NEWS AND VIEWS

DNA as Taxable Property – The Elephant in the Room or a Red Herring?

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1. Introduction

In his recently published book, *Property Rights in Blood, Genes and Data: Naturally Yours?*, Jasper Bovenberg notes that “[a] double standard currently governs the commercialization of biological materials. Although intellectual property (IP) law allows researchers to capitalize on their contributions to a research enterprise, it denies donors of biological materials the right to compensation for their contributions”. A number of models have been proposed “to redress the imbalance in property interests between researchers and the patients who donate tissue and cells for their research”, including the property model, the charitable trust model, the contract model, the non-market compensation model, and the global public good model. As Bovenberg points out, “a central feature of most benefit-sharing models… is that they seek to secure for the individual… or the disease group concerned… a portion of the financial benefits of an invention based on tissues originating from these sources”. As an alternative to these, Bovenberg suggests that a ‘tissue tax’ (that is, a tax on cell and tissue products derived from

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a donor or set of donors) “could provide a fairer distribution of the fruits of regenerative medicine and the commercial use of tissue in general.”

The need to develop equitable benefit-sharing arrangements between researchers and research participants has arisen not only to remedy the monetary “double standard”, however, but also to address public concerns over growing commercialisation practices, which have caused a decline in public trust and confidence in the research enterprise. These concerns distil around issues of fairness and justice: that private profit is made through public exploitation; that research participants who freely donate biological material to genetic research have little or no say in how their material is used or what is done with the profits generated from the research; and that people are disrespected by the commercialisation process itself. Indeed, current institutional policies treat research participants as largely passive, and fail to recognise any interests they might have in the research endeavour itself or in the benefits that might accrue as a result of such research. As Laurie has pointed out, however, “those who participate as subjects and who provide vital genetic research material are the key components of the genetic research machine and are crucial to its continued success… The way forward is to empower these parties to take a more equal role in the partnership that is formed when they participate in research.”

The challenge, then, is to develop a benefit-sharing model that tempers, but does not unduly diminish, commercial financial interests; that redresses the economic imbalance; and that gives research participants a more active role in influencing or directing sharing, thereby restoring some degree of public trust and confidence in the research enterprise.

This commentary will evaluate the concept of a “tissue tax” in light of the principles of benefit-sharing and the generally-accepted purposes of taxation, and will outline some of the practical and ethical implications a tax could have for human tissue. While a tissue tax provides an interesting and novel approach to distributing the financial benefits that might accrue as a result of human genetic research, it is limited in its scope and application. The expansive and flexible approach to benefit-sharing espoused by the HUGO Ethics Committee is preferable,