

GLOBALISING THE BODY: GLOBALISATION AND REPRODUCTIVE RIGHTS*

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I INTRODUCTION

Globalisation is a phenomenon of the contemporary world. Everywhere around us there seem to be signs of the power of the forces of globalisation: in our media and popular culture; in our international linkages across continents through international travel and telecommunications; in our globalised trade; and with the global movement of people, a process which itself ranges from the movement of international tourists to the international movement of refugees and other displaced persons.

The processes of globalisation seem to simultaneously unify and divide us. There is no doubt that we live in a globalised world and that we are connected to others in previously unimaginable ways by transportation, telecommunications and economics. Yet, while this global context increasingly links us to others, there is also a very real sense in which separation, difference and the local have also gained a new significance; we are locked in a tension between the universal and the particular that has come to typify contemporary society. This article explores the meanings of globalisation and this dynamic – or tension – between the universal and the particular in terms of its implications for the body and, in particular, its significance for women and their reproductive rights.

At the outset it should be made clear that globalisation is not a unified or one-way process. Globalisation is not simply a rolling out of cultural oneness across an international landscape. It is, as a number of scholars have suggested, an interactive process.¹ Indeed Roland Robertson has described the dynamic of globalisation as ‘the twofold process of the particularisation of the universal and

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1 See Ulrich Beck, *What is Globalization?* (Patrick Camiller trans, 2000 ed) 46 [trans of: *Was Ist Globalisierung*]; David Held et al, *Global Transformations: Politics, Economics and Culture* (1999); Roland Robertson, ‘Glocalisation: Time-Space and Homogeneity-Heterogeneity’ in Mike Featherstone, Scott Lash and Roland Robertson (eds), *Global Modernities* (1995) 25.

the universalisation of the particular'.² So, the focus of this article is the dynamic between the universal and the particular in the context of contemporary legal debates about reproduction and the body.

II THE MEANING OF 'US'

Our lives and our bodies have different significance in this age of globalisation, information technologies and biomedicine, creating complex dilemmas about the meaning of 'us'. In many ways, our sense of self, both individually and in relation to others, is being recast. In the 50 years since Watson and Crick outlined the structure of DNA, genetics has reshaped our understandings of the human body. While the dangers of genetic essentialism are evident,³ genetic science seems to offer an appealingly simplistic certainty. As modern genetic science seeks to find the deciding factors for disease and personality, the old debates of 'nature versus nurture' are being replayed in a modern genetic context.

There is a certain paradox in these debates. On the one hand, the exploration of human genetics seems to find ways of tying us together, across humanity. The human genome has, for example, been described as the 'heritage of humanity':⁴ a common ancestral heritage that links us all, across time, place, culture and race. In a sense, genetics is characterised in global terms. On the other hand, however, genetics is also increasingly used as a basis upon which to differentiate between us. We are increasingly looking for the genetic causes of disease, of behavioural characteristics, of intelligence, or of personality. Genetics has become the science of difference. It allows us to identify not only the ill, but also the pre-symptomatically ill,⁵ including those who may never actually become ill at all, raising concerns about the potential for genetic discrimination.⁶ In the reproductive context, prenatal diagnosis allows us to identify certain genetic conditions in the developing foetus, and this information may be used to make decisions about selective termination of pregnancy, subject to the provisions of the relevant abortion laws. When combined with reproductive technologies, genetic technologies allow us to selectively choose embryos on the basis of their genetic characteristics even before they have been transferred to a woman's body – a process known as pre-implantation genetic diagnosis.⁷ As our knowledge of

2 Roland Robertson, *Globalisation: Social Theory and Global Culture* (1992) 177–78.

3 Genetic essentialism is the idea that 'personal traits are predictable and permanent, determined at conception, "hard-wired" into the human constitution': Rochelle Cooper Dreyfuss and Dorothy Nelkin, 'The Jurisprudence of Genetics' (1992) 45 *Vanderbilt Law Review* 313, 320–21.

4 *Universal Declaration on the Human Genome and Human Rights*, UNESCO Gen Conf Res 29 C/Res 16, reprinted in Records of the General Conference, UNESCO, 29th sess, 29 C/Resolution 19, 41 (1997) (adopted by the UN General Assembly: GA Res 152, UN GAOR, 53rd sess, UN Doc A/RES/53/152 (1999)).

5 Dreyfuss and Nelkin, above n 3, 318.

6 See generally Australian Law Reform Commission, *Essentially Yours: The Protection of Human Genetic Information in Australia*, Report 96 (2003).

7 See generally Isabel Karpin and Belinda Bennett, 'Genetic Technologies and the Regulation of Reproductive Decision-making in Australia' (2006) 14 *Journal of Law and Medicine* 127.

genetics increases, so too **do** our understandings of the body; and, with this, the meanings of health, illness, disability and difference are transformed.

In the reproductive context, the meaning of 'us' has been redefined by assisted conception. Since the birth of the world's first in-vitro fertilisation baby in 1978 in England, thousands of infertile couples have used assisted conception technologies to have a child of their own. The development of these technologies has led to new understandings of parenthood which has allowed parenthood to be divided into social, genetic and gestational categories, leading to new legal debates.⁸ In one sense, this development fractures the meaning of parenthood by splitting it into its various components in ways that could be seen as fracturing our understandings of 'us' and our roles as parents. Perhaps this could be seen as opening up a more inclusive discussion of contemporary meanings of the word 'parent' given that the 'family' is a far more diverse entity than it once was. However, debate still rages over the meaning of 'family', as we can see from debates over the eligibility for assisted conception services and, in particular, over whether single women or lesbian couples should be allowed access to these new reproductive options. In the reproductive context, then, the meaning of 'us' is still contested.

The examples provided so far are grounded in contemporary biomedicine. Yet the question of the meaning of 'us' does not arise exclusively in the context of modern technology. Any attempt to think about the meaning of 'us' in the context of reproductive rights and globalisation must also address the fundamental inequalities that exist at a global level. If we want to talk about the body, then it is important to remember that not all bodies are equal in terms of health, their access to health care or their access to the basic conditions for health, such as clean water and adequate sanitation. The patterns of global poverty and disease impact in differential ways and, in particular, on women and children. Rates of maternal and infant mortality,⁹ and gendered patterns of access to basic health services,¹⁰ combine to ensure that bodies are institutionally gendered and are affected by global patterns of wealth and health. If we fail to appreciate this fact then we risk ignoring critical issues about the way 'the body' is configured in contemporary society. While one would like to think that these issues are obvious, and that it is not necessary to remind us to take them into account, the continued and growing gap between the world's rich and poor, and the relative social and economic disadvantage of women, are indicators of the continued importance and relevance of these issues.

8 Victorian Law Reform Commission, *Assisted Reproductive Technology and Adoption – Position Paper 2: Parentage* (2005); New Zealand Law Commission, *New Issues in Legal Parenthood*, Report 88 (2005); Kerry Petersen, 'The Rights of Donor-Conceived Children to Know the Identity of Their Donor: The Problem of the Known Unknowns and the Unknown Unknowns' in Belinda Bennett and George F Tomosy (eds) *Globalization and Health: Challenges for Health Law and Bioethics* (2006) 151.

9 Each year 10.6 million children and 529 000 mothers die, primarily from avoidable causes: World Health Organisation, *World Health Report 2005: Make Every Mother and Child Count* (2005) 1.

10 Ibid 25–26.

III THE MEANING OF 'RIGHTS'

Perhaps the challenges of determining the meaning of 'us' become most acute when we endeavour to find a common language of, and approach to, ethics and rights. The relationship between the universal and the particular plays out in attempts to articulate common values and norms. The difficulty here is that we are increasingly trying to grasp the global while the local seems to be gaining primacy. Even within our globalised world there is an increased recognition of local context and culture. The difficulty with attempts to articulate global approaches to controversial issues is that such attempts appear to presuppose, and take for granted, the existence of common values and approaches to bioethical and other issues.¹¹

Such claims have been under increasing challenge in recent years. Demands for the recognition of cultural context and specificities remind us that norms which claim to have universal application will need to be sensitive to those contexts and specificities – and indeed be genuinely trans-cultural – if they are to retain their currency.

Contemporary bioethics is walking a difficult line between universalism and relativism in ethical debates. There is a risk that recognition of difference and culture may slide us into a relativism devoid of universal values. If we need to pay attention to cultural specificities, how are we to decide when a cultural practice is in violation of human rights? If we are to respond to this dilemma we need to find a universal language that can articulate our common concerns and values. The language of human rights is well suited to this task, although even here we must be aware of the need to ensure that human rights are genuinely trans-cultural and inclusive.

For us, as lawyers, these issues have particular resonance since the language of the law is often used as the mould, whereby rights and entitlements are shaped at local, national and international levels. The contextualised nature of rights is not new. Feminist scholars and others have long questioned the liberal ideal of universality and commonality, pointing out that there is no universal, generic form of the body, and that law, and indeed society generally, are shaped by gender, race, class, disability and a range of other factors. The ongoing task for lawyers and feminists is to craft a language for the law that can articulate those values that we do share, while at the same time remaining responsive to the differences between us.

IV POINTS OF INTERSECTION

Globalisation, health and human rights can intersect around the body in new and challenging ways. Previously, when we would talk about reproductive rights, we would be talking mainly about access to contraception, safe, legal abortion services and safe motherhood. In this country at least, and in many others, access

11 For further discussion of these themes see Belinda Bennett, 'Rewriting the Future? Biomedical Advances and Legal Dilemmas' (2006) 13 *Journal of Law and Medicine* 295.

to contraception is now taken for granted. Across the globe, women have varying access to safe, legal abortion services.¹² While maternal mortality rates are at historic lows in the West, for the women of the world's poorest countries, reproduction is still fraught with hazards and the risk of death remains unacceptably high.¹³ Thus, the dynamic between globalisation, health and human rights is still a continuing struggle.

Reproductive rights are also being transformed by globalisation and technological change. As discussed above,¹⁴ the global scientific effort that is the new genetics is transforming the reproductive landscape by providing more information than ever before about the developing foetus, and even the embryo. This raises complex questions about the intersection of reproductive rights and disability rights.¹⁵

The globalisation and commercialisation of health are also transforming our understandings of the body. Women are now able to travel to other countries to access the health services they are unable to access at home. Women have long traveled within and between countries in order to access the reproductive medical services they require. They have, for example, traveled in order to access abortion services¹⁶ and services associated with assisted conception.¹⁷

Writing on reproductive tourism in Europe, Guido Pennings has argued that the main causes of reproductive tourism are as follows: that the treatment is prohibited in the patient's country of origin; because the treatment is not available in the patient's home country due to lack of expertise; long waiting lists; or, high financial costs.¹⁸ In the globalised and consumer-oriented economy, health care can become simply one more commodity able to be 'purchased' by the globe-trotting patient.

Fertility tourism, or reproductive tourism, raises important questions of equity. Is it unfair if wealthy patients can travel abroad in order to access health services that they cannot access at home? On the other hand, if patients are able to access health services abroad that they could not *afford* at home, does health tourism potentially promote equity?¹⁹ Does it make a difference if patients travel from a developed country to a poorer country to access health services, rather than

12 *World Health Report 2005*, above n 9, 50–52; Marge Berer, 'Making Abortions Safe: A Matter of Good Public Health Policy and Practice' (2002) 10 *Reproductive Health Matters* 31.

13 Only '1% of maternal deaths occur in the developed world. Maternal mortality ratios range from 830 per 100 000 births in African countries to 24 per 100 000 births in European countries': *World Health Report*, above n 9, 62.

14 See Part I of this paper.

15 See Karpin and Bennett, above n 7.

16 Seth F Kreimer, 'The Law of Choice and Choice of Law: Abortion, The Right to Travel, and Extraterritorial Regulation in American Federalism' (1992) 67 *New York University Law Review* 451.

17 Guido Pennings, 'Legal Harmonization and Reproductive Tourism in Europe' (2004) 19(12) *Human Reproduction* 2689; Tamara K Hervey and Jean V McHale, *Health Law in the European Union* (2004) 144–155.

18 Pennings, above n 17, 2690.

19 See *ibid* 2691.

travelling from one wealthy country to another? Is health simply another commodity, just like any other in the global economy?²⁰

V CONCLUSION

There are a number of trends and developments that are reconfiguring contemporary understandings of the body. Indeed many of the cultural and scientific changes of our time are focused upon the body. Although the economic and cultural forces of globalisation may have a unifying effect, there are still global disparities in wealth and health that continue to have a profound impact on the lived reality of the body. Advances in genetic science have transformed the ways that we think about illness, disability, and even our physical commonality with each other. Our sense of family is being shaped and reshaped by new understandings of parentage through the use of assisted conception technologies. With the increasing globalisation and commercialisation of health care, the body once again becomes a site upon which cultural changes are written. For lawyers, the task is to be alert and responsive to these changing conceptions of the body, and to their potential to impact upon broader regulatory debates about the body, rights and reproduction in contemporary society.

20 John Harrington, 'Globalization and English Medical Law: Strains and Contradictions' in Bennett and Tomossy (eds), above n 8, 169.