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HEALTH, RIGHTS AND GLOBALISATION

Belinda Bennett

Health, Rights and Globalisation

Edited by

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Published by
Ashgate Publishing Limited
Gower House
Croft Road
Aldershot
Hants GU11 3HR
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

Ashgate website: http://www.ashgate.com
--

British Library Cataloguing in Publication Data

Health, rights and globalisation. – (The international
library of medicine, ethics and law)

1. World health 2. Globalization 3. Bioethics 4. Public health
– International cooperation

I. Bennett, Belinda
362.1

Library of Congress Control Number: 2005934404

ISBN 0 7546 2590 7

Printed in Great Britain by TJ International Ltd, Padstow, Cornwall

Acknowledgements

The editor and publishers wish to thank the following for permission to use copyright material.

American Medical Association for the essay: Lawrence O. Gostin, Ronald Bayer and Amy L. Fairchild (2003), 'Ethical and Legal Challenges Posed by Severe Acute Respiratory Syndrome: Implications for the Control of Severe Infectious Disease Threats', *JAMA*, **290**, pp. 3229–37.

The American Public Health Association for the essays: Derek Yach and Douglas Bettcher (1998), 'The Globalization of Public Health, I: Threats and Opportunities', *American Journal of Public Health*, **88**, pp. 735–38; Derek Yach and Douglas Bettcher (1998), 'The Globalization of Public Health, II: The Convergence of Self-Interest and Altruism', *American Journal of Public Health*, **88**, pp. 738–41.

Blackwell Publishing for the essays: Rebecca J. Cook and Bernard M. Dickens (2002), 'The Injustice of Unsafe Motherhood', *Developing World Bioethics*, **2**, pp. 64–81; Alan Whiteside, Tony Barnett, Gavin George and Anton A. Van Niekerk (2003), 'Through a Glass, Darkly: Data and Uncertainty in the AIDS Debate', *Developing World Bioethics*, **3**, pp. 49–76; Solomon R. Benatar (2001), 'South Africa's Transition in a Globalizing World: HIV/AIDS as a Window and a Mirror', *International Affairs*, **7**, pp. 347–75; Solomon R. Benatar, Abdallah S. Daar and Peter A. Singer (2003), 'Global Health Ethics: The Rationale for Mutual Caring', *International Affairs*, **79**, pp. 107–38; Sirrku Kristiina Hellsten (2001), 'From Human Wrongs to Universal Rights: Communication and Feminist Challenges for the Promotion of Women's Health in the Third World', *Developing World Bioethics*, **1**, pp. 98–115; David B. Resnik (2004), 'The Distribution of Biomedical Research Resources and International Justice', *Developing World Bioethics*, **4**, pp. 42–57; James H. Flory and Philip Kitcher (2004), 'Global Health and the Scientific Research Agenda', *Philosophy and Public Affairs*, **32**, pp. 36–65.

British Medical Journal for the essay: Julio Frenk and Octavio Gómez-Dantés (2002), 'Globalisation and the Challenges to Health Systems', *British Medical Journal*, **325**, pp. 95–97.

Elsevier for the essays: A.J. McMichael and R. Beaglehole (2000), 'The Changing Global Context of Public Health', *Lancet*, **356**, pp. 495–99. Copyright © 2000. Reprinted with permission from *Reproductive Health Matters*; Marge Berer (2002), 'Making Abortions Safe: A Matter of Good Public Health Policy and Practice', *Reproductive Health Matters*, **10**, pp. 31–44. Copyright © 2002. Reprinted with permission from *Reproductive Health Matters*.

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Oxford University Press for the essay: Guido Pennings (2004), 'Legal Harmonization and Reproductive Tourism in Europe', *Human Reproduction*, **19**, pp. 2689–94.

Taylor and Francis for the essay: Udo Schüklenk and Richard E. Ashcroft (2002), 'Affordable Access to Essential Medication in Developing Countries: Conflicts Between Ethical and Economic Imperatives', *Journal of Medicine and Philosophy*, **27**, pp. 179–95.

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Series Preface

Few academic disciplines have developed with such pace in recent years as bioethics. And because the subject crosses so many disciplines important writing is to be found in a range of books and journals, access to the whole of which is likely to elude all but the most committed of scholars. The International Library of Medicine, Ethics and Law is designed to assist the scholarly endeavour by providing in accessible volumes a compendium of basic materials drawn from the most significant periodical literature. Each volume contains essays of central theoretical importance in its subject area, and each throws light on important bioethical questions in the world today. The series as a whole – there will be fifteen volumes – makes available an extensive range of valuable material (the standard ‘classics’ and the not-so-standard) and should prove of inestimable value to those involved in the research, teaching and study of medicine, ethics and law. The fifteen volumes together – each with introductions and bibliographies – are a library in themselves – an indispensable resource in a world in which even the best-stocked library is unlikely to cover the range of materials contained within these volumes.

It remains for me to thank the editors who have pursued their task with commitment, insight and enthusiasm, to thank also the hard-working staff at Ashgate – theirs is a mammoth enterprise – and to thank my secretary, Anita Garfoot for the enormous assistance she has given me in bringing the series from idea to reality.

MICHAEL FREEMAN
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Introduction

Trade, travel, telecommunications and popular culture are increasingly linked at the global level, fading the relevance of national borders. Health and rights also interact in this new global space presenting new challenges for health, law, ethics and policy. Public health has re-emerged as a global concern under the increasing realisation that infectious diseases are not confined by national boundaries. Biotechnology and biomedicine continue to present new possibilities for health care, prompting questions about global access to the benefits of scientific advances, while bioethics itself is examining the meaning of ethics in a globalised world. This volume draws together writings from international scholars in a range of disciplines to examine these issues and the challenges that arise at the intersections of health, rights and globalisation.

Globalisation and Public Health

Globalisation has presented new challenges for public health. The international movement of people in contemporary society changes the context for health risks, particularly in relation to infectious diseases. As Julio Frenk and Octavio Gómez-Dantés (Chapter 1) have pointed out, 'Even the longest intercontinental flights are briefer than the incubation period of any human infectious disease' (p. 3). From a health perspective, there are, as Frenk and Gómez-Dantés argue, both positive and negative sides to globalisation. While the growing interconnectedness of the world can facilitate international comparisons, sharing of information and greater access to health care through telemedicine, the darker side of globalisation is characterised by exclusion, inequality and cultural insensitivity (pp. 4–5). The authors put forward the goal of 'health as a force for unity' (p. 5) arguing that renewed international co-operation around health rests on the exchange of information about common problems, the development of a solid knowledge base of alternatives, and the importance of empathy as a basis of understanding cultural difference (p. 5).

There are, as Derek Yach and Douglas Bettcher point out in Chapter 2, both threats and possibilities that arise from the globalisation of public health. They argue that 'Seriously addressing the risks and negative aspects of increasing global interdependence could help to sustain the process of economic and political globalization' (p. 8). This transformation of risks into opportunities may require concerted global efforts around common concerns (p. 8–9).

For Yach and Bettcher, effective responses to the globalisation of public health require the promotion of greater awareness of the global dimensions of health, action to implement effective information, monitoring and surveillance systems for health risks at the local, national and international levels, and the development of international norms and standards (see Chapter 3). Ultimately, the development of global public health policy rests not only on 'enlightened self-interest', but also on 'altruism'. As they argue, 'In an increasingly interdependent world, it can be argued that "altruism" and enlightened self-interest converge' (p. 13).

In Chapter 4 A.J. McMichael and R. Beaglehole point out that, in many parts of the world, the pace of economic growth and technological advances associated with globalisation have led to improvements in health and life expectancies (p. 16). Yet the erosion of environmental and social conditions, the patterns in global distribution of labour, the growing gap between rich and poor and the spread of consumerism all potentially jeopardise the health of populations (pp. 16–17). Global environmental change and global climate change pose risks to human health in a range of ways including through their impact on the natural resources that support human life; lower agricultural yields; changes in the geographic distribution of vector-borne diseases such as malaria; in the incidence of food- and water-borne infections; the loss of biodiversity which may adversely affect our discovery of new chemicals and genes; depletion or destruction of arable lands, pastures and oceans with the consequent reduction in food yields; and problems with chemical pollution (pp. 17–18).

In Chapter 5 David Fidler argues for the development of a ‘globalized theory of public health law’ (p. 21). Fidler argues ‘that the need to construct a globalized theory of public health law exists not because the world is experiencing a globalization of public health law, but rather because a globalized theory is needed to serve as an antidote to the globalized *neglect* of public health law’ (p. 21). He maintains that the development of a globalised approach to public health law requires analysis at the level of national law (‘public health law in a nation-state’), international law (‘the body of international law relevant to public health created by states through their interactions in the international system’), and global governance (‘looking at the role of non-state actors in public health governance’) (p. 23). While Fidler aims to articulate a new, global vision of public health law, he does so with the recognition that public health law has not been part of post-Cold War trends in the globalisation of law generally (p. 30). His analysis is, then, a call for recognition for the global dimensions of public health law for, as he argues, ‘the future of public health law is, empirically and normatively, a global future’ (p. 30).

Health also has gendered dimensions. Marge Berer in Chapter 6 and Rebecca Cook and Bernard Dickens in Chapter 7 analyse the hazards for women from unsafe abortions, pregnancy and motherhood. Berer reports that of the estimated 50 million abortions worldwide each year, ‘20 million abortions are being performed under dangerous conditions, either by untrained providers or using unsafe procedures, or both’ (p. 33). An estimated 80 000 deaths each year in developing countries result from unsafe abortions (p. 33). For women in the developing world these are very real hazards ‘with unsafe abortions in Africa at least 700 times more likely to lead to death than safe abortions in developed countries’ (p. 33). Berer argues that the legalisation of abortion services is critical not only to improving the safety of abortion, but also to ensuring that health professionals can provide such services without fear of imprisonment and that women are protected from unskilled abortion providers. According to Berer, abortion laws which delay the procedure being performed are undesirable because of the greater risks posed to women by late, rather than early, abortions. She argues that ‘making unsafe abortions safe is above all a public health responsibility of governments’ (pp. 42–43).

Rebecca Cook and Bernard Dickens (Chapter 7) are also concerned with the hazards women face from unsafe motherhood. With an estimated 515 000 women dying each year from complications of pregnancy and childbirth, 7 million women experiencing serious health problems after childbirth and a further estimated 50 million women experiencing adverse health effects after childbirth (p. 48), safe motherhood is a major public health issue of global

significance. For Cook and Dickens, an understanding of the causes and patterns of women's social exclusion and women's lack of control over their reproductive lives is central to the goal of achieving safe motherhood. They note that the deaths from unsafe motherhood 'have become rare in countries and communities in which women's power of self-determination approaches equality with that of men, but remain pandemic where women's equal rights are not respected in their societies' (p. 64).

The HIV/AIDS epidemic also presents major challenges for public health, particularly in sub-Saharan Africa. As Alan Whiteside and his colleagues note in Chapter 8, it has been estimated that there are more than 28 million people with HIV living in Africa (p. 66). In their essay, Alan Whiteside, Tony Barnett, Gavin George and Anton A. Van Niekerk address the issue of data about AIDS in Africa, arguing 'that data about the AIDS pandemic is far from completely reliable. This fact fuels the fire of denial in Africa' (p. 68). The authors suggest that the long incubation period is part of the reason why the epidemic is so lethal: 'the epidemic is silently creeping through the population and it is only later – when the HIV pool has risen to a considerable level – that the true impact of the epidemic is felt in terms of AIDS deaths' (p. 69). Whiteside *et al.* examine the sources of data about the prevalence of HIV in Africa, including data from antenatal clinics. However, they acknowledge that existing data is imperfect: 'There is a lot we do not know about the epidemiology of HIV/AIDS, but we know enough to predict potentially devastating developmental, social, economic and possibly political, impacts' (p. 90). They argue that there are two consequences arising from insufficient data about HIV/AIDS: first, that a lack of reliable data can hamper scientific evaluations of the pandemic's scope and impact (p. 90) and, second, that 'in Africa (specifically) we are dealing with policy makers on the level of national governments . . . that seem to be in perpetual denial about the scope and seriousness of the pandemic' (p. 91). In this context, there is, according to the authors, a clear and compelling need for 'more research and more reliable data' (p. 92).

In Chapter 9 Solomon Benatar uses HIV/AIDS as a lens through which to analyse South Africa's transition to democracy and the relationships between health and globalisation. Benatar analyses the need for reform of the public health system and the relationship between public and private provision of health care (p. 103), the cost of anti-retroviral medicines to treat AIDS, which are often too expensive for developing countries (p. 104), the impact of privatisation of health care (p. 105), and concern about focusing responses to the epidemic on biomedical treatments rather than broader factors which impact on health (p. 109). While acknowledging the benefits that have flowed from recognition of human rights, Benatar also argues for the recognition of corresponding duties. He asks, 'Who will meet the duties required to honour rights if members of society see themselves only as holders of rights?' (p. 370).

Udo Schüklenk and Richard Ashcroft (Chapter 10) examine three responses to the challenges of providing access to essential AIDS medicines in developing countries: donations of medicines by pharmaceutical companies; reductions in the prices of patented medicines; and public-private partnerships. Although they acknowledge that donations and other charitable giving are commendable, such donations represent, in Schüklenk's and Ashcroft's view, an imperfect 'ad hoc solution' (p. 131). In addition, price reductions 'are fraught with conditions, time and quantity based limitations and a continuing dependence of [a] developing country's health care planning on the good-will of commercial organizations' (p. 132), and public-private partnerships have failed to provide poor patients with access to essential medicines (p. 135). Schüklenk and Ashcroft argue that compulsory licensing of patented medicines, as permitted under the World

Trade Organisation's TRIPS rules in national emergencies, should be undertaken in order to provide the world's poor with access to essential medicines.

The final chapter in Part I uses the SARS crisis in 2003 to analyse the legal and ethical challenges that arise in the context of severe infectious diseases. Lawrence Gostin, Ronald Bayer and Amy Fairchild examine the responses to SARS in countries affected by the disease, focusing on surveillance and contact tracing, isolation and quarantine, and travel restrictions. Each of these areas reveal tensions between the protection of the public's health and the rights of individuals to privacy and liberty. In the face of a new disease, action may need to be taken to respond to the disease even though there is still scientific uncertainty about it. Gostin *et al.* argue that transparency of decision-making is an essential safeguard when actions must be taken without scientific certainty: 'International and national public health agencies must be willing to make clear the bases for restrictive measures and openly acknowledge when new evidence warrants reconsideration of policies' (p. 148).

Globalisation and Bioethics

Globalisation has also brought new challenges for bioethics. The international movement of people and the increasing multiculturalism of many Western societies raises important questions about the universality of values and ethical principles. In Chapter 12 Ruth Macklin analyses the difficulties that arise when Western bioethical and medical concepts conflict with those from other cultures. She considers a range of situations in which the practices of American medicine may be different from, and conflict with, those of a patient's cultural background. Macklin argues that 'The reluctance to impose modern medicine on immigrants from a fear that it constitutes yet another instance of "cultural imperialism" is misplaced' (p. 171). She rejects what she calls 'extreme ethical relativism' (p. 173), maintaining that 'It is one thing to require that cultural, religious, and ethnic groups be treated as equals; that conforms to the principle of justice as equality. It is quite another thing to say that any cultural practice whatever of any group is to be tolerated and respected equally' (p. 173).

In Chapter 13 Robert Baker continues this theme of the meaning of universal ethics in a multicultural world. He considers the idea of 'moral fundamentalism', a view 'that certain "basic" or "fundamental" moral principles are accepted in all eras and cultures and thus are universally applicable to agents and actions in any era or culture' (p. 177). Baker argues that, in the period following the Second World War, the international community adopted this form of fundamentalism. Yet this fundamentalism is under challenge from multiculturalism, with the dispute between fundamentalism and multiculturalism amounting to a difference 'over the truth of the claim that there are shared basic or fundamental ethical or moral principles' (p. 183). According to Baker, postmodernism represents an even greater challenge to fundamentalism for postmodernists 'deny even the commonality of culture; that is, they deny that there is a common morality even within a given culture or era' (p. 195). Baker argues for the abandonment of moral fundamentalism by international bioethics. He argues that 'international biomedical ethics must rest on a theoretical framework that can bridge perspectives even as it justifies genuine transcultural and transtemporal moral judgments' (p. 199).

Solomon R. Benatar, Abdallah S. Daar and Peter A. Singer argue, in Chapter 14, for bioethics to move 'beyond the micro-level of interpersonal relationships to include ethical

considerations at the meso-level of institutions and nations and at the macro-level of international relations' (p. 208). They argue for the development of a 'global health ethics' which would have the following values as its basis: respect for human life and universal ethical principles; the connections between human rights, responsibilities and needs; equity; freedom; democracy; environmental ethics; and social solidarity. They maintain that the development of a global health ethics requires the development of a 'global state of mind' (p. 229) which could be based not only on altruism, but also on 'long-term self-interest' (p. 233).

Patricia Marshall and Barbara Koenig (Chapter 15) propose the development of culturally-informed bioethics (p. 240). They argue that 'An approach to bioethics that promotes a universal template for moral understanding flies in the face of the multiple and complex realities lived by people everywhere' (p. 247). For Marshall and Koenig bioethics must move beyond its traditional Western outlook if it is to remain relevant (p. 247). Central to the development of a new approach to bioethics is the need for greater attention to social justice, human rights and population health (p. 248) and attention to the ways in which social context, including political and economic factors, affect the health of individuals and populations (p. 249).

In Chapter 16 Paul Farmer and Nicole Gastineau Campos argue that 'Given that we are living in a global world order, global health equity, more than ever before, must be a goal of any serious ethical charter' (p. 257). In making a case for a new focus for bioethics, Farmer and Campos are not suggesting that bioethics should lose its focus on the individual patient. Rather, they argue 'that millions are still denied the chance to *become* patients and to have bioethics' "individual focus" trained on them' (p. 258). They remind us that the concept of human rights was developed to provide protection to the vulnerable, poor and marginalised, and that it is these people who bear a disproportionate burden of disease (p. 262).

Sirku Kristiina Hellsten (Chapter 17) maintains that it is possible to resolve the tensions around relativism and universalism and the dilemma of choosing between individualism and collectivism. She argues that 'we have to learn to find the proper ways to make a distinction between positive and negative cultural features' (p. 281) by recognising which ethical issues arise due to cultural beliefs, which are the result of 'fundamental cultural differences' and which ethical issues '*appear* to be culturally bound but in fact are a consequence of invalid logic and/or misinterpretations of the values that we may already share' (p. 281).

Globalisation and Biotechnology

The interface between health, new technologies and globalisation also raises important issues for law, policy and ethics. In Chapter 18 Allyn Taylor analyses the global implications of developments in genetic science, focusing on UNESCO's role in providing guidance for the development of laws and policies at the national level and in providing technical assistance to countries in order to assist them in meeting their international obligations. A key issue here is the relationship between state sovereignty and the role of international organisations. As Taylor argues, 'Increasing international awareness of aspects of global interdependence flowing from technological developments in genetic science may serve to foster support, as well as a growing sense of urgency, for international cooperation in this realm' (p. 337). While acknowledging the limited influence of international organisations on national policies, Taylor argues that 'active organizational advancement of an international regulatory strategy and supervisory

institutions on the human genome is an important step toward the protection of human rights and promotion of public health in the new millennium' (p. 347).

Disparities in health research become apparent when health research is considered in a global context. As David Resnik (Chapter 20) notes, 'According to some estimates, less than 10% of the world's biomedical R&D funds are dedicated to addressing problems that are responsible for 90% of the world's burden of disease' (p. 350). He argues that this 90/10 divide in medical research is unjust and that the developed countries of the world are morally obliged to develop measures to address these disparities (p. 351). Resnik also suggests that the 'UN should establish a trust fund for biomedical R&D on the health problems of the developing world' (pp. 363–64).

James H. Flory and Philip Kitcher also analyse the global divide in health research in their essay (Chapter 20). They argue that the distribution of health research creates certain obligations to address the disparities in global health, among them obligations to 'provide relief for those in imminent danger of severe disability and death' (pp. 385–86); obligations to address the causes of chronic health problems by ensuring that poor countries have systems in place for preventing disease and responding to it through the development of public health infrastructure; and through modification of 'the current research agenda so as to give much greater weight to investigations into the diseases that produce extraordinary suffering among the poor' (p. 385). Flory and Kitcher maintain that 'individual researchers have an obligation to direct their research toward remedying the global research gap, and . . . that the institutions that fund and direct research have a similar obligation' (p. 386).

The final chapter in this volume, Chapter 21, addresses the trend towards 'reproductive tourism' where individuals travel internationally to access assisted conception services that are unavailable or too expensive in their home jurisdictions. Writing on reproductive tourism in Europe, Guido Pennings argues that reproductive tourism has an important part to play in relieving feelings of frustration amongst those community members who do not share the same views as the majority of the community. As Pennings argues, 'Reproductive tourism should be seen as a safety valve that avoids moral conflict, and as such, contributes to a peaceful coexistence of different ethical and religious views in Europe' (p. 400).

Conclusion

As the essays in this volume show, health and rights intersect in a variety of ways and are increasingly shaped by global trends and debates. The global context for public health, the search for common values in a diverse world and the challenges posed by new technologies are all examples of these intersections and a reminder of the importance of developing a global approach.

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