Rethinking the Body and Its Boundaries

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Until recently, the idea that the nature of the body is a contested matter may have seemed to many people, whether inside or beyond the ivory tower, as but another sign of the silliness of the academy. Advances in biotechnology such as organ transplantation, assisted reproductive techniques (ART), genetics, stem cell research, enhancement, and regenerative medicine have made use of and manipulated bodies in increasingly fantastic ways, offering us—academician and layman alike—new eyes with which to view the body and unprecedented vantage points from which to consider what it means to be embodied. The discussion on the nature and limits of human bodies is a special case of a more general problem: a matter of individuality and individuation of biological entities. The human body is a particular instance of living organisms, and

the frontiers of the body in the case of an animal constructing its milieu are sometimes no less clear than in the more familiar cases of organ transplants, and so on. The necessity of understanding the body as more than “natural object,” of course, is not new (see, e.g., Wolfe and Gal 2010 for a discussion of the body as both an “object” and an “instrument” of research, knowledge, and power in the 17th and 18th centuries). Western scientific history has papered its ivy-covered walls with bodies that have been curiously prodded and oftentimes callously dismissed; we need only look for such horrific evidence to the anthropological collections of indigenous bodies, the anatomical dissection and pathological displays of the 19th and early 20th centuries, the medical experimentation on vulnerable people and populations in the name

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of progress or profits, the removal of pituitary glands for growth hormone, and the development and use of cells lines (see, for example, Skloot 2010 and the story of Henrietta Lacks). Today, however, the obligation to attend to the body as something more than biomedical plastic—even as we fracture it into smaller and smaller parts—hits closer to home, and theoretical movements such as embodiment and bioethical exhortations to contemplate what human dignity might exist in bodily tissues appear less the “touchy-feely,” liberal thinking of professors with too much time on their hands and more a real danger that needs to be taken seriously. This is because biotechnology has brought the cause to its own shores: to bodies in the developed world, not merely those of “others” from a century ago or cultures one might read about in *National Geographic*.

Nearly six decades after the discovery of the double helix and the first kidney transplant, the rapid growth in the 21st century of the so-called “new biology”—a term revived by writers such as Michael H. Shapiro, Roy G. Spece, Jr., Rebecca Dresser, and Ellen Wright Clayton that refers to “those processes of research and experimentation [related to human physiology] that enhance knowledge and technique” and, thus, deconstruction and reconstruction of the body itself (2003, 4)—is clearly not so new, yet bioethicists, policymakers, and citizens still struggle with the evolving bioethical and legal issues related to these “new” practices, particularly when it comes to bodily tissues.

The new biology has revitalized fundamental questions about bodies: what bodies are, how they can and should (or should not) be used, where they begin and end, and how they are connected—not just between parts and whole but also each other (that community of other bodily selves). Since the mid-20th century, particularly within the humanities and social sciences, much has been written about the “nature” as well as the “construction” of bodies (see, for example, Mauss 1973; Merleau-Ponty 2002; Douglas 1970; Bourdieu 1990; Foucault 1995; Ortner 1984; O’Neill 1985; Scheper-Hughes and Lock 1987; Turner 1984, 1991; Csordas 1990, 1993; Levin and Solomon 1990; Laqueur 1990; Martin 1992; Van Wolputte 2004), and today, in what might be labeled “postmodern” times, the body can be viewed simultaneously as object and subject, created and creative, material and holy, of value and beyond value.

If this were not complicated enough, we also must answer questions about the fundamental natures of bodily parts—tissues such as organs, eggs and sperm, and embryos. In legal and philosophical analysis, these fragmented bodies have been variously viewed as neither persons nor property, leaving them in a limbo that provides few answers as to what these parts are and little guidance about what can morally be done with them. Our categories of thought in science and the law simply are not able to do justice to the nature of “entities” that are neither “things” nor “persons.” It is as if the attempts to stop conceptualizing the world in a dualistic, dichotomous way have failed in this case. Labeling these tissues “as a sort of *quasi* property” (as the Supreme Court of Rhode Island did in relation to dead bodies in *Pierce v. Proprietors of Swan Point Cemetery* 1872, 238, *emphasis original*), however, also fails to clarify our understandings of these bodily non-objects. While on the one hand the designation of “quasi-property” attempts to recognize that such bodily tissues are something different than mere objects—that some essence of or connection to “humanness” exists or once existed—on the other it links autonomy and decision-making control over the body with conceptions of property that simultaneously risk sliding down the slope to commodification while offering, as Ngaire Naffine and Bernadette Richards discuss in this issue, rather weak legal protections.

Naffine and Richards write in relation to organs and embryos:

The legal and moral view is that there is something special about the body, its parts, and its products ... which ill-suit them to regulation as a species of property, hence the resort to a weak law of regulated altruism rather than a stronger commercial variety of law of the market. The paradoxical effect of this diminution of rights in the disposition of our bodily material is that we may be weakest in our autonomy in the area where we arguably most need it—the control of our physical selves. Thus, what donors say should happen to their bodily material may not necessarily happen (see “Regulating Consent to Organ and Embryo Donation: The Legal Dimensions of the Problem” by Naffine and Richards 2012 in this issue).

Property is, of course, as Naffine and Richards and others such as Donna Dickenson (2007) acknowledge following Wesley Newcomb Hohfeld (1919) and A.M. Honoré (1961), not necessarily a “thing” in itself but, rather, a bundle of rights describing the relationship between an “owner” and an object of interest. Thus, the legal concept of “property,” like the body, can be quite indefinable and has at times been used loosely and ambiguously by lawyers, judges, and society as a whole. As Hohfeld explored in a 1913 *Yale Law Journal* article, “with lawyers and with laymen this term has no definite or stable connotation. Sometimes it is employed to indicate the physical object to which various legal rights, privileges, etc., relate; then again—with far greater discrimination and accuracy—the word is used to denote the legal interest (or aggregate of legal relations) appertaining to such physical object” (1913, 21). Dickenson makes the case in *Property in the Body* (2007) that it is possible, in order to protect our bodies and our *selves* from commercialization, to deem the body and bodily tissues property without necessarily permitting every “stick” that exists in the bundle of rights we call “property” (for example, the right to sell such property). Perhaps this is what the term “quasi-property” is meant to convey; however, as Hohfeld noted a century ago, lack of clarity and consistency in practice with regard to concepts such as “property” or “quasi-property” allows the flexibility that is a strength of the common law to be stretched in most any direction.

Justice Potter in *Pierce* makes clear that “quasi-property” in a dead body means

certain persons may have rights, as they have duties to perform towards ... it arising out of our common humanity. But the person having charge of it cannot be considered as the owner of it in any sense whatever; he holds it only as a sacred trust for the benefit of all who may from family or friendship have an interest in it (1872, 242–243).

More than a century later, the Supreme Court of Tennessee in *Davis v. Davis* (1992) hinted at this concept of “quasi-property” in relation to cryopreserved embryos in a similar manner—as a way to emphasize not the former personhood of a decedent but the potential personhood of an embryo.

On the other hand, other courts have relied on more typical notions of property in relation to bodily tissues with few acknowledgements or explanations. In *York v. Jones* (1989), for example, Steven York and Risa Adler-York successfully sued the Virginia-based Howard and Georgeanna Jones Institute for Reproductive Medicine for, among other counts, detinue (an action to recover unlawfully detained property) when the Jones Institute refused to allow the Yorks to transfer their remaining cryopreserved embryo to a fertility clinic in California. Likewise, the court in *Hecht v. The Superior Court of Los Angeles County* (1993) stated that sperm—even though “as reproductive material ... is a unique type of ‘property’”—“is properly part of decedent’s estate” and “constitute[s] ‘property’ within the meaning of Probate Code section 62” (1993, 850).

When it comes to organs and other medically excised tissues, the recognition of bodily tissues as the property of donors or patients is explicitly avoided. This readily can be seen in the *Uniform Anatomical Gift Act* (1968) and in cases such as *Moore v. The Regents of the University of California* (1990), *The Immortal Life of Henrietta Lacks* (Skloot 2010), and to some degree *Browning v. Norton-Children’s Hospital* (1974), where diseased tissues have been viewed as abandoned and a danger to public health and safety.

What’s more, legal and philosophical attention is selective in these matters, with scrutiny of certain bodily tissues but not others, raising the question of: why these tissues? What links these tissues to the body or humanity or personhood, while others are thought of, if at all, as biowaste? Moreover, the status of tissues can change, both in relation to context and technology. Today, we think of hair left at a crime scene or the afterbirth or umbilical cord blood much differently than 30 or 40 years ago. (For a discussion of the “precious and precarious” nature of embryos and cord blood, see “Informed Consent and Fresh Egg-Donation for Stem Cell Research: Incorporating Embodied Knowledge Into Ethical Decision-Making” by Carroll and Waldby 2012 and “‘Good Mothering’ or ‘Good Citizenship’? Conflicting Values in Choosing Whether to Donate or Store Umbilical Cord Blood” by Porter, Kerridge, and Jordens 2012 in this issue.)

Hidden in all of these discussions (and others about the body), whether one wishes to advocate for or against “property in the body” or resort to some other

means of defining the body and its parts, is an unsaid idea about body boundaries—a concept that exists though is not readily apparent or defined in the current literature: What circumscribes the body-self (i.e., where are its boundaries)? What “belongs” to me or is a part of me and what is not? And, therefore, what should be considered with some respect of personhood or dignity, or, at least, come under my own decision-making control?

Bioethics in the 21st century has become rather adept at asking the latter questions (who should control body parts), yet an explicit discussion of the former has been largely overlooked. The question of the cultural construction of the body is perhaps an appropriate place to begin if bioethics and societies in general are ever to keep pace with the bodily challenges posed by the new biology.

The idea of body boundaries is not new. Philosophers and anthropologists have long contemplated the malleable nature of bodies within their environments and in other cultures, and a variety of examples could be offered here. For instance, French philosopher and physician Georges Canguilhem addressed this problem of biological individuality in 1952 in *Knowledge of Life*:

From the biological point of view, one must understand that the relationship between the organism and the environment is the same as that between the parts and the whole of an organism. The individuality of the living does not stop at its ectodermic borders any more than it begins at the cell. The biological relationship between the being and its milieu is a functional relationship, and thereby a mobile one; its terms successively exchange roles. The cell is a milieu for intracellular elements; it itself lives in an interior milieu, which is sometimes on the scale of the organ and sometimes of the organism; the organism itself lives in a milieu that, in a certain fashion, is to the organism what the organism is to its components (2008, 111).

From a cultural perspective, James George Frazer, in his 13-volume *The Golden Bough* (the first two volumes of which were published in 1890), documented the ubiquity of the notion of a “sympathetic connexion” between bodies and body parts or other objects. In this comparative (though methodologically

questionable) work, Frazer states that “many peoples in many ages” have attempted “to injure or destroy an enemy by injuring or destroying an image of him, in the belief that, just as the image suffers, so does the man” (2008, 12) and that the “notion that a man may be bewitched by means of the clippings of his hair, the parings of his nails, or any other severed portion of his person is almost world-wide” (2008, 240). In other words, in this “Sympathetic Magic ... things act on each other at a distance through a secret sympathy” (2008, 12).

While it might be “ill-considered” to cite the ethnocentric, armchair anthropologist here, as Mary Douglas (1966, 28) emphasized in her *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*, Frazer’s “Law of Sympathy”—like Canguilhem’s “milieu”—offers an interesting way of thinking about bodily tissues that have been disengaged by the new biology. Isn’t there a secret (or, perhaps now, not-so-secret) sympathy between a person and bodily tissues that had “once been in contact” (2008, 12)? And, thus, what of our *selves* continues to exist in those body parts? Unlike Frazer, Douglas does not distinguish between once-deemed “primitive” and “modern” societies or the “sacred” and the “secular”; instead, she recognizes and examines the underlying, universal human predisposition to systematically, albeit in culturally specific ways, order and classify the world (including bodies). In the collective and often unconscious process of categorically labeling and arranging beings, matter, behaviors, and beliefs, cultures create publicly held patterns or schemata that lend a sense of stability, harmony, and permanence to both social life and existence. Douglas compares such a schema to “a kind of filtering mechanism” that seems a priori but for which “we, the perceivers, are largely responsible” (1966, 36; cf. Bourdieu 1990). In other words, culturally established boundaries “chase dirt” and “positively re-order our environment, making it conform to an idea” (1966, 37).

Boundary-making, then, is something in which all cultures engage, regardless of era or locale, and this includes socially constructing bodies and establishing body boundaries. The biomedical body of Western cultures, however, has resisted such interpretations and we have been unable (or unwilling) to see the mobile relationship between a being and its milieu or the culturally constructed context in which biomedicine is conducted. A technological narrative,

where subjective influences are largely sidelined in the name of scientific progress and improvement of the human condition, means that both negative personal and social consequences of the new biology may be overlooked.

If body-boundary dilemmas are not addressed in all their messiness in an honest and transparent fashion, there is a risk not only of developing social structures, laws, policies, and actions based on false “truths” of the body but also misunderstanding our *selves* and what it means to be human.

The body is knowable and beyond comprehension. It is bounded as individual, group, and entity-of-this-earth, yet perhaps boundless across time and space. This makes it rather difficult to determine how (and when) we attend to and with our bodies (Csordas 1993), particularly when forces such as biotechnology continue to shift the parameters (and in new and incredible ways). Today, with hindsight regarding the folly of approaches that tend to view the body primarily as object, the path seems less clear than before. When it comes to the new biology, we do have a half-century of practice under our belts, but how far have we progressed in terms of ethically treating and protecting the body? (Or even understanding it?) What boundaries or standards have been set and by whom? By predominantly drawing bodily and bioethical lines in modern systematizing ways (for example, the law), are we caught in the same post-modern paradox Naffine and Richards (2012) identify?

In this edition of the *JB*, we explore some of these issues and we hope that we can shed new and valuable light on an old question: What is the body?

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