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THE NEW BIOLOGY: LAW, ETHICS AND BIOTECHNOLOGY. By George P. Smith, II. New York: Human Sciences Press, Plenum Publishing Corp. 1989. 292 Pp. \$36.95.

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Regardless of this shortcoming, Callahan's suggested approaches to these questions always lead to the conclusion that no one really knows the right answer; no one, in fact, ever may. And because Callahan compiles a thought-provoking, rather than answer guide book, it is worth reading by anyone wrestling with the question of how to handle the shifting and expanding elderly population and scarce medical resources. It appears that some decisions are personal to the point of having several "right" answers.

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*Reviewed by Josephine Y. King, Ph.D.**

One would have to consult a wide array of texts and reports to achieve the comprehensive coverage of the subject of bioethics that Professor George P. Smith has masterfully assembled in one volume. The breadth of the work is not a signal for a cursory or summary treatment of the range of subjects; quite the contrary. The difficult, disturbing and as yet unresolved questions are brought to the surface in full light. There is no attempt to shun controversy and please all by vacuous platitudes. In addition to scope, depth and controversy Professor Smith's work is, above all timely, the Supreme Court having just accepted for review a Missouri abortion case¹ which may occasion the examination of *Roe v. Wade*.²

An eminent scholar, the Honorable Justice Michael D. Kirby, CMG, President of the Court of Appeal, Supreme Court of New South Wales, Australia, and Commissioner of The International Commission of Jurists, said this of Professor George P. Smith's new work, **THE NEW BIOLOGY: LAW, SCIENCE AND BIOTECHNOLOGY:**

This book will inform, irritate, exasperate and illuminate the reader. Such is the controversy of the topic the author has tackled. For the lawyer and the citizen who is brave enough to contemplate

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1. *Webster v. Reproductive Health Services*, probable jurisd. noted, Jan. 9, 1989, 57 U.S.L.W. 3451 (Jan. 10, 1989).

2. 410 U.S. 113 (1973).

our biological future, there is much to consider. And unless we do consider the issues debated in these pages, decisions will be made by default which we may live to regret.³

Professor Benjy F. Brooks, M.D., Professor of Surgery and Special Assistant to the President for Ethics at The Health Science Center at The University of Texas at Houston, called *THE NEW BIOLOGY*, a "well documented and comprehensive book . . . that points to the contradictory decisions that are made in law and medicine . . . and an invaluable addition to the libraries of not only physicians, lawyers, scientists and nurses [but also] to all who are interested in The New Biology."⁴

In a 1986 review essay that considered Professor Smith's previous books in the field of Bioethics,⁵ the reviewer heralded Smith as a "prescient prophet of the New Biology" and one committed, as a true scholar, to looking into dark places in order to shed a discernible light into what is seen there.⁶ The review concluded by observing that Professor Smith's works were "significant contributions" to the ongoing literature of "The New Biology" and were especially commendable because of their exceptionally high level of "thorough and objective analyses," in-depth research and "insightful recommendations."⁷

Up to this juncture, I am in total agreement with that reviewer and could—without more—conclude my own review essay. His very last sentence, however, provides me with the stepping off point for my own analysis; for that reviewer observed that Professor Smith's approaches to his works "eschew considerations that are moral or ethical" and, instead, adhere to a strict legal methodology.⁸

In this new treatise, Smith tackles directly the heavy and complex socio-moral-ethical-political and medical issues that permeate the legal bases of

3. Letter to Prof. George P. Smith, II, from the Hon. Justice Michael D. Kirby, July 12, 1988, Sydney, Australia (available through the editorial office of the *J. CONTEMP. HEALTH L. & POL'Y*).

4. Book Review, *THE NEW BIOLOGY*, Prof. Benjy F. Brooks, University of Texas, Health Science Center, Houston, Texas, September 10, 1988 (available through the editorial office of the *J. CONTEMP. HEALTH L. & POL'Y*).

5. Buetow, reviewing G. SMITH, II, *MEDICAL-LEGAL ASPECTS OF CRYONICS: PROSPECTS FOR IMMORTALITY*; G. SMITH, II, *ETHICAL, LEGAL AND SOCIAL CHALLENGES TO A BRAVE NEW WORLD*; and G. SMITH, II, *GENETICS, ETHICS AND THE LAW*, in 2 *J. CONTEMP. HEALTH L. & POL'Y* 173 (1986).

6. *Id.* Acknowledging the enormity of the Professor's research and his penetrating analyses in tackling "the multiple and complex problems of contemporary health law," the reviewer continued by stating that Smith's works were of such a "first order" level of creativity that a structured framework for principled decisionmaking emerged to such an extent that not only is law in action seen vividly, but an impetus provided for law reform. *Id.* at 174.

7. *Id.* at 188.

8. *Id.*

eleven vexatious challenges to The New Biology.⁹ Within these challenges, Professor Smith finds unparalleled opportunities to structure new, and at times provocative, frameworks for analyses and conflict resolution and to participate fully in the dynamism of law reform actions prompted by the full development of biotechnology and contemporary health law.¹⁰ The time for critical decisionmaking is now—not as unchecked crises develop.

In his willingness to consider and evaluate the total dimensions and unpopular themes of The New Biology, Smith demonstrates scholastic maturity. He writes in a balanced style, one that reads easily in the text for the average individual both interested and concerned about the various complexities of The New Biology and, in the copious notes, provides the more serious minded reader with strong research guidance notes to trace various subtleties and more academic points. Indeed, the book is a rich blend of practical understanding and scholastic thoroughness.

In his eloquent Introduction, Professor Smith recognizes “the basic challenge of The New Biology,” is to seek to maintain a standard of *quality* and *purposeful* living from conception through its natural conclusion; with the qualitative standard being in turn guided by the situation ethic (as opposed to an *a priori* standard) that dictates the utilization of a balancing test of the costs versus the benefits of any particular designed to resolve dilemmas. By recognition and application of such a test, the resource value of life has both negative costs and positive benefits that must be evaluated in making allocation decisions.

Ultimately, Smith sees the goal of any deliberative process in this field of concern as but maximization of the total potential for human growth, development, interpersonal relations and intellectual fulfillment when it exists and—at the same—the minimization of all suffering connected with the attainment and perpetuation of this lifetime goal. For him, the test that must be followed to allow for the achievement of this potential mandates a weighing of the utility of the good (social, economic, cultural or political) or maintaining the *status quo* against the gravity of the harm of undertaking a new and different course of action—be it efforts to obtain organs for human

9. G. SMITH, II, THE NEW BIOLOGY: LAW, ETHICS AND BIOTECHNOLOGY, Ch. 1, Biotechnology: The Challenges and The Opportunities; Ch. 2, Law, Science and The New Biology; Ch. 3, Medical, Legal and Ethical Conundrums at The Edge of Life; Ch. 4, The Contemporary Influence of Genetics and Eugenics in Family Planning; Ch. 5, Organ Procurement and Transplantation; Ch. 6, El Dorado and The Promise of Cryonic Suspension; Ch. 7, AIDS: The Private and The Public Dilemmas; Ch. 8, Noble Death, Rational Suicide or Self-Determination; Ch. 9, Procreational Autonomy: Values Gone Awry?; Ch. 10, The Case of The Orphan Embryos; Ch. 11, Science, Religion and The New Biology.

10. See *id.* at Chs. 6, 9 & 10.

transplantation¹¹ or the allocation of scarce medical resources to maintain terminally ill individuals¹² or those with a prolonged and expensive course of treatment as with AIDS.¹³

Although in many respects Professor Smith's thesis and development of a basic cost-benefit analysis as a construct for biomedical and biotechnological decision making is laudable as well as creative and path breaking, I fear that in his efforts to remain dispassionate and pragmatic in his analyses, he has often placed too much emphasis on economic efficiency¹⁴ in allocation decisions of The New Biology and, thus, "short-changed," so to speak, humane and compassionate values so important here. Professor Smith would, no doubt, seek to meet or blunt this criticism by stressing the fact that it is because of love, compassion and humaneness that certain actions—particularly those concerned with management at the edge of life—are made.¹⁵ Personal dignity, self-determination and humaneness—then—are for Professor Smith but complements to basic principles of economic efficiency and triage.¹⁶

If a modern focus is to be developed for evaluating and, where appropriate, harnessing the wonderment and the challenge of the unparalleled opportunities of The New Biology for making the world and the lives of all who live within it stronger and more qualitative, law, science, medicine, ethics and religion must align themselves in the final analysis as compatible forces rather than disharmonious enemies.

The eleven essays in THE NEW BIOLOGY which Professor Smith has authored, display—beyond doubt—his very thoughtful and persuasive realization of this inherent balancing mechanism that must be utilized in decision making here. I find myself in total agreement with his visualization of the central goal of The New Biology: namely, to minimize human suffering and maximize the social good. The eloquence of this insightful goal is to be found in its simplicity of purpose.

In sum, these essays, then, may be viewed properly as not only imaginative and compassionate, but also as providing a useful structure for managing the complexities and challenges of The New Biology, and the unlimited opportunities as well.

11. *Id.* at Ch. 5.

12. *Id.* at Ch. 3.

13. *Id.* at Ch. 7.

14. See generally R. POSNER, *ECONOMIC ANALYSIS OF LAW* (2d ed. 1977).

15. SMITH, *supra* note 9, at Ch. 3.

16. See generally Smith, *Triage: Endgame Realities*, 1 J. CONTEMP. HEALTH L. & POL'Y 143 (1985).