

Blackwell Public Philosophy Series

Who Owns You? The Corporate Gold Rush to Patent Your Genes

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Discussion Questions

1) Genes Patents and Analogies:

- a. What are the scientific and practical benefits of the Human Genome Project (HGP)?
- b. How was the HGP financed, and how did part of the genome first become patentable?
- c. Would the HGP have been completed timely and under budget without corporate involvement?
- d. Why were the discoveries of the public HGP supposed to be part of the public domain?
- e. How do the analogies (*The I, Robot*, and the *Elephant Man* scenarios) either differ from, or resemble gene patenting?
- f. How does the notion of privacy relate to the issue of gene patenting, if at all?

2) Preliminary Issues:

- a. What is the current legal framework for Intellectual Property rights in genes?
 - i. What does it mean for a gene to be patented?
 - ii. What does it mean for something to be patentable or un-patentable?
- b. How is DNA “special”? How does it differ from others sorts of things in the world?
- c. Are individuality, autonomy, or personhood related to genes at all, and if so, why might they be part of a discussion pf patentability of genes?

3) Method:

- a. How is the method presented a “natural law” approach?
- b. How does this method differ from traditional natural law theories?
- c. What does it mean for something to be “grounded” as argued in the book? What are “brute facts” as compared with “social facts” according to Searle?
- d. How does the author link brute facts to “justice”?

4) Science:

- a. What is a “gene”?
- b. How did the discovery of genes revolutionize our understanding of our bodies?
- c. Is a gene a type or a token, and why does this matter for a discussion of ownership of genes?
- d. How did science progress before patents, and how does the institution of patenting affect science?
- e. How do genes interact with environments, and how might this affect our consideration of patenting genes?

5) Species, Individuals, and Persons:

- a. What is a species, and how do its members relate to one another taxonomically?
- b. Does a species have rights, or do only members of the species have individual rights? Are there obligations of members to the species as a whole?

- c. What counts as an individual, and how do persons depend ontologically on individuality?
- d. What relations are there, if any, between personhood and genes? How about individuality and genes?
- e. Can we derive any rights or obligations from these relations?

6) Legal Dimensions:

- a. Does the law protect rights in physical body parts? To what degree are body parts protected, and to what degree are they not?
- b. How are genes like body parts, or how do they relate to bodies?
- c. How are genes unlike parts of our bodies, and how does this alter our conceptions about property rights in genes?
- d. How do genes relate to other distinct aspects of our individuality such as our appearances, and what protections are there for our images?

7) Intellectual Property and Genes:

- a. How did intellectual property law develop and what are its purposes?
- b. What are the distinctions between patentable, copyrightable, and public domain objects?
- c. How did genes get patent protection? Are there flaws in the application of patent law to genes? Are there reasons it might be appropriate?
- d. Why are engineered life forms patentable?
- e. What “parts” or genes are granted patents, and under what theory of “utility” and “novelty”?

8) Genes and The Commons:

- a. What is a commons and how did they develop in the law?
- b. What is the distinction drawn between a commons “by choice” and a commons “by necessity”?
- c. What sorts of things are commons by choice and why? What sorts of things are treated as commons by necessity?
- d. How is DNA argued to be a commons?
- e. How are genes like radio spectra or are they not?
- f. Why are genes not ideas?

9) Pragmatic Considerations:

- a. How does gene patenting affect science and scientists?
- b. What are the potential reward and risks to business caused by the practice of gene patenting?
- c. How does an open source approach to genes and DNA potentially benefit science?
- d. How can businesses thrive under an open source regime?
- e. What sorts of national, legal approaches to genes, ownership, and profits have been tried and by whom? What are their various benefits or shortcomings?

10) Conclusions:

- a. What open questions remain about genes and personhood or individuality, and are they solvable?
- b. What does it mean for genes to be a “common heritage” and how might this not be enough?
- c. What new technologies might complicate issues of gene patenting, or threaten our privacy and rights given the current practice of gene patenting?
- d. How can the current practice be changed?