

## Towards an Equitable Proprietary Regime: Property Rights Over Human Genes as a Case Study

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**Abstract :** The legal recognition of property rights over human genes is a divisive topic to which there is no resolution. As a frequently discussed topic, scholars and practitioners often highlight the inadequacies of a proprietary regime. However, little has been said in regard to the nature of human genetic materials (HGMs). This paper proposes approaching the issue of property over HGMs from an alternative perspective that looks at the personal and social value and valuation of HGMs. This paper will highlight how the unique and unresolved status of HGMs is incompatible with the main tenets of property and, consequently, contributes to legal ambiguity and uncertainty in the regulation of property rights over human genes. HGMs are perceived as part of nature and a free-for-all while also being within an individual's private sphere. Additionally, it is also considered to occupy a unique "not-private-nor-public" status. This limbo-like position clashes with property's fundamental characteristic that relies heavily on a clear public/private dichotomy. Moreover, as property is intrinsically linked to the legal recognition of one's personhood, this irresolution benefits some while disadvantages others. In particular, it demands the publicization of once-private genes for the "common good" but subsequently encourages privatization (through labor) of these now-public genes. This results in the gain of some (already privileged) individuals while enabling the disenfranchisement of members of minority groups, such as Indigenous communities. This paper will discuss real and intellectual property rights over human genes, such as the right to income or patent rights, in Canada and the US. This paper advocates for a sui generis approach to governing rights and interests over human genes that would not rely on having a strict public/private dichotomy. Not only would this improve legal certainty and clarity, but it would also alleviate—or, at the very least, minimize—the role that the current law plays in further entrenching existing systemic inequalities. Despite the specificity of this topic, this paper argues that there are broader lessons to be learned. This issue is an insightful case study on the interconnection of various principles in law, society, and property, and what must be done when discordance between one or more of those principles has detrimental societal outcomes. Ultimately, it must be remembered that property is an adaptable and malleable instrument that can be developed to ensure it contributes to equity and flourishing.

**Keywords :** property rights, human genetic materials, critical legal scholarship, systemic inequalities

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