

Banking on the Body: The Market in Blood, Milk, and Sperm in Modern America

Philip L. Frana
James Madison University

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Banking on the Body: The Market in Blood, Milk, and Sperm in Modern America, by Kara W. Swanson. Cambridge: Harvard University Press, 2014. 333 pp. Illustrations, notes, index. \$35.00 hardcover.

Reviewer Philip L. Frana is associate professor of interdisciplinary liberal studies at James Madison University. He is working on a book manuscript tentatively titled "Calculating Care: Evidence, Computers, and Medicine in the Twentieth Century."

The self is a legal construct that operates under a civil social contract. We have personhood as an artifact of that contract and the expectation of obedience to the rule of law. You cannot sell your eye. You can use your body for sex but cannot sell your body for sex. You can give and sell blood but not most other organs. There is a national shortage of organs available for transplantation, but monetary compensation to donors is banned everywhere except in Iran.

And yet there is legal precedence for the body as commodity, beginning with *Hawkins v. McGee* (1929). Curiously absent from Kara Swanson's monograph, *Hawkins* (known in casebooks as the "Hairy Hand Case") is one of the first disputes law students encounter. It is about how the body has property and value. George Hawkins's arrangement with his doctor for a restored "perfect" hand is little more than a bargain to replace a broken mechanism. (As the casebook title implies, he didn't get what was promised.)

Selling two kidneys is a death wish. But the value of the body is not depreciated by production of blood, milk, or sperm. Humans aren't just collections of parts; they are general-purpose bodies for the potential production of goods and services, or, as Swanson asserts, factories that stamp parts for later use. Do individuals, she wants to know, own those factories? Would it be better if we considered outputs as gifts or saleable commodities? Are they products or services?

Swanson explores these tensions through the complex interdisciplinary lens of the history of American medicine and law and the metaphor of "banked" inventories of life-sustaining human fluids. The banking metaphor, an invention of Chicago physician Bernard Fantus, encouraged donors and recipients to think about blood supply as existing in dynamic equilibrium, where deposits and withdrawals are managed like Keynesian economic theory. It encouraged people to bank ahead for a surgical rainy day but also to run deficits and borrow from family and friends ("replacement donors").

The banking metaphor, Swanson shows, came under attack in the middle decades of the twentieth century. Mass appeals to emotion and patriotism, which inspired gifts of blood to the Red Cross during World War II and the Cold War, undermined free markets. The powerful

American Medical Association (AMA) considered such selfless generosity a form of socialized medicine. The alternative—a for-profit, individual “professional donor”—suggested the need for a medical authority. The AMA wanted to replace locally controlled banks—which they viewed as interlopers—with medical supervision. Finally, state courts began asserting that patients harmed by “bad blood”—infected, for example, by hepatitis—might be permitted to plead strict liability under product liability law. Such reasoning triggered a reaction against banked blood as a commodity. State blood shield laws recast the bank as a financial service.

Hepatitis (and eventually HIV) screening, scandals involving expired blood, and the miscegenation bombast of civil rights opponents who feared blood purchased from racial minorities all played havoc with shield law. By the 1970s, public stereotypes marked gift blood as pure blood and bought blood as contaminated. Public confidence drained away, stemmed only by President Nixon’s unveiling in 1973 of a Federal Blood Policy, which promoted a paradox familiar to students of college football: unpaid donor-producers and a network of distributors and surgical team-captains reimbursed profitably by insurers.

Swanson devotes fewer pages to the history of human milk and sperm supply chains, largely because they represented much less controversial industries. While the banking metaphor applied to breast milk, the AMA refrained from asserting market control. The reasons for this included its feminine and intimate expression, easy preservation and stockpiling, and the popularity of formula. Sperm banking, pioneered by University of Iowa graduate student Jerome Sherman and urology professor Raymond Bunge in the 1950s, required “donor differentiation” (199) so that the offspring of assisted reproduction interventions shared physiognomies with adoptive fathers. A better analogy, Swanson concludes, is the safe deposit box.

Swanson suggests that body products be reinterpreted as “civic property” in a pluralistic Kingdom of Ends. This is important because in the twentieth century bodies were voraciously commoditized for use by those artificial persons called corporations. Natural persons were left to live with the incongruent wreckage: *Moore v. University of California* (1990), rejecting the claim that people have a property interest in their own body parts; *Kane v. Hecht* (1995) validating the custody of frozen sperm willed by lover to girlfriend over the objection of the lover’s parents; and tax courts upholding claims on business expenses related to the sale of rare AB blood.