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BOOK REVIEW

FAMILY VALUES AND THE NEW SOCIETY: DILEMMAS OF THE 21ST CENTURY BY GEORGE P. SMITH, II CONNECTICUT: PRAEGER. 1998, PP. 280

*James P. Prennetta, Jr.**

The former Dean of the Yale Law School, Guido Calabresi, once observed that, "[t]he role of the scholar is to look in dark places and to shed light on what he or she sees there."¹ In his current book, *Family Values and the New Society*, Professor George Smith continues to define his on-going role as such a scholar by tackling the contentious issues of the New Biological Society. With insightful and creative analysis, he provides not only a glimpse of law in action, but structures templates for legal reform.² Perhaps no greater challenge to the New Society exists than that seen in the frontal assaults to the traditional notion of family. In his latest work, Professor Smith examines how old and new ethical values and moral convictions combine with changing political and social forces to demand a re-evaluation of the

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1. Guido Calabresi, *Correspondence to Paul D. Carrington*, 35 J. LEGAL ED. 23, 23 (1985).

2. See GEORGE P. SMITH, II, *LEGAL AND HEALTHCARE ETHICS FOR THE ELDERLY* (1996); *BIOETHICS AND THE LAW: MEDICAL, SOCIO-LEGAL AND PHILOSOPHICAL DIRECTIONS FOR A BRAVE NEW WORLD* (1993); *THE NEW BIOLOGY: LAW, ETHICS, AND BIOTECHNOLOGY* (1989); *FINAL CHOICES: AUTONOMY IN HEALTH CARE DECISIONS* (1989); *MEDICAL-LEGAL ASPECTS OF CRYONICS: PROSPECTS FOR IMMORTALITY* (1983); *ETHICAL, LEGAL, AND SOCIAL CHALLENGES TO A BRAVE NEW WORLD* (1982); *GENETICS, ETHICS AND THE LAW* (1981). See also Raymond C. O'Brien, *The World of Law, Science and Medicine According to George P. Smith, II*, 8 J. CONTEMP. HEALTH L. & POL'Y 181 (1992); Harold A. Buetow, Book Review, 2 J. CONTEMP. HEALTH L. & POL'Y 173, 174 (1986).

institutional model of family life. Within his book,³ Professor Smith structures four divisional themes for analysis: challenging or restructuring the concept of family,⁴ reproductive privacy or social responsibility,⁵ intra-familial and external discontinuities,⁶ and the dissolution of the family unit.⁷ The interconnectedness of these four themes is seen through the central reference to motherhood and fecundity and, more specifically, the extent to which it is expanded (or, restricted, as the case may be) within traditional views of reproductive freedoms.

Growing societal acceptance of same-sex preferences and support privileges in marital relationships,⁸ with attendant rights of adoption and uses of non-traditional forms of reproduction,⁹ is viewed by some as evidence of America's cultural breakdown.¹⁰ Others prefer to see these changes as a positive accommodation of the New Society to the voices of pluralism and inclusiveness which, in turn, promotes a new cultural vibrancy.¹¹ Feminism, as yet another important cultural force, has both challenged and re-stated the historical roles of women in contemporary heterosexual marriages.¹²

The extent to which all of these societal forces succeed in promoting a re-definition of the concept of family within state and local governments is yet still uncertain. At the federal level, however, the Defense of Marriage Act, passed by Congress on September 11, 1996,

3. See GEORGE P. SMITH, II, *FAMILY VALUES AND THE NEW SOCIETY: DILEMMAS OF THE 21ST CENTURY* (1998); Ch. 1, *Familial Challenges, Conflicts, or Dilemmas in The New Millennium*; Ch. 2, *Feminist Perspectives: Enhancing or Threatening Traditional Values?*; Ch. 3, *Domestic Partnerships and Same-Sex Relationships*; Ch. 4, *Testing the Limits of Procreational Autonomy*; Ch. 5, *Assisted Reproductive Technologies: Artificial Insemination, Surrogation and In Vitro Fertilizations*; Ch. 6, *Incest and Intrafamilial Child Abuse*; Ch. 7, *Pornography and Obscenity*; Ch. 8, *Death*; Ch. 9, *Organ Harvesting: Salvaging a New Beginning*.

4. See *id.* at 19.

5. See *id.* at 43.

6. See *id.* at 93.

7. See *id.* at 215.

8. See SMITH, *supra* note 3 at Ch. 3.

9. See *id.* at Ch. 4. See also John A. Robertson, *CHILDREN OF CHOICE: FREEDOM AND THE NEW REPRODUCTIVE TECHNOLOGIES* (1994).

10. See SMITH, *supra* note 3, at 9.

11. See *id.* at 11.

12. See *id.* at Chs. 1, 2.

“re-affirms the traditional view of heterosexual marriage by allowing the states to refuse to recognize same-sex marriages across state boundaries.”¹³ As such, it stands as a strong barrier to any rush to judgment towards validation of same-sex relationships. What remains to be seen in the future, however, as an accommodation to the growing efforts to legitimize domestic partnerships, will be a wider acceptance of various incidents of marriage (*e.g.*, employment pension and health plans) for same-sex relationships.¹⁴

The analytical framework Professor Smith constructs, in attempting to evaluate the various conflicts raised throughout this book, complements his own status as a situationalist. Accordingly, rather than utilize rigid or unyielding *a priori* ethical standards as constructs for decision making, he analyzes the complete factual basis of each problem (or issue) from a *macro* perspective before proceeding to evaluate the consequence of particular courses of action from a *micro* view.¹⁵ The inherent character of this balancing test requires economic, legal, medical, social, ethical, and individual costs to be measured against societal benefits.¹⁶ The ultimate course of action or resolution of conflict, then, is decided by a determination of what action minimizes human suffering, is humane, and at the same time, advances from a utilitarian perspective the greatest good for as many people as possible.¹⁷

The importance of economic efficiency or economic utilitarianism as a vector of force in the Smith construct is seen realistically in the analysis of death with dignity¹⁸ and organ harvesting.¹⁹ Both of these areas of concern must, necessarily, utilize an assortment of balancing tests in order to determine whether continued and very costly end-of-life care is futile and should thus be ended together with the mechanisms – economic and social – utilized in generating a total equality of opportunity for organ transplant recipient. Interlinking any consideration of these two areas of concern, however, should be acceptance of

13. *See id.* at 57, n.126.

14. *See id.* at 59.

15. *See* SMITH, *supra* note 3, at 10-12.

16. *See id.* at 9, 10.

17. *See, e.g., id.* at x; *see also* Raymond C. O'Brien, *supra* note 2, at 172, 182. *See generally* ROGER B. DWORKIN, *LIMITS: THE ROLE OF LAW IN BIOETHICAL DECISION MAKING* (1996).

18. *See* SMITH, *supra* note 3, at Ch. 8.

19. *See id.* at Ch. 9.

the penultimate norm of "love, simple kindness or mercy."²⁰ In other words, Professor Smith urges a standard of reasonableness and humanness, especially for those hard end-of-life decisions which have the effect of ending families themselves.

In sum, *Family Values and the New Society* presents a thought-provoking and critical analysis of a number of current socio-political, ethical, cultural, and legal issues which will dominate the thinking of all citizens in the new millennium. Indeed, much of what Professor Smith writes will shape and inform future debates and discussions of the family. The extent to which, in the final analysis, there is an accommodation of new attitudes that impact on re-defining traditional family values. This must be presented within the political arena and "not be made preemptively by a judicial system devoid of responsiveness and accountability to the political will of the majority."²¹

20. See *id.* at 237; see generally George P. Smith, II, *Quality of Life, Sanctity of Creation: Palliative or Apotheosis?* 63 NEB. L. REV. 709 (1984).

21. See SMITH, *supra* note 3, at x.