

ON PATENTING HUMAN ORGANISMS  
OR  
HOW THE ABORTION WARS UNDERMINE TECHNOLOGICAL  
INNOVATION

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ABSTRACT

The idea of ominous technologies that put human individuals or parts of their bodies under someone else's control has been stirring emotions and terrifying people for centuries. It was a recent offshoot of this idea—the notion of “patenting humans”—that mobilized certain members of Congress to pass legislation prohibiting the issuance of patent claims “directed to or encompassing a human organism.” The values underlying this legislation may well have been agreeable, even admirable. Yet, the actual motivation for it was misguided; its execution, deeply flawed; its potential outcomes, hazardous.

This article reviews the history and background of this prohibition. It fleshes out the prohibition's numerous flaws, including, primarily, the lack of an agreed upon definition of “human organism.” It explains why the perception that humans could be patented is part of what the article labels as the “Ownership Fallacy,” which is founded on a misunderstanding of patent laws. The article further discusses why the prohibition on the patenting of inventions “directed to or encompassing a human organism,” while unnecessary and unlikely to achieve its purpose, poses a danger to technological innovation, especially in the area of biomedical technology. The article then discusses ways of minimizing the potential negative ramifications of the prohibition by construing it narrowly. Finally, the article calls for the repeal and substitution of the prohibition on the patenting of inventions “directed to or encompassing a human organism” with a scientifically informed legislative effort aimed at expanding the boundaries of the concepts of slavery and involuntary servitude.

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