

Jean Buttigieg

**The Human Genome
as Common Heritage
of Mankind**

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Dedication

I would like to dedicate this thesis to my wife Mariella and my children Emmanuel and Maria Lara in recognition and appreciation of their unwavering support during my studies.

Abstract

There are three main goals that this research study will seek to achieve. The first is to make the human genome, as a common heritage of mankind, a legal principle of international law. Already in 1997, the UNESCO General Conference declared the human genome the common heritage of humanity, in a symbolic sense, in its Declaration on the Human Genome and Human Rights. This declaration was followed by the Joint Statement of 14 March 2000, by President Bill Clinton and British Prime Minister Tony Blair, in which they stated that the ‘fundamental data on the human genome, including the human DNA sequence and its variations, should be made freely available to scientists everywhere’. The two leaders’ announcement to allow ‘unencumbered access’ to this fundamental data on the human genome, for the benefit of all humanity, appeared to endorse the UNESCO Declaration of 1997 on the human genome.

But it is our contention that these references to the human genome as common heritage of mankind were only political slogans rather than genuine attempts to make the human genome, as a common heritage of mankind, a legal principle of international law. Our goal is to re-introduce, into public discourse, the philosophical and political implications of the concept of common heritage of mankind, as intended by Arvid Pardo when he addressed the UN General Assembly on November 1, 1967, and apply them to the human genome.

The second goal of this research study is to demonstrate that the biggest challenge to making the human genome the common heritage of mankind comes from the patent system as it is presently operated, that encourages the commercialization of the human genome by denying scientists ‘unencumbered access’ to the fundamental raw data on the human genome. By putting *individual rights* before *community rights*, the patent system is not conducive to promoting discoveries that improve health by providing new and better medical treatments.

The third goal concerns the issue of biotechnology. While the biotechnology debate is very often centred on what new applications of biotechnology should or should not be permitted, there is missing a critical philosophical analysis of biotechnology itself that can no longer be ignored if we do not want the human genome to fall victim to modern science’s project of complete mastery of nature, including human nature. This philosophical analysis should lead to a re-introduction, into public discourse, of the notion that the true essence of the human genome is to be found in metaphysics and not biology. This will entail

resisting the trend of modern science to consider as irrelevant any metaphysical considerations on the human genome.

These are the concerns that will be made subject to philosophical scrutiny throughout this research study. In the first chapter, we will be discussing the different ways how the patent system is generating an ‘anti-commons’ in biomedical research. In the second chapter, we will carry the concept of common heritage of mankind from the deep seabed to the human genome. The metaphysical nature of the human genome will be the subject of the third chapter while in the last chapter we will focus our attention on the contributions of Martin Heidegger and other philosophers on issues concerning technology and biotechnology, in particular. We will also discuss the ways how these philosophical concerns relate to the human genome. The last section will consider a number of political initiatives that can be taken with the purpose of promoting, on the international level, the legal recognition of the human genome as a common heritage of mankind.

Our research study is meant to fill a gap in the literature on the human genome and the common heritage of mankind that tends to ignore the ‘anti-commons’ effect of the patent system on biomedical research and gives very little importance to the metaphysical nature of the human genome and to the philosophical concerns surrounding the field of biotechnology.