

Human Tissue and Global Ethics

DONNA DICKENSON

Abstract

One important sense of ‘global ethics’ concerns the applied ethical issues arising in the context of economic globalisation. This article contends that we are beginning to witness the economic commodification and, concomitantly, the globalisation, of human tissue and the human genome. Policy-makers and local research ethics committees need to be aware that the relevant ethical questions are no longer confined to their old national or subnational context. A shift from questions of personal autonomy and identity can therefore be expected—towards the more problematic issues of justice, exploitation and distribution. Here we can learn from the distinctions drawn in legal philosophy, such as the notion of property as a ‘bundle’ of rights, from which we may choose rights favouring the interests of vulnerable populations. We may also wish to apply the distinctions drawn by Calabresi and Melamed between pure property rules, modified alienability rules, and pure non-property regimes. Global ethics also concerns issues of value disparity across cultures, directing our attention to the moral beliefs of indigenous peoples, for example, whose DNA or tissue is increasingly of commercial importance. In examining case examples from Tonga and Aotearoa/New Zealand, I will consider the impact of indigenous belief systems and of neo-colonialism on indigenous peoples’ perceptions of Western researchers. It is clear that many indigenous peoples reject both the pure property system and any modifications, insisting on a pure non-property regime. How can they then be protected in a globalised market system that so far favours the opposite end of the spectrum?

I. Commodification and globalisation

In July 2004 it was reported that the UK’s Human Fertilisation and Embryology Authority was to visit a Bucharest clinic, in order to monitor the purchase of human ova from Romanian women by British clinicians. Although it was not suggested that the HFEA was brokering the transactions, many observers were shocked that the HFEA tacitly approved this commodification and globalisation of tissue, in the form of the cross-border trade in ova.¹ I was not so shocked, having predicted such developments in several articles and at a workshop on reproductive ethics issues involving women in the accession countries.² If this sounds like bragging, I hasten to say that I would much rather have been proved wrong.

My Delphic powers are minimal, and I never win at Bingo. But from Dolly’s earliest days, as the sole survivor of 267 embryos each developed from genetic material injected into an enucleated egg, it should have been clear that the stem cell

technologies would require large numbers of enucleated ova, that most IVF clinics in Western Europe were already short of ovum donors, and that commercial incentives to ‘donate’ would be particular irresistible to poor women in Eastern Europe or the developing countries. While the majority of commentators appeared most concerned with the moral status of the embryo, for embryonic stem cell technologies, or with the autonomy and identity of a clone, in reproductive cloning, I found myself more and more convinced that the real issues concerned the possibility of a global trade in ova, with the attendant questions of what was to count as commodification and exploitation if that trade did emerge.

For me the issues that counted, and that still count, were less to do with the classic concentration of bioethics on autonomy, informed consent and other such individual questions, and more to do with structural and societal issues concerning economic and political justice. It seems to me that the commodification and globalisation of human tissue and the human genome will catch bioethicists and social policy analysts unawares, unless they shift their gaze outward to global justice. Policy-makers and local research ethics committees need to be aware that the relevant ethical questions are no longer confined to their old national or subnational context. A shift from questions of personal autonomy and identity can therefore be expected—towards the more problematic issues of justice, exploitation and distribution.

This is of course an oversimplification: despite the unfavourable press they have recently had from some social scientists,³ many bioethicists are fully aware of wider social questions of justice, which is after all one of the ‘four principles’—even if a somewhat junior partner in the firm. Some of these international justice issues had already arisen, and continue to be debated, in the more widely discussed context of organ sale.⁴ There, and more recently in examples drawn from genetics,⁵ they have given rise to a debate on whether property in the body is a useful or even an accurate concept, and to proposed distinctions between sale, gift and other forms of exchange, which I shall examine in the next section. Ownership rights construed as forms of control, protecting individuals’ autonomy, differ from rights seen primarily in terms of income, and some commentators rely on the first form of property rights to protect against injustice, while prohibiting or strictly regulating the second.⁶

Other commentators have rightly drawn attention to the global inequities that may arise between rich and poor nations and their nationals; what the ova sale example adds is whether there is also a question of gender injustice at a global level. We may be witnessing the creation of a new subject of global bioethics, now taught in at least one university⁷, and centring on issues such as property in tissue, patenting, ‘reproductive tourism’, and other questions of global distribution. None the less, the combination of globalisation and commodification of human tissue more generally raises enormous and largely unaccustomed issues for bioethics and bio-law.

It might be well to begin by trying to define some terms, in order to get some purchase on this vastness. By the commodification of tissue, I mean the process by which tissue acquires value such that it becomes the object of exchange: not

necessarily totally purely free market exchange, however. We can see in the HFEA example that a UK regulatory body empowered to licence IVF clinics, and to retract their licences, is attempting to regulate untrammelled exchange. In some senses this attitude is preferable to turning a blind eye; in other ways it represents accommodation with the inevitability of commodification. For those to whom commodification makes people and/or their tissue in some way into objects—and ‘in what way’ needs further unpacking, as I have attempted to do elsewhere⁸ -- clearly this is neither desirable nor, in the last analysis, inevitable, since so long as people remain people rather than objects, they retain the possibility of agency, of doing something to prevent their own commodification.

In denying that commodification necessarily equates the free market exchange of practically everything, I follow Margaret Radin’s warning: ‘universal commodification is oversimplified, a caricature.’⁹ It is neither accurate nor heartening to assume that simply because elements of tissue commodification have crept into medical research and clinical practice, we must accept the inevitability of full-blooded free markets in tissue. On the other hand, my definition in terms of exchange would include ‘egg-sharing’ and other practices in which money does not actually change hands, but the primary motivation is economic and the exchange mutual. It would not include blood donation, where in the UK, at least, there is no mutual exchange, except possibly tea and biscuits for the donor.

This will do for a working definition of what may be an unfamiliar concept to some, commodification—even though it has been said that ‘in the last couple of decades, *commodification* has become almost a buzz-word in bioethics’¹⁰. Turning now to globalisation, definitions are no less sticky. I want to use the term neither in its vague and beneficent sense of ‘growing interconnectedness and interdependence on a world scale,’¹¹ nor necessarily and exclusively in the malevolent characterisation of the anti-globalisation movement. Instead I want to present globalisation, in its economic guise, as the process by which capitalism penetrates global markets and audiences with minimal regulation. ‘That meaning of globalization is associated first with the internationalizing of production by multinational corporations (MNCs) and then with the establishment of unregulated global financial markets.’¹² The global ‘Gold Rush’ in biotechnology is a prime example of the penetration of capitalism into previously non-capitalist relationships and societies; in section three I shall use the case example of Tonga to illustrate this claim.

II. Should human tissue be commodified?

If human tissue is to be commodified, it must in some sense be an object of property-holding. This is true even if the ‘return’ for the tissue is not monetary. In a broad sense, the question of commodification assumes that the prior question ‘Can human tissue be an object of property?’ has been answered in the affirmative.

Some commentators—on both sides of the commodification and globalisation debates-- tend to assume that once the affirmative answer has been given, no further regulation is possible or desirable. That position is patently false: we regulate all kinds of property-holding. There are stringent limitations on my right to attack you with my kitchen knife, no matter how clear it may be that it is my legitimate property. Property is normally conceived in jurisprudence as a bundle of rights,¹³ some of which may be partial or non-existent. I may have the right to sell my knife, or give it away, or gamble it in a game of mumblety-peg, but I do not have unmitigated rights over all of its uses merely because I am its owner.

What kinds of rights might I then have? In jurisprudence property is further conceived not as a single entity but as a ‘bundle’ of relationships, from which ‘sticks’ can be chosen at will by lawmakers, regulators and policy-makers.¹⁴ One might, for example, wish to assure research subjects the ‘stick’ of protection against unauthorised taking, while not allowing them the ‘stick’ of profiting from long-term developments performed with their tissue.¹⁵ In other words, property is not all-or-nothing, although liberal political theory tends to see it as such.

As John Christman says, ‘[T]he picture of ownership that history paints...is much more complex, murky and varied than defenders of the liberal paradigm of ownership might have us suppose.’¹⁶ Christman denies that historically, the notion of property has ever involved full and absolute rights, without any restriction or regulation: this is not the natural state on which government then imposes, as in the liberal view of the social contract and in the Roman conception of ‘sole despotic dominion’. Yet researchers, pharmaceutical firms and, yes, British IVF clinics are still widely assumed to enjoy undifferentiated and total power over the tissue they acquire.¹⁷ Whereas in law the notion of property is so differentiated that some commentators deny there is such a thing as property at all,¹⁸ in bioethics the ‘all or nothing’ model seems to be assumed by both proponents and opponents of property in tissue.

Bearing this *caveat* in mind has the effect of reducing some fears about the commodification of tissue. Even if tissue such as ova, or DNA, or blood, or organs, is commodified to the extent that it can be alienated from its original ‘owner’¹⁹—and I use the scare quotes deliberately—that does not mean that we are powerless to regulate the means by which it can be transferred. It is not all or nothing: complete market commodification or total non-commodification. We may wish to allow the gift of blood, for example, but not its sale. The argument used by many ‘pro-commodification’ advocates, to the effect that it would be contradictory not to allow sale when we already allow gift, betrays an ignorance of legal philosophy.

Over thirty years ago, Calabresi and Melamed²⁰ distinguished between pure property rules (in which both gift and sale are permitted); liability or market-inalienability rules (allowing gift but not sale) and pure inalienability (forbidding both gift and sale). A pure property regime would prohibit all ‘border crossings’ (between the ‘owner’ and other parties) unless prior permission is granted, and compensation is paid at a rate determined by the property owner. Liability or market-inalienability rules allow such

crossings or transfers without prior permission, but require compensation to be paid *ex poste*, at a rate to be determined by the state. Complete inalienability rules prohibit the transfer of the property object entirely, regardless of offers of compensation. (If the last category is the most unfamiliar, think of the analogy of the vote, which may be neither given away nor sold.)

Applied to human tissue in the global context, this analysis would yield three very different policy prescriptions. What we risk seeing in examples such as the Romanian one is an unregulated pure property regime, in which compensation is paid at a rate determined where the tissue ‘owner’ is either in a weak bargaining position, due to her comparative poverty, or not even consulted about the bargain at all. (For example, there have been reports of unauthorised taking of ova by Croatian gynaecologists, presumably for subsequent sale to Western European or US researchers and clinicians.) We could counter that risk by insisting that ova should not be alienable from their ‘owners’ in any circumstances, regardless of whether or not women are paid a great deal, very little, or anything at all. For policy reasons—such as difficulty of regulation, or awkwardness of setting a ‘fair’ price—or for reasons of core values—such as the symbolic importance of a legal ban in upholding human dignity²¹—we could decide that tissue should be totally inalienable at global level. (We might still believe that national jurisdictions should allow other property regimes within their own borders, where there might not be such huge disparities of wealth as between developing and developed countries; or we might not.)

Alternatively, we could choose the middle route: allowing tissue such as ova to be transferred, but at a rate to be determined by the state or some other form of allegedly impartial institution. Charlotte Harrison,²² for example, has proposed a hybrid approach between the two extremes of total market freedoms to sell, trade or profit from property in human tissue, and a comprehensive ban on any form of tissue transfer, including gift. Harrison favours a modified alienability scheme whereby donors would be compensated by an objective administrative mechanism rather than by a market in tissue. This hybrid approach retains a general rule of donation for research tissue when acquired, but a non-market mechanism for compensation in those cases where donations later prove to have commercial uses. Harrison denies that commodification is necessarily entailed by this liability or market inalienability approach, whereby research users remain liable to compensate donors for tissue that proves valuable in further research developments. Rather, she argues, commodification is inextricably entangled with market mechanisms; compensation, if determined by a public body, actually avoids the worst evils of commodification.

To some Western observers²³ this modified alienability scheme represents an attractive compromise between a raging market in tissue and an impractical ban on all tissue transfer. If such a compromise could be engineered on a global level, some might feel, indigenous populations in the Third World would also enjoy better protections. The difficulty is that those populations themselves almost universally insist on total non-commodification—the third of Calabresi and Melamed’s three views. Many indigenous peoples distrust the entire idea of giving informed consent to the use of

human materials in commercial applications. From the Karioca Declaration at the Rio de Janeiro Environment and Development Summit onwards, indigenous peoples have widely rejected the notion that they can give any such thing as informed consent to what they view as a deeply wrong enterprise, the objectification and commodification of human life. Some of the reasons for this attitude are historical: an entirely understandable reaction to the excesses of colonialism, to the exploitation of colonial countries' resources and even the plundering of aboriginal corpses for Western museum collections.²⁴ In the recent example of Tonga, these attitudes resulted in a collapse of the negotiations with an Australian biotechnology company, with losses for both sides. The gulf between Tongan and Western values illustrated in this case highlights a second sense of global ethics: conflicts between competing value frameworks despite the appearance of value uniformity that globalisation has often been said to produce.

III. The Tongan and Maori cases

In November 2000 the Australian firm Autogen announced to the Australian media an agreement with the Tongan Ministry of Health, to collect tissue samples for the purpose of genomic research into the causes of diabetes—well-known for its high incidence, about 14%, among the Tongan population.²⁵ As the press announcement declared, the firm was attracted to the 'unique population resources of the Kingdom of Tonga.' Such relatively homogeneous indigenous populations are likely to possess an increasing appeal not only in terms of research into the genetic basis of such conditions as diabetes, but also for pharmacogenetic research, which is still in the early days of learning how to tailor drug regimes on a genomic basis. Randomised clinical trials testing the effects of pharmacogenetic drug regimes may well be cheaper to run on populations possessing a high degree of genetic similarity in both the experimental and control arms, since the required level of statistical significance will probably be available from smaller populations.

Although the Tongan public had not been informed of the initiative before the announcement in the Australian press, Autogen might have expected little resistance. It was offering several sorts of benefits: annual research funding for the Tongan Ministry of Health, royalties to the Tongan government from any commercially successful discoveries, and provision of drugs from such discoveries free of charge to the people of Tonga. However, although the Director of the Tonga Human Rights and Democracy Movement, Lopeti Senituli, had advocated similar benefits for indigenous peoples in a previous instance, when Smith Kline Beecham was pondering a bioprospecting agreement for *plant* samples in Fiji, he was wholly opposed to the Tongan government's agreement with Autogen concerning *human* tissue, despite its apparently lucrative benefits. As Senituli put it,

*Existing intellectual property right laws favor those with the technology, the expertise and the capital. All we have is the raw material—our blood. We should not sell our children's blood so cheaply.*²⁶

It would be easy to dismiss this statement as a political war cry of dubious scientific accuracy. Of course the Tongans were literally not being asked to sell their children's blood. The DNA samples to be taken were renewable tissue in any case, and there was no theft of any individual's genome. But to dismiss Senituli's position so lightly would be an error, and a neo-colonialist one at that. It represents an appeal to an alternative and conflicting set of values, to which the second aspect of global ethics should alert us.

The Tongans' primary stated objection to the Autogen proposal was that only individual informed consent was to be sought, in accordance with the dominant ethical model in genetic databanks. 'The Tongan family, the bedrock of Tongan society, would have no say, even though the genetic material donated by individual members would reflect the family's genetic make-up.'²⁷ They also had highly pragmatic objections: for example, they cannily surmised that Autogen would reap rewards, such as higher share values and provision of venture capital from the pharmaceutical industry, as soon as the agreement was announced--whether or not any therapies were eventually developed. By contrast, 'the promised royalties from any therapeutics and the provision of those therapeutics free of charge to the Tongan people were, we felt, prefaced by a huge "IF".'²⁸ In the face of this opposition, Autogen quietly dropped its proposed Tongan DNA databank in 2002, announcing that it would conduct its research in Tasmania instead but then disappearing from view altogether.

If the issue of extended consent could have been solved, and if the benefits of the agreement had been made more secure, would the Tongan opposition have been placated? Senituli says no: ultimately the conflict with Tongan values was simply too great, and the threat from global commodification too vast.

*The Tongan people in general still find it inconceivable that some person or Company or Government can own property rights over a human person's body or parts thereof. We speak of the human person as having "ngeia", which means "awe-inspiring, inspiring fear or wonder by its size or magnificence." It also means 'dignity'. When we speak of "ngeia 'o te tangata" we are referring to 'the dignity of the human person' derived from the Creator...Therefore the human person should not be treated as a commodity, as something that can be exchanged for another, but always as a gift from the Creator.'*²⁹

Again, to dismiss these objections as biologically incorrect—because no individual human being is owned or exchanged as a commodity by a DNA databank—is to miss the point. Global ethics in its second sense reminds us of the need to understand explanations such as this in their wider cultural context. Just as improved benefits or community consent would not have been sufficient counterweight to the Tongans' core objections, so correction of 'misperceptions' about the science involved would be insufficient to balance the power of a host of core ethical beliefs in Polynesian cultures. In the closely related Maori culture of Aotearoa/New Zealand, the concept of

human dignity to which Senituli refers is linked to the core values of *mana tipuna*, prestige and authority drawn from the ancestors; *tapu o te tangata*, the sanctity of the person; *whakapapa*, genealogy; and *mauri*, or life force. (The Maori language also uses the word *ira* for the life principle; it is also the closest Maori translation to the word 'gene'.³⁰)

As the eminent Maori cultural studies professor Hirini Moko Mead has written, Maori culture views one's personal *tapu* as the most important spiritual attribute of the individual.³¹ 'This attribute is inherited from the Maori parent and comes with the genes.' The aim of a good life is to preserve and enhance *tapu*, keeping the self in a steady state of balance. Actions by self or others that take away *tapu* are to be avoided. In the Polynesian context, it might well be thought that allowing others to take away one's genetic material is a violation of *tapu*, resulting in a diminution of the *tapu* available to one's descendants and affronting one's ancestors, who have striven to preserve their own *tapu* as a legacy. The ultimate source of *tapu* is seen as the primeval parent gods and their divine children, and the greatest threat to the vitality of the entire Maori people, embodied in this legacy from the earliest parents, is perceived by Maori elders as the assaults of European *pakeha* culture on Maori customs. An earlier anthropological study (Best, 1941) recorded the powerful statement from one elder 'that the vitality of their race departed with the loss of *tapu*, leaving the people in a defenceless and helpless condition.'³²

Although learning for its own sake is highly esteemed in Polynesian cultures, research for principally financial gain does not necessarily share the same high value. On the other hand, if it could be known definitely that the proposed research might have lowered the high Tongan rate of diabetes or provided more effective therapies, the value of *tapu* might be displaced from its usual pre-eminent position. The countervailing value of *mauri* or life force could arguably be enhanced, one might think. However, Maori and Polynesian values in general are by no means utilitarian. Even if the benefit to be derived from the research were definite, there would still be qualms about sacrificing even a small part of some individuals' life force in order to benefit others.

Mead discusses a similar reluctance in the instance of xenotransplants. Although it might be thought that Maori values would allow the implantation of a pig's heart valve, for example, in order to save a human, Mead is in fact unwilling to allow this sacrifice as unproblematic in terms of *mauri*, which pigs too possess. It is the offence against *mauri* as a life-force which renders a consequentialist balancing of harms inapplicable—or, to translate into the utilitarian calculus, which requires us to set a value on *mauri* in the abstract, as an ultimate value to be maximised, regardless of where and how it is embodied. In the case of xenotransplantation, Mead argues:

In the final analysis a mauri is sacrificed to save another and this is not an ideal situation. The rationalisation for sacrificing the pig is that we kill it and eat it anyway. But when we eat it we do not call it pig, but rather pork. Eating pork, however, is quite different from using living tissues of a pig to keep us alive...Many

of us have qualms about employing living pig tissues to repair damaged human parts. Why is this? In the case of pork the pig is killed, prepared, cooked and eaten by us. The mauri of the pig is extinguished in the process...In contrast, living tissue used to repair human parts continues to live...Part of the mauri of pigs remain [sic] in human beings as living tissue...We doubt that the mauri and tapu of the pig are in fact completely extinguished, and this is a concern.³³

In the case of DNA samples taken for the proposed Tongan research on diabetes, there is no cross-species violation of *mauri*; no research subjects are asked to sacrifice their *mauri* for the greater good of the community, or Autogen. I have already suggested, however, that they are being asked to infringe their personal *tapu*, and that a countervailing claim that *mauri* will instead be enhanced for the community as a whole would not be unproblematic. In other instances in bioethics where a Western analyst might employ a consequentialist, balancing mode of reasoning, such as xenotransplants, a Maori analyst is loath to let the benefit to some outweigh harm to the life force in other persons or indeed any other creatures.

The subtle analysis suggested by Mead distinguishes between certain permissible uses of pigs, including eating pork, because *mauri* has already been extinguished in the pigs and can be enhanced in the humans who use pork as sustenance. In the case of genetic material, however, it is living tissue that is being taken, so that *mauri* is not extinguished. Not only is the taking of such tissue wrong in terms of both *tapu* and *mauri*; even the beneficial employment of Tongan DNA to produce more effective therapies for the Tongan population might be suspect, to the extent that living cell lines are involved. For example, an immortal cell line such as that produced through stem cell therapies would continue to contain the *mauri* of the individual who donated the genetic material, as well as the *mauri* of the woman who donated the enucleated ovum. The mixing of these individuals' *mauri* with that of the recipient patients might be ethically problematic, even if the *mauri* of the recipient were enhanced.

Maori and other Polynesian values might appear to forbid any 'border crossings', to return to the terminology of property, liability and inalienability. However, there are also aspects of Maori culture concerned with repairing breaches of *tapu* and *mauri*, in effect compensating for border crossings once they have occurred, more in the manner of liability. In the *take* procedure, the starting point for repairing such breaches is to acknowledge that they have occurred and that a wrong has been committed. Had Autogen acknowledged that harm had been done to Tongan values, regardless of the benefits offered, the resultant breakdown of negotiations might not have occurred.

Possibly this seems an impossibly high price to exact of a Western company, particularly because the Polynesian sense of harm does not accept the Kantian excuse of good intentions. 'All offences appear to be offences of strict liability.'³⁴ It would not be sufficient for Autogen to claim that they intended no harm; once core values such as *ngeia* had been offended, harm had occurred. However, the subsequent process of *utu* or reparation does provide a blueprint for negotiation, in the hope of establishing *ea* or balance between the conflicting viewpoints. Complete value

relativism is neither necessary nor desirable: accommodation between indigenous and Western values can in principle be reached, through recognition of the validity of indigenous frameworks. The Bioethics Council of New Zealand has recently completed a consultative exercise on the use of human genes in other organisms, for example, in which both Maori and *pakeha* values were canvassed—although some Maori critics viewed this exercise as more top-down than bottom-up.³⁵

As Mead notes, ‘the debates are likely to be contested, and since we are now dealing with global rather than local issues, with believers and non-believers, and with Maori and non-Maori, it is much more difficult to reach agreement.’³⁶ This pessimism about the possibility of reaching accord between ‘indigenous’ and Western values is borne out by the Tongan case, and in New Zealand by the rather formulaic hearing given to Maori beliefs during hearings by the Environmental Risk Management Authority over an application by the ‘Dolly’ firm, PPL Therapeutics, to field-test transgenic sheep in order to produce a cystic fibrosis treatment, human alpha-I-antitrypsin. Taking the position advanced by the Ngati Raukawa tribe’s response to the consultation, the Maori advisors to the ERMA recommended that the application should be denied, representing as it did an unacceptable transgression against sacred values. However, the ERMA allowed the application after a ‘balancing’ test, holding that Maori cultural objections were outweighed by the possibility of relieving cystic fibrosis—which, it should be noted, disproportionately affects those of European descent. We have also seen that Maori values do not admit of this sort of utilitarian balancing; it is therefore rather mystifying that the ERMA denied that it had dismissed Maori objections, and that the risks to Maori culture had been adequately considered.³⁷

It is also a neo-colonialist error, however, to draw an overly black-and-white picture of the differences between indigenous and Western beliefs, or indeed to categorise those beliefs too rigidly into the very categories ‘indigenous’ and ‘Western’. For patients and donors in the First World, human tissue has also been found in ethnographic surveys to retain elements of ‘life-force’, or of personhood and identity.³⁸ A Quaker response to the New Zealand transgenic consultation exercise rejected the insertion of human genes in other organisms on grounds that independently echoed Maori beliefs, presenting the gene pool as a collective legacy for which we owe a collective responsibility.³⁹ Feminist theory may be particularly alert to the complex effects inherent in embodied identity.⁴⁰ Here, too, global ethics in its second sense should warn us against too automatic an assumption of cultural relativism, and assist us in tracing the common elements between cultures. Global bioethics as a progressive movement has widened the issues considered by bioethics and the perspectives it employs.⁴¹

Acknowledgements

My little knowledge of Maori ethics was gained from the kind invitation from Nga Pae o te Maramatanga, the National Institute for Research Excellence in Maori Development and Advancement in Aotearoa/New Zealand, to speak at a conference on ‘Research ethics, tikanga Maori/indigenous and protocols for working with

communities,' held in Wellington on 10th-12th June 2004. I am very grateful to Lopeti Senituli for presenting me with a copy of his paper at this conference and for his helpful answers to my questions. My thanks also to Mera Penehira, Paul Reynolds and Sharon Hawke for looking after me so well during this conference, and to Professor Linda Smith for providing comments on a draft version of this paper. John Pennington, Executive Officer of Toi Te Taiao/The Bioethics Council, was hospitable and helpful in providing me with materials and explanations concerning the human gene transplantation consultation exercise.

I am also deeply honoured and grateful to have been welcomed into the Bastion Point (Auckland) and Bluff *marae* by my hosts, the *tangata whenua: karanga mai, mihi mai*.

¹ (Core) Comment on Reproductive Ethics, (Corethics.org. website, visited 22.7.2004, quoting a report in the *Sunday Times* that the visit had taken place on 15th July. 'That the HFEA thinks it appropriate to lend its support to such practice, and in an overseas country, is beyond belief... That they can imagine it is their duty to police clinics in Europe, particularly in the poorer countries where the potential for exploitation of vulnerable women is immense, is truly shocking. Egg harvesting can be a life-threatening intervention for the women involved, and at the very least the HFEA should remain absolutely neutral on this issue, not promoting it in any way.' (Statement from Core director Josephine Quintavalle)

² D.L. Dickenson. Property and women's alienation from their own reproductive labour. *Bioethics* 2001; 15; 205-217; D.L. Dickenson. Commodification of human tissue: implications for feminist and development ethics. *Developing World Bioethics* 2002; 2; 55-63; D.L. Dickenson. Consent, commodification and benefit-sharing in genetic research. *Developing World Bioethics* 2004; 4; D.L. Dickenson. Reproductive rights and property in the body. Paper delivered at the San Sebastian workshop of the Network for European Women's Rights, February 2004.

³ For example, A.M. Hedgcoe. Critical Bioethics: Beyond the Social Science Critique of Applied Ethics. *Bioethics* 2004; 18; 120-143.

⁴ E.g. Calabresi, Wilkinson, Murray, Shannon, T. Harrison.

⁵ E.g. L.S. Cahill. Genetics, commodification and social justice in the globalization era. *Kennedy Institute of Ethics Journal* 2001; 11; 221-238.

⁶ E.g. J. Christman. 1994. *The Myth of Property: Toward an Egalitarian Theory of Ownership*. Oxford. Oxford University Press.

⁷ As a module in the MSc in Global Ethics at the University of Birmingham, for example.

⁸ D.L. Dickenson. 1997. *Property, Women and Politics*. Cambridge. Polity Press. See also note 1.

⁹ M.J. Radin. 1996. *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts, and Other Things*. Cambridge, MA, Harvard University Press, p. 2.

¹⁰ D.S. Davis and S. Holland. Introduction. *Kennedy Institute of Ethics Journal* 2001; 11; 219-220, at p. 219. Original emphasis.

¹¹ R. Cox. 1997. *Democracy in hard times: economic globalization and the limits to liberal democracy*. In *The Transformation of Democracy: Globalization and Territorial Democracy*. A. McGrew, ed. Cambridge. Polity Press: 49-72, at p. 49.

¹² *Ibid.*, p. 50.

¹³ A.M. Honore. 1961. *Ownership*. In A.G. Guest, ed. *Oxford Essays in Jurisprudence*. Oxford. Oxford University Press.

¹⁴ *Ibid.*

¹⁵ A. Grubb. 'I, Me, Mine': Body Parts and Property. *Medical Law International* 1999; 3; 299-313.

¹⁶ Christman, *op. cit.*, note 6, p. 18.

¹⁷ As, for example, in the *Moore* judgement, where the holding found no limitations on the rights of the researcher and the sponsoring university once it had been established that the plaintiff, Moore, had

none. (Moore v. Regents of the University of California. 51 Cal 3d 120, 793P 2d, 271 Cal Reporter 146.

¹⁸ E.g. J. Penner. 1997. *The Idea of Property in Law*. Oxford. Clarendon Press.

¹⁹ I have argued elsewhere (Dickenson, *Property, Women and Politics*, Polity Press, 1997) that it is by no means clear that we own our bodies, and hence our tissue. However, I have also argued there and in the articles cited in note 2 that women's labour in producing ova under the artificial and indeed dangerous conditions of 'egg harvesting' does in fact entail a Lockean right of property in one's labour and hence in the products of one's labour, such as ova.

²⁰ G. Calabresi and A.D. Melamed. Property rules, liability rules and inalienability: one view of the cathedral. *Harvard Law Review* 1972; 85; 1089-1128.

²¹ For example, in the context of genetics, the UNESCO Declaration on the Human Genome, adopted in 1998 by the UN General Assembly, takes the strong but largely symbolic line that 'the human genome in its natural state shall not give rise to financial gain', in order to protect the 'heritage of humanity.'

²² C.H. Harrison. Neither Moore nor the Market: Alternative Models for Compensating Contributors of Human Tissue. *American Journal of Law and Medicine* 2002; 28; 77-104.

²³ E.g. S. Wilkinson. 2003. *Bodies for Sale: Ethics and Exploitation in the Human Body Trade*. London. Routledge.

²⁴ S.C. Lawrence. 1998. Beyond the Grave—the Use and Meaning of Human Body Parts, a Historical Introduction. In *Stored Tissue Samples: Human Legal and Public Policy Implications*. R.F. Weir, ed. Iowa City, Iowa: Iowa University Press, 111-41. See also the story of the theft of the body of the last pure-blooded Australian aboriginal in Matthew Kneale's novel *English Passengers* (London: Penguin, 2000).

²⁵ I base my narrative on an account by the Director of the Tonga Human Rights and Democracy Movement, Lopeti Senituli: L. Senituli. They Came for Sandalwood. Now the B...s Are After Our Genes! Paper presented at the conference 'Research ethics, tikanga Maori/indigenous and protocols for working with communities.' Wellington, New Zealand: 10th-12th June 2004..

²⁶ *Ibid.*, p. 3.

²⁷ *Ibid.*, p. 3.

²⁸ *Ibid.*, p. 4.

²⁹ *Ibid.*, p. 4.

³⁰ H.M. Mead. 2004. Whakapapa and the Human Gene. Toi Te Taiao/The Bioethics Council. Wellington, New Zealand. The Bioethics Council.

³¹ H.M. Mead. 2003. *Tikanga Maori: Living by Maori Values*. Wellington, New Zealand. Huia Publishers, at p. 45.

³² E. Best. 1941. *The Maori*. Wellington. The Polynesian Society. Volume 1, at p. 39. Cited in Mead, *op. cit.*, note 25, p. 47.

³³ Mead, *op. cit.*, note 25, at p. 339.

³⁴ J. Patterson. 1992. *Maori Values*. Palmerston North, New Zealand. Dunmore Press, at p. 131.

³⁵ Toi Te Taiao/The Bioethics Council. 2004. *Reflections on the Use of Human Genes in Other Organisms: Ethical, Spiritual and Cultural Dimensions*. Wellington, New Zealand. The Bioethics Council. For example, one of the anonymous comments made to the Council in the run-up to the consultation was: 'They say they want Maori perspectives, but really they just want us to say yes or no to the questions they've already worked out. They don't realise that really getting Maori views would mean asking different questions.' It is to the credit of the Bioethics Council, however, that this comment is reproduced in the leaflet setting out the consultation exercise and inviting further similar or dissimilar opinions.

³⁶ Mead, *op. cit.*, note 25, at p. 341.

³⁷ M. Durie. 2004. Mana Tangata: Culture, Custom and Transgenic Research. In Toi Te Taiao/The Bioethics Council. 2004. *Reflections on the Use of Human Genes in Other Organisms: Ethical, Spiritual and Cultural Dimensions*. Wellington, New Zealand. The Bioethics Council, 20-25.

³⁸ C. Waldby. *Biomedicine, Tissue Transfer and Intercorporeality*. *Feminist Theory* 2002; 3; 239-254.

³⁹ J. Moxon. 2004. *Human Genes in Other Organisms: Ethical, Spiritual and Cultural Dimensions*. In Toi Te Taiao/The Bioethics Council. 2004. *Reflections on the Use of Human Genes in Other*

Organisms: Ethical, Spiritual and Cultural Dimensions. Wellington, New Zealand. The Bioethics Council, 6-8.

⁴⁰ E.g. Waldby, *op. cit.*, note 38.

⁴¹ H. Widdows, D. Dickenson and S. Hellsten. *Global Bioethics*. *New Review of Bioethics* 2003; 1; 101-116.