

Bodies, Equality & Truth

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What does affirmative action affirm?

Why have a journal issue on ‘Law and the Body’? Perhaps because law has things to learn from recent philosophical work on the body. In this article I approach from an opposite angle. I address an area in which the law has started to come to grips with issues relating to the body, in ways which pose challenges for philosophy.

Affirming bodily existence

In Australia, employers of more than 100 people are obliged by the *Affirmative Action (Equal Opportunity for Women) Act 1986* to report to the Affirmative Action Agency about the measures they have taken to comply with the *Sex Discrimination Act 1984*. The Affirmative Action Agency is responsible for seeing that large employers ‘go the extra mile’ to change their practice to comply with the *Sex Discrimination Act 1984*, which forbids discrimination against people because of their sex, or because of sex-related circumstances like marital status¹ or pregnancy.²

The relevance of affirmative action law to theories concerned with bodily existence is that affirmative action law takes seriously the fact that workers are not disembodied minds. However body-mind dualism might work in other areas, it will not work in thinking about employment: all sorts of bodily experience (and not only illness or industrial accidents) can affect an employee’s working life, and employers are obliged to take into account these aspects of lived experience which might obtrude (so to speak) from the worker’s private, and bodily, existence into the public realm of work.

The introduction of affirmative action law was followed in North America (and preceded in Australia) by a wave of philosophical discussion about its ethical justifiability. That 30-year-long discussion is not over yet, as the continued emergence of new publications makes clear.³ At issue are such questions as, ‘Does offering affirmative action for women mean discriminating against men?’ and ‘What are the goods to be achieved by affirmative action (and do they outweigh any possible dangers)?’

Bodies and equality

In answering these questions, moral and political philosophers tend to start from a heritage of theory which supposes that the basic notion of what an individual is can be understood without consideration of bodily specificity. Neither sex, nor race, nor age, nor other features with bodily manifestations are included in the definition of what an individual is. In this way, all subjects can be considered as equals. Critics have often observed that this tends to lead to a view of the individual which excludes non-male, non-white, children and the elderly.

Affirmative action policies turn a presupposition of disembodied equality on its head. Affirmative action starts from the assumption that bodily differences exist, and that they are not morally or politically

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insignificant because they are the basis for discrimination against some, and advantaging of others. In short, affirmative action policies start from the recognition that all are not equal.

This creates an obvious problem for those who try to justify affirmative action through conventional moral and political philosophy. I shall demonstrate this by comparing two articles by the same author (indeed, successive articles in the same collection).⁴ The author is Richard Wasserstrom, and the pair of articles has been influential in contemporary affirmative action debates. 'Racism and Sexism' mounts a case for the elimination of racism and sexism, starting from the kind of assumption about the equality of individuals which I have just outlined. The second, 'Preferential Treatment', argues for affirmative action.

In 'Racism and Sexism', Wasserstrom argues for a vision of the good society in which sex and ethnicity are regarded as purely contingent and insignificant attributes, and uses the analogy of the way eye colour is regarded in our own society. He contends that earlier arguments against racism and sexism have failed on methodological grounds, and sets out to show how a society can be conceived in which sex and ethnicity are viewed as incidental to identity. He calls this ideal an 'assimilationist' one, and adds a footnote in which he explains,

That term often suggests the idea of incorporating oneself, one's values and the like into the dominant group and its practices and values. No part of that idea is meant to be captured by my use of the term. Mine is a stipulative definition.⁵

Taking the example and footnote together, we might understand that in Wasserstrom's good society, attributes of sex and ethnicity, although regarded as arbitrary (like eye colour in our own society), will retain their specificity, bringing particular insights, traditions and views about the world. Yet it is hard to imagine how these points can combine. The reason Wasserstrom finds eye colour such a useful analogy for the assimilationist ideal is surely just that eye colour (except in the very vague and imprecise associations which it may have with ethnicity) does not lead to, or bring with it, any specific insights or outlooks.⁶ Indeed, following this analogy, Wasserstrom is at pains to disclaim any idea that sex or ethnicity could differentially affect a person's approach to or performance at their job.

It is therefore hard to see how his well-intentioned footnote can actually prevent the 'assimilationist ideal' from meaning anything other than assimilation of the feminine into the masculine, or of ethnic minority positions into those of the dominant ethnic group. Wasserstrom's view of the subject is one in which bodily distinctiveness is something to be circumvented. Repeatedly drawing on the example of physical disability ('lameness'), Wasserstrom points out ways in which sexual (read: female) specificity can be overcome so as not to prejudice a person's (read: woman's) employment. Menstruation, Wasserstrom suggests, might not be so painful or psychologically destabilising in a non-patriarchal society; but even if it were, it could be factored into a work schedule in the same way as other human frailties, like physical disability or fatigue.

Bodies and truth

One possible justification of affirmative action is by a group of arguments which I call the 'service delivery' approach. These arguments say that employing women is not only good for women, but is also good for the employer and the com-

munity, because there are special skills, talents, or perhaps just desirable personality characteristics which women uniquely bring to the workplace. Women in the positions in question would deliver a service that a man in those position could not.

'Preferential Treatment', the second paper of the pair from the Wasserstrom collection, is an example of this kind of argument. Discussing affirmative action in academic jobs, Wasserstrom proceeds from the assumption that institutions of learning have a duty to perform a particular kind of service, namely the development of knowledge. He argues in favour of affirmative action for the likely social effects of appointing women, and male members of ethnic minorities, to positions as university staff or students. Coupling the case in terms of the services which universities aim to deliver, he invites us:

Consider, for example, one of the more traditional conceptions of the function of the university, the search for truth. One argument for programs of preferential treatment is that the addition of minority persons and women to the student body and the faculty will, *ceteris paribus*, increase substantially the likelihood that important truths, which would otherwise have gone undiscovered, will be discovered.⁷

Wasserstrom implies, here, that there are 'truths' which are specific, or at least uniquely accessible to white women and to members, male or female, of ethnic minorities.

Taking this point in the light of his remarks in 'Racism and Sexism', Wasserstrom appears to want to have his argument both ways. If being male or female is just a physical difference whose significance can (in the good society) be reduced to the kind of significance that eye colour has now, then the question of where 'women and minority persons' get their 'important truths' demands further investigation.

Wasserstrom to some extent anticipates this question. In 'Racism and Sexism', he opens his argument by pointing to four 'domains of inquiry' which are involved in discussions of gender and ethnicity and which, he insists, must be kept separate.⁸ He maintains that '[m]uch of the confusion in thinking about matters concerning race and sex' comes from a failure to keep these four domains separate.⁹ The first domain is that of current social realities. The second consists of explanations for how these realities came to be. The third deals with the ideals one might hold for the future. The fourth is the domain of instrumentalities which a society might employ in order to conform itself more nearly to the third domain's vision.

Wasserstrom could, therefore, plausibly reply (to my criticism in the last-paragraph-but-one) that the assimilationist ideal relates to the good society of the future. At this hoped-for point, when sex and ethnicity have become culturally and politically insignificant distinctions, like eye colour, then presumably they will no longer yield access to specific truths or privileged access to general truths (just as, under current conditions, eye colour is not held to yield such access). In the meantime, while we remain in the first domain of current social realities, ethnicity and sex do lead to such unique insights.

If this is the answer to the apparent contradiction, then one must ask, what is the critical element of being female and (or) of an ethnic minority which yields such insights (now, and which would not yield them in the future)? According to Wasserstrom, it cannot be biological sex, or a culturally and materially distinctive way of life; for these things (or at least, the distinctions of biological sex and physical racial markers like skin colour) will remain under the assimilationist ideal.

Although he refrains from saying so, it seems, on Wasserstrom's own analysis, that the critical element which yields these new insights, these previously overlooked or invisible truths, cannot be sex *qua* sex, or ethnicity *per se*. There is, therefore, only one thing left which could be the critical element: it must be the experience of oppression.

Oppression and truth

This view, that oppression itself yields a kind of epistemological privilege, is not unique to Wasserstrom. It underlies, for example, the body of academic studies described as 'from below' or 'from the underside'.¹⁰ It also underlies a considerable body of feminist writing.¹¹ This view, of an epistemological privilege which comes with a lived experience of oppression, is not without its problems; but they are not insurmountable.

One problem is that as long as one defends an epistemological privilege of the oppressed, it may become awkward to argue for an absolute end to oppression. For if only the experience of oppression can bring a person the necessary insights to discover as yet undiscovered truths, who will discover them once the good society is achieved? In Wasserstrom's schema, the university's job is to discover truth; and some truth can only be discovered by those who suffer oppression on the basis of their sex or (and) ethnicity. This view of epistemological privilege, coupled with Wasserstrom's notion of truth as existing independently of the institutions in which it is sought, seems positively to require the retention of a materially, socially and culturally deprived, yet epistemologically uniquely privileged underclass/elite.

As I said, this problem is not insurmountable. Probably the best way to surmount it is to abandon Wasserstrom's rather (perhaps deliberately) idealist view of truths waiting to be discovered and then immortalised in the academy. If this view gives place to one of truth as phenomenologically grounded in the human condition, one can safely proceed (or at least try to proceed) along the path to the elimination of oppression. We can do so secure in the knowledge that, with the change in the material and social structure of human experience which would come with the elimination (or reduction) of oppression, the 'truths' which arise from the vanished experiences of oppression will no longer be necessary or useful to the continued flourishing of a human race in which oppression (or certain instances of it) does not happen.

This approach is consistent with approaches 'from below', whose epistemology is generally based in historical materialism, and which therefore tends to eschew transcendental and transhistorical conceptions of truth. This would issue in a rather different view of knowledge and subjectivity from Wasserstrom's. For example, a theory grounded in situation would require us, among other things, to regard the material (including sexual difference and material culture) as a constitutive and not a contingent element of what it means to be human. This being the case, it seems unlikely that such a view would be able to incorporate any version of Wasserstrom's assimilationist ideal, however 'stipulative' his definition is taken to be.

It also follows, though, that a vision of a world from which oppression has been eradicated is harder to imagine in a theory which acknowledges difference than in one which holds an assimilationist ideal. Even in the best of good societies in which difference is allowed to continue, a more appropriate vision stems from Foucault's account of pervasive power and pervasive resistance. As long as difference

remains, and people engage in cooperative endeavour across their differences, it is hard to see that power will be eliminated; and as long as power remains, we surely cannot hope that resistance would pass away.

A theory which takes bodily difference to be more than a contingent part of identity is therefore actually more cautious than Wasserstrom's assimilationist vision in its assessment of the possibility of oppression being eradicated. In Wasserstrom's view of the good society, there are at least no logical barriers to the total elimination of oppression, although there are practical ones. In the difference-oriented view there are both logical and practical obstacles. On the other hand, Wasserstrom's lack of logical hindrances is undermined by the requirement, implied in his view of epistemological privilege, that someone must remain oppressed so that the cause of truth may not suffer. The view which grounds epistemology in situated, lived experience, instead of *only* in the state of oppression, does not have this problem because Wasserstrom's transcendent and idealist view of truth as independently existing, waiting to be sought and discovered, is removed. Instead, truth becomes something which emerges as it is needed out of the situations of those who need it.

Since the chances of eradicating all oppression from the face of the earth are, realistically, about equally remote under either schema, I do not think it is a problem to have a theory which is structurally imbued with caution about the prospects for ever doing so. Paradoxically, the more cautious theory has the advantage over its assimilationist competitor of not actually *requiring* the continuation of oppression for its epistemological advantage.

To sum up, then, Wasserstrom's argument in 'Preferential Treatment', that female sex and non-dominant ethnicity bring their own access to truth, is meaningful only if it rests on a less idealist and more embodied view of subjectivity than the one he argues for in 'Racism and Sexism'. On delving, it transpires that sex and ethnicity cannot be, of themselves, the elements to which Wasserstrom attributes the endowment of a subject with unique access to truths (since ethnicity and sex can be as immaterial to a person's life experience and outlook as eye colour). Rather, the critical element must be the experience of oppression which goes with being female in a patriarchal society, and with belonging to an ethnic minority in a racist one.

Bodies and truth again

While a view of epistemological privilege deriving from the experience of oppression is not without problems, the problems can be eased by appeal to a more embodied view of the subject than Wasserstrom allows for. Removing the difficulties in this way, however, leaves another problem. If we accept the more phenomenological account of the subject (which, I suggest, affirmative action laws imply), the question becomes why the experience of oppression should be the *only* kind of lived experience which has the capacity to yield unique access to truths — since under the phenomenological view of subjectivity, there are far fewer 'merely contingent' elements of subjectivity than Wasserstrom presents. Since the lived experience of being male or female, and the lived experience of belonging to one materially based social and cultural community rather than another, would, in a phenomenological argument, be readmitted as components of what it is to be a thinking and knowing subject, they can hardly be

held to exert no voice in how their bearers see the world, criticise current realities, and engage with truth.

Wasserstrom's advocacy of the potential role of ethnic minority members and white women in the academy rests on the assumption that sex and ethnicity can give privileged access to certain truths as long as they position subjects in relation to discourses of racism and sexism. Once those discourses have been demolished, bodies will lose any capacity to intervene in social discourses. Bodies will be what Moira Gatens denies they are — *tabula rasa*, waiting to be inscribed at their owners' will with any of multifarious discourses of behaviour and relationship, now free-floating within the society and no longer arbitrarily labelled 'male', 'female', 'masculine', 'feminine'.¹²

A further implication of Wasserstrom's argument, once it is sifted through to the form I have just presented, is as follows. If a major advantage of having women and male members of ethnic minorities in the academy is that we bring our own access to truths, this contains the task of ethnic minority members and white women within the terms of the existing institution. Rather than an institution founded (in part) on assumptions of racism and sexism and with these as defining discourses in the tasks it sets itself, Wasserstrom's academy is neutral ground, to which women and ethnic minority men, and other people marginalised from the academy's traditions, can bring our experiences of oppression. We distil these experiences for their epistemological essence, which we carry carefully *in vitro* and toss in to season the giant, collective pot in which the academic quest for truth bubbles over an undying flame. The possibility that the essence thus added might curdle the other contents of the pot — or even crack the pot itself — is written out of Wasserstrom's account at the start.¹³

In other words, Wasserstrom's good society is problematic in that it assumes a more or less seamless continuation of the institutions of our own society. He offers no account of how such continuation would get around the fact that the institutions of our own society are, at least in part, grounded in and shaped by the racist and patriarchal practices which his good society would eliminate. Wasserstrom's response to this criticism might well be along the lines that he sees affirmative action programs 'not . . . as constituents of the good society but as one means by which more nearly to bring it into being'.¹⁴

However, by responding in this way, the problem to which I pointed above is only thrown into greater relief. If it is a feature of affirmative action programs that they lead to a society (Wasserstrom's 'good society') in which ethnicity and sex are as culturally, politically and psychologically insignificant as eye colour is in our current society, then the academy must be envisioned as remaining comparatively unchanged, except in terms of its content within specific disciplines. To follow some of Wasserstrom's own examples,¹⁵ the university in the good society will be one in which trainee lawyers will learn to deal sensitively with rape victims (if rape still exists), and trainee philosophers will learn to defend a woman's right to choose an abortion. Not only this, but, it follows from Wasserstrom's eye-colour analogy, the lectures on these topics will be offered with equal passion and conviction by male and by female lecturers.

Wasserstrom is at pains to bring this point home. On page 81 he adds a footnote to explain why affirmative action programs are a means towards, and not an element of, an assimilationist version of the 'good society':

They [affirmative action programs] would, perhaps literally, make no sense. If race and sex were like eye color, one's race and sex would necessarily lack the significance they now possess, and none of the things that are true today of race and sex, except the physiological features, would still be true of them.¹⁶

The rape example demonstrates the problems with this view particularly clearly. Presumably, in the 'good society' there would be no rape as we know it (boys having been taught from childhood to deal constructively with their feelings of anger and inadequacy). While we might accept that, even in Wasserstrom's good society, individuals would still from time to time stray from the path of good behaviour, rape is a crime which only makes sense because of its ideological content. Rape (at least as we know it today) is a crime of patriarchy, and in the good society, patriarchy having been abolished, rape would have no more meaning than acts of violence and humiliation perpetrated upon the green-eyed by the blue-eyed would have under current realities.

However, even in such a society it would be remembered that rape, when committed at all, was committed by those with male bodies, and mainly upon those with female bodies. It is hard to imagine that this could escape the notice or fail to intrude into the reflections of those participating in such a utopian classroom; and the nature, meaning and affective impact of the intrusion would surely differ according to whether the thinker was male-bodied or female-bodied. Therefore, this example illustrates the difficulties inherent in Wasserstrom's project of disentangling gender ideology from lived, bodily experience.

Wasserstrom's account fits into the 'service-delivery' collection of arguments for affirmative action in that he ties the epistemological specificity of being female under patriarchy or (and) of an ethnic minority in a racist society to the particular services that a university aims to deliver. Thus, if his argument holds, being female (under patriarchy) and being a member of an ethnic minority (in a racist society) can in themselves be seen as legitimate elements of what it means to be a qualified contributor to the university's mission. However, the problems in Wasserstrom's account mean that this argument fails to provide a convincing case for affirmative action. It comes unstuck at the point at which he tries to take account of the impact of being female and the impact of belonging to a minority ethnic group while at the same time asserting a universal human nature for which sex and ethnicity can have no significance.

Wasserstrom undertakes the peculiar task of trying simultaneously to affirm and deny that the lived, bodily experience of being male or female bestows upon the experiencer a unique access to the world. It is a peculiarity often shared by arguments which try to justify affirmative action while ruling out the kinds of specificity, including bodily specificity, which affirmative action policies are designed to acknowledge. Like others in the parts of liberal tradition which rely on such exclusions, Wasserstrom's argument is made up of oppositions: sex is separate from personality, mind is uninfluenced by body, truth is detached from the world. The detachment which issues in a society of individuals whose various lived experiences impinge upon their and other consciousnesses no more than eye colour leads into a whole framework which undercuts arguments for affirmative action. Wasserstrom suggests that in his good society affirmative action programs would become meaningless; but once his vision of the good society is accepted, even taking into account the discreteness of the other three domains of current realities, aetiology and instrumentalities, his arguments them-

selves become meaningless, because they 'talk past' the very kernel of what affirmative action is about; namely, taking account of the multiple levels of individuals' situatedness.

Nevertheless, as affirmative action programs falter under the USA's Gingrich-led backlash and its 'relaxed and comfortable' Australian equivalents, the task of developing a philosophical justification for affirmative action is as urgent as it has ever been. To succeed, any justification has to be able, while preserving liberal gains, to take account of the specificities of lived experience, including bodily difference, which affirmative action law has begun to recognise.

References

1. If the traditional reason given for discriminating against married women in employment was that they might become pregnant at any time (backed up by the ideology of the man as breadwinner), then the sections of the Act which forbid discrimination on the basis of marital status should also be interpreted as also being part of the prohibition of discrimination on the basis of potential pregnancy.
2. This is distinct from USA law, in which affirmative action includes ethnicity as well as sex; and North American philosophical analysis tends to concentrate on ethnicity rather than sex. The author discussed in this paper, Richard Wasserstrom, is an exception in this regard.
3. For example, Rosenfeld, Michael, *Affirmative Action and Justice: A Philosophical and Constitutional Inquiry*, Yale UP, 1991; 'Affirmative Action and the Myth of Merit' in Iris Marion Young (ed.) *Justice and the Politics of Difference*, Princeton UP, 1990, pp.192-225.
4. Wasserstrom, Richard, 'Racism and Sexism' and 'Preferential Treatment', both in *Philosophy and Social Issues*, Notre Dame UP, 1980.
5. 'Racism and Sexism', p.47, n 25.
6. This is an analogy which does not completely exclude difference — eye colour, after all is not a totally neutral phenomenon in the culture we have now. The association of green eyes with jealousy and quick temper, brown eyes with peaceful disposition, blue eyes with merriment ('twinkling blue eyes') and grey eyes with thoughtfulness is a common literary device. Wasserstrom could plausibly claim that he is not arguing for the eradication of all cultural ascriptions of difference. However, these literary associations probably do not have great impact on the actual lives of green-eyed, blue-eyed, grey-eyed or brown-eyed people; Wasserstrom is arguing for a much lower level of recognised difference based on bodily experience than is now the case.
7. 'Preferential Treatment', p.56.
8. 'Racism and Sexism', p.12.
9. 'Racism and Sexism', p.11.
10. For example, Wolf, Eric, *Europe and the People Without History*, Berkeley: University of California Press, 1982. Wolf attributes his development of the model to 'the intellectual reassessments that marked the late 1960s' (p.x). The movement involving studies 'from below' owes much to the Frankfurt-inspired South American-based theorists such as Freire, Illich and Gutierrez, who formulated their approaches during this period.
11. For a survey and analysis of this tradition of feminist scholarship see, for example, Harding, Sandra, *The Science Question in Feminism*, Cornell UP, 1986; Duran, Jane, *Toward a Feminist Epistemology*, Sage, Rowman & Littlefield, Maryland, c1991.
12. See Gatens, Moira, 'A Critique of the Sex/Gender Distinction', in Judith Allen and Paul Patton (eds), *Beyond Marxism: Interventions after Marx*, Intervention, Sydney, 1988.
13. On the possibilities and dangers of the incorporation of difference into the liberal academy, see Champagne, John, *The Ethics of Marginality: A New Approach To Gay Studies*, University of Minnesota Press, Minneapolis, 1995; also the critical foreword to Champagne's book, by Donald E. Pease. See also related arguments in Poiner, Gretchen and Wills, Sue, *The Gifthorse: A Critical Look at Equal Employment Opportunity in Australia*, Allen and Unwin Sydney, 1991, p.98.
14. 'Preferential Treatment', p.60.
15. 'Preferential Treatment', p.57.
16. 'Preferential Treatment', note 22, p.81.

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18. Koranyi, E.K., *Transsexuality in the Male: The Spectrum of Gender Dysphoria*, Charles C. Thomas Publishers, 1980, p.31.
19. Bolin, A., above, ref. 17, p.63.
20. Koranyi, E.K., above, ref. 18, p.89.
21. Bolin, A., above, ref. 17, p.63.
22. Lewins, F., *Transsexualism in Society: A Sociology of Male-to-Female Transsexuals*, Macmillan, 1995, p.95.
23. Lewins, F., above, p.94.
24. Bolin, A., above, ref. 17, p.63.
25. King, D., above, ref. 7, p.185.
26. West, C. and Zimmerman, D.H., 'Doing Gender' in J. Lorber and S.A. Farrell (eds), *The Social Construction of Gender*, Sage Publications, 1991, pp.13-37.
27. Kessler, S.J. and McKenna, W., *Gender: An Ethnomethodological Approach*, John Wiley & Sons, NY, 1978.
28. Foucault, M., 'The Confession of the Flesh' in C. Gordon (ed.), *Power/Knowledge: Selected Interviews and other Writings, 1972-1977*, Harvester Wheatsheaf, 1980, pp.194-228 at 215-6.
29. See Koranyi, E.K., above, ref. 3, pp.27, 84; Billings, D.B. and Urban, T., 'The Socio-Medical Construction of Transsexualism: An Interpretation and Critique', (1982) 29 *Social Problems* 266-82 at 275; Bolin, A., above, ref. 22, pp.107-8; King, D., above, ref. 9, p.85; Lewins, F., above, ref. 27, p.103, 116. However, what counts as feminine may be indicative of a middle-class as well as a male medical gaze. For as Tyler points out 'it is only from a middle-class point of view that Dolly Parton looks like a female impersonator; from a working-class point of view she could be the epitome of genuine womanliness' (Tyler, C.A., 'Boys Will be Girls: The Politics of Gay Drag' in D. Fuss (ed.), *Inside/Out: Lesbian Theories, Gay Theories*, pp.32-70, Routledge, 1991). Indeed, it may be that a successful gender performance and the degree of that success implicates multiple relations.
30. King, D., above, ref. 7, p.85.
31. Foucault, M., *The Archaeology of Knowledge*, Tavistock, London, 1972, pp.51-2.
32. Butler, J., above, ref. 3.

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29. Leiber, James, 'A Piece of Yourself in the World', (1989) *Atlantic Monthly*, June, p.76.
30. NSWLRC, *In Vitro Fertilization*, Report No. 58, 1988, Recommendation No. 39.
31. The report in *Estate of K* does not state the age of the wife.
32. i.e. the sole child of the relationship plus three children of the father from a previous marriage.
33. *Todd v Sandridge Construction Company* 341 F2d 75, 77 (4th Cir, 1964) per Bryan J.
34. Feliciano, Tanya, 'Davis v Davis: What About Future Disputes', (1993) 26 *Conn L Rev* 305 fn 6.
35. See *Artificial Conception Act 1984* (NSW) ss.5-6; *Artificial Conception Act 1985* (ACT) ss.5-7; *Artificial Conception Act 1985* (WA) ss.6-7; *Status of Children Act 1979* (NT) ss.5A-5F; *Status of Children Act 1978* (Qld) ss.15-18; *Family Relationships Act 1975* (SA) ss.10c-10e.
36. Nor have Australian courts been faced with disputes about whether embryos are property or may be left in a will, or may be the subject of a custody dispute as have several American courts: *Davis v Davis* 842 SW2d 588 (Tenn SC, 1982); *Hect v Superior Court* 20 Cal Rptr 2d 275 (Cal App 2 Dist, 1993).