

Chapter 9

A Philosophical Exploration of the Concept of 'Property' in Genetics and Databanking: Challenges for Bioethics in Asia and Europe

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ABSTRACT

The chapter criticizes arguments purporting to show that the human body could be made available in the market as property and those arguing that the concept of property could be applicable to the human bodily parts or human DNA. The author argues that the genetic information contained in matter such as DNA cannot be taken for granted as classifiable as property. There are three reasons: DNA is too personal to be commodified; DNA is of familial nature; and commercialization of DNA runs the risk of exploitation of the disadvantaged. Moreover, ethics should venture to clarify interests and stakes in the debate, with sympathy for the vulnerable rather than executing the rationales of powerful groups in economy and society.

WHAT IS AT STAKE

Modern biomedicine and the development of genetic technology raise a number of concerns about the tendency to see a person's body as an accumulation of objects that may and can be separated and commercially transferred. In fact, the view, that sees a human body as an accumulation of objects, is convenient because it suggests and encourages practices of utilization that would be difficult to

defend morally without such a view. The primary consequential danger of commodification is that it can lead to exploitation and dehumanization, particularly of vulnerable populations, such as people at the margins of society, thus eventually contributing to de-humanizing societies at large. This danger is most apparent in the pharmaceutical and biotechnology companies' quest to patent and market products derived from human tissues, e.g., the widespread 'biopiracy' in the developing world (Rural Advancement Foundation International (RAFI), 1995).

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Moreover, the metaphysical challenge lies in reducing the human being, in part or in total, to an instrument, be it by other people or by an individual regarding itself. This concern is also expressed in efforts to anathematize and contain any activity or doctrine that might support dehumanization, for example in terms of taboo or ban. Both consequentialist and metaphysical concerns demarcate the conceptual horizons of the cultural philosophical debate about the ethics of databanking.

THE CONCEPTUAL DEBATE

The Human Body Property

Canadian ethicist Williams-Jones has linked an apparent social (or, rather, legal) tendency to accept commercialization of human tissues to three principal factors (William-Jones, 1999):

1. *Cartesian dualism*, which reduces a human being to a person. It conceives of the person as separable into mind and body and emphasizes the primacy of the mind over the body. Historically, such dualism helped demythologize the body and made it a secular object. Scientists gained the freedom to explore the functioning of the body, thereby supporting the development of modern scientific medicine. But this separation, without proper self-critical reflection, also supports the objectification and commodification of the body, for it may be taken to suggest that the body and its parts may be treated like possessions or instruments, alienated from the grounds of human value.
2. *A materialist conception of the person*, which treats the person as a wholly material being, has mostly replaced the dualistic conception or combines with it. As materialism treats the mind as a function of the body, materialism, in a reductionist form (most apparent

in popular views of human genetics, such as the 'blueprint' metaphor for the genome), can lead to the body being objectified. Many people now expect all behaviors to be explained in terms of genetic causation. Despite this seeming fatalism, there is nonetheless a desire to gain control over genetic material, for the decoding of the blueprint is seen as the key to controlling a person's life and destiny. At the same time, a reductionist materialist perspective can also lead people to treat their own or other people's body parts as commercially transferable, as seen, for example, in the fact that commercial sperm banks exist for the express purpose of selling 'genetically superior' material to prospective mothers.

3. *The principle of self-determination* (or, misleadingly, "autonomy") in the dominant international bioethics discourse requires conceiving of individuals as fully self-responsible, private persons with strong controlling interests in their bodies. This emphasis on one aspect of autonomy can, however, go so far as to diminish awareness of duties towards one's own body. For example, one argument in favor of a commercial trade in organs is that "autonomous" individuals should be able to do as they please with their bodies. Williams-Jones argues that in combination with dualistic or materialistic (reductionist) concepts of the person, such a conception "may result in the body being objectified, manipulated, dismantled and commodified" (Williams-Jones, 1999, p. 12).

One way of exploring the body as property is to speak of it in terms of *quasi-property rights*. According to utilitarian consequentialists such as Radin, the means of weighing the significance of a person's relationship with an object is the type and level of pain suffered by the loss of the object. If the object is loosely held (e.g., one's car),

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