

Is science helping or harming us?

By April Scarlett

As science continues to redefine our lives at a dizzying pace, Professor Thérèse Murphy is working on the best way for law to ensure that science improves societies rather than harming them.

At a recent public lecture for the Castan Centre, Professor Murphy, who is Director of the Health & Human Rights Unit at Queen's University Belfast, laid out her vision for a future where science and the law complement each other.

Professor Murphy began by suggesting that scientists see the law as a cumbersome tool associated with bans and moratoriums, while lawyers mostly ignore science except when it serves the law—for example, in the provision of expert scientific evidence.

Against this backdrop, she suggested that the relationship between science and the law could and should be reimagined. Noting the 'ELSI' (ethical, legal, and social implications of scientific research) Research Program funded by the Human Genome Research Institute, Professor Murphy advocated shifting thinking about science as something done by scientists first, and then regulated by the law, to a process where the law and science develop in tandem. She acknowledged that the law sometimes seems to be pitted against ethical and social considerations, and indeed against the interests and needs of the researchers themselves. She reminded us, though, that law is more than its technicalities. It can be normative, responsive and creative in its interactions with science and technology, and it is sufficiently flexible to deal with new developments.

Professor Murphy then addressed how science and international human rights law interact. Although the right to science is protected by international law, the content of the right needs to be clarified. A further obstacle is that recent efforts such as UNESCO's Universal Declaration on Bioethics and Human Rights and the Council of Europe's Oviedo Convention on Human Rights and Biomedicine, have been perceived as unhelpful by many bioethicists and largely ignored by lawyers. More broadly, at least one bioethicist has suggested that human rights pose an unwarranted obstruction to scientific progress towards a better future for humanity, and that the 'human' ought to be taken out of 'human rights'.

Professor Murphy proposed that we hold onto both human rights and human rights law. We need, she said, a better sense of the role they can play. With this mind, she called both for more social science enquiry into human rights and for more interest amongst international human rights lawyers in the findings produced by such enquiries. We need, for example, to know who is taking legal action to access new drugs and with what effects. We also need to know more about the ways that scientists understand human rights and human rights law. Do scientists view human rights law as a source of protection or merely the latest form of bureaucracy—or something else? Also, how do gender, age, race, field of expertise and location impact on scientists' views?

To illustrate the need to reassess rights and obligations in a rapidly changing field, Professor Murphy gave the example of donor-conceived children, who were probably not foreseen by the authors of the Convention on the Rights of the Child. Article 7.1, for example, provides that a child shall have a right, as far as possible, to know and be cared for by his or her parents, and Article 9.3 provides that States parties shall respect the right of the child, who is separated from one or both parents, to maintain personal relations and direct contact with



Professor Thérèse Murphy

both parents on a regular basis. What might these provisions mean for donor-conceived children? To answer this question, we should not simply call for an analogy with adoption or assume the primacy of genetic relationships; instead we need to look closely at the lived experiences of modern family and kinship.

Professor Murphy concluded that clarifying the interaction between law and science could be seen as presenting two challenges. The first challenge is the formulation of a set of foundational principles, or aspirations, regarding science and technology, and their relationship to human rights. These principles might include, for example, that science is in the service of humanity and not of the state; and that science has its own intrinsic value in addition to its value to humanity. Second, the legal obligations attached to a right to science must be specified. Taking questions, she emphasised that there is a difference between whether a right exists and what it comprises, and how it is delivered or protected in practice by the state and others. While the latter question is crucial, the lack of answer at present does not prevent work being done on the former. She also suggested that the forthcoming General Comment on the right to science, being prepared by UN Committee on Economic, Social and Cultural Rights, will be a vitally important starting-point for further work on science, technology and human rights.

Professor Thérèse Murphy visited Australia as a Holding Redlich Distinguished Visiting Fellow.