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Is Local, Organic Sperm the Next Big Thing?

Findlaw recently reported that the US Food and Drug Administration was seeking to stop Trent Arsenault from donating his sperm on the basis that he was in the business of manufacturing human cells. This apparently is in contravention of US regulations. While Mr Arsenault has received no payment for his sperm donations, it was his lack of 'sexual intimacy' with any of the recipients that caused him to fall foul of the rules.

The primary concern of the charges against Mr Arsenault (in fact 'his Establishment') is that in failing to screen his sperm for certain agents, he has failed to 'provide adequate protections against the risks of communicable disease transmission'.

To those interested in the question of property in the human body, this case draws attention again to the nature of human cells and the human body itself as an object (rather than a subject) of law. In deeming Mr Arsenault's gifts of his sperm as 'manufacture', the regulations in question suggest a categorisation of sperm as a thing outside of oneself rather than something that forms part of us (well, as part of Mr Arsenault). As something considered under the regulations to be independent of a human, the sperm arguably then become capable of being the subject of property rights and interests - in spite of a long-term reluctance of the common law, including US law, to find a property interest in the human body (though exceptions do exist).

It is not suggested that sperm donation be free of regulation - though there does appear to be inconsistency in US regulation of sperm donation that needs to be resolved. It is however interesting to note that the framework of regulation of 'recovery' and distribution of sperm (and other human cells) adopts the language of manufacture within an 'establishment'. This gives the appearance of an economic enterprise, presupposing the production of goods, or personal property. This raises questions such as: can the FDA confiscate Mr Arsenault's sperm? At what point in the 'production' process do his sperm become contraband, or unlawful? These questions highlight the problematic nature of considering ejaculation and conception as a manufacturing process.

Some argue in favour of investing the human body with the characteristics of property, and others argue against. In either case, any regulatory framework needs to be clear and consistent in its purpose, and to use language appropriate to the unique character of the human body and its component parts.

(The title is a reference to an article in the Daily Mail Online.)

ABOUT ME



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