Law, Religion, and Medical Science: Building a Bridge of Understanding

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BOOK REVIEW

LAW, RELIGION, AND MEDICAL SCIENCE: BUILDING A BRIDGE OF UNDERSTANDING

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Kevin Phillips in his new book, American Theocracy, warns that what he terms radical Evangelical Christians are having a destabilizing effect on the American economy, foreign policy and scientific advancement — this, because of their closed-minded readings of the Bible’s “Prophecy of The End Times” and “Armageddon” and thus, their acceptance of the so-called “inevitable.”1 Indifference, if not pessimism, then, shapes their responses to issues of national and international importance.2

Professor George Smith’s new book, The Christian Religion and Biotechnology: A Search for Principled Decision, disputes Mr. Phillip’s conclusion and finds law, religion, and science sharing at least a symbiotic relationship, if not a real underlying partnership, in their response to the


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new biotechnology. As an established scholar in the field of bioethics since 1968, this is Smith's tenth book dealing specifically with the challenges society faces in the dawning of the Brave New World of molecular biology.

It is easy to understand why this book was nominated for a Pulitzer Prize in 2005 in non-fiction, for not only does Professor Smith deftly analyze the subject area, he shows a scrupulous objectivity, as all creditable scholars must do, and thus analyzes carefully both sides of the issues—complete with a thoroughness of research for which he is known and respected. Within six chapters he evaluates the role and purpose of lawmaking in the new age of biotechnology, normative standards of conduct, procreational autonomy, scientific research, genetics, and


Professor Smith sets out to investigate the legal, ethical, religious, and medical intersections within these six areas of interest and to show the lines of compatibility rather than incompatibility at play among them. He succeeds admirably in this task. This work not only informs the current national debate on the roles of law, religion, and medical science in the 21st century, but shapes an intelligent and humane response to it. He tackles these complex issues forthrightly and in a clear, unbiased and strong writing style. In so doing, he raises the level of balanced analytical discourse to a new level of reasoning.

The central link among these six chapters in Professor Smith’s book is to be found both in his thesis and his conclusion that “fairness, justice, and love [must] shape the framework for principled decision making in applications of genetic knowledge, medicine, and biotechnology,” with, of course, common sense also being a significant value as well. Laws, as standards of normative conduct, accordingly should be set within a socio-ethical value system whose foundation is grounded in love since, as St. Augustine suggests, it is within the ethics of love that the essence of justice is found. This spirit of love, compassion, or humaneness should
direct efforts in lawmaking and judicial interpretation\textsuperscript{17} as well as undergird efforts to interpret the principles of autonomy both in the beginning\textsuperscript{18} and the end of life.\textsuperscript{19} By embracing this spirit, the personal dignity, value and integrity of the human person is thereby validated and indeed, guaranteed.\textsuperscript{20}

Mindful of the influence that Judaism and Christianity played in developing the political philosophies of the founding generation in America\textsuperscript{21} and the decidedly political character of religions and the moral theologies attendant to them,\textsuperscript{22} Professor Smith takes a much different view than does Kevin Phillips regarding the impact of religion in today's society. Indeed, what Mr. Phillips appears to ignore in his unease over the role of religion from the town squares to the halls of Congress and the White House is that Christianity, Islam, and Judaism are, in the main, political in their focus. While prophetic, they endeavor nevertheless to challenge the socio-political status quo and attack the vast economic inequalities of society as well as protect marginalized interest groups, particularly the sick.\textsuperscript{23} Instead of being seen as a destabilizing force, without referencing specific denominations, religion should be seen as a vital social force at all levels of law and policy making in America. Simply put, religion without law loses its social effectiveness\textsuperscript{24} and law degenerates into little more than a mechanical legalism without religion.\textsuperscript{25}

Still defined as a Christian nation, America nonetheless accepts a discursive type of religion pluralism.\textsuperscript{26} Open debates on the contemporary place of religion are not only tolerated, but encouraged. Of late, what has taken center stage, as it were, has been the

\textsuperscript{17} See generally George P. Smith, II, Judicial Decisionmaking, supra note 7. See also Lynee N. Henderson, Legality and Empathy, 85 Mich. L. Rev. 1574 (1987).

\textsuperscript{18} See generally George P. Smith, II, Quality of Life, Sanctity of Creation: Palliative or Apotheosis?, 63 Neb. L. Rev. 709 (1984).


\textsuperscript{21} Michael Novak, On Two Wings: Humble Faith and Common Sense at the American Founding 27, 28-29 30 (2002).

\textsuperscript{22} Michael J. Perry, Love and Power: The Role of Religion in American politics 77 (1971).

\textsuperscript{23} Perry, id. at 78. See Michelle Borstein, Americans May Be More Religious Than They Realize: Many Without Denomination Have Congregation, Study Finds, Wash. Post, Sept. 12, 2006 at A12.


\textsuperscript{25} Id.

\textsuperscript{26} Novak, supra note 21 at 575, 576.
appropriateness of placing religious monuments (e.g., The Ten Commandments) on public land together with whether the national motto, “In God We Trust,” should be removed from all U.S. currency.

If the view is accepted that the “bedrock of moral order is religion,” it must follow that law and science not only build upon this bedrock, but are linked inextricably to it in all of their present policies and actions at one degree or other. Recent polls would seem to bear out this conclusion regarding the centrality of religion in America. One Associated Press survey of ten countries, the United States, Australia, Britain, Canada, France, Germany, Italy, Mexico, South Korea and Spain, found nearly all U.S. respondents saying faith was important to them, with only two percent acknowledging that they did not believe in God. Other polls have revealed that approximately 85 percent of Americans identify with a religious faith and more than 40 percent attend religious services at least once a week making the United States, with the exception of Iceland and Poland, the most religious nations in the Free World. In America, “the majority of the citizens believe themselves obligated by a prior, divine morality, despite the fact that most of them are unable to argue for it theoretically.” It is for the philosophers and moral theologians to make these arguments.

Issues of science inevitably become political issues because of one fact: they raise to the surface the extent to which the government can restrict private medical research undertakings, either in the name of (generational) safety, morality (IVF, fetal stem cell issues) or public health (AIDS).

32. Novak, supra note 21 at 595-96.
33. Id. at 596.
34. See generally George P. Smith, II, Setting Limits: Medical Technology and The Law, 23 Sydney L. Rev. 23 (2001).
Obviously, the complex issues of biotechnology and molecular biology are found neither in the foundational texts of most religious communities nor in scripture.\textsuperscript{35} What these religious texts do is establish broad, instead of specific, ethical norms for regrettable living and, thus, validate a set of core values to guide toward the achievement of that goal.

The Roman Catholic Church has, however, more than perhaps any other Christian faith, been in the vanguard of full disclosure in shaping "the critically important ethical, moral and social issues of the day."\textsuperscript{36} This has been achieved by and through the "definitive teachings of the Magisterum—from the Pope and the Bishops" which "allow the faithful to know with certainty the position of the Church on all aspects of the New Biology."\textsuperscript{37} Regrettably, other "denominations do not speak with one voice."

A historically significant clarification of the role of science and religion in Roman Catholic theology was made by his Holiness, the late Pope John Paul II, in 1996 when he concluded the two are compatible and "both can flourish."\textsuperscript{39} The Holy Father went further in discussing the theory of evolution by acknowledging that it was "more than just a hypothesis"\textsuperscript{40} and that accepting this theory did not preclude "affirming that the spiritual and philosophical elements must remain outside the competence of science."\textsuperscript{41} Interestingly, Pope John Paul's successor, his Holiness Pope Benedict XVI, has expressed his unhappiness with evolutionary science which seeks, as he observes, to discount "creative reason . . . that has created everything without a form of supernatural guidance."\textsuperscript{42}

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\item Christian Religion, supra note 3 at 234.
\item Id. See also Introduction at xv.
\item Id. at 234. See William E. May, Veritas Splendor and Bioethics, in John Paul's Contribution to Catholic Bioethics 35 (Christopher Tollefsen ed. 2004). See generally Symposium, What is Catholic Bioethics?; Nat'l Catholic Bioethics Q. 1 (2001).
\item Christian Religion, supra note 1 at 234.
\item Id.
\item Id. See generally Michael Ruse, The Relationship Between Science and Religion (2001). Professor Smith discusses, at length, in Christian Religion, the challenges to Darwinian Theory by countervailing theories of intelligent design and creation science at 40–46. Dick Taverne, supra note 1, at 269, sees intelligent design as a euphemistic equivalent to creationism and as a threat to reason.
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The new biological and molecular sciences prompt a re-evaluation of the whole scheme of the universe and of the precise role of humanity. Accordingly, the role of theology, grounded as it is in various faith traditions, must be to frame reasonable guidelines for assistance in determining if and when specific applications of the new genetic technology and medicine, within approved moral-ethical contexts, may be utilized. In addition to the teachings of the Magisterium, for Catholics, the central consideration put forward by the late Richard McCormick, S.J., should be helpful in determining whether or not to follow a particular course of action within the new biotechnology. Fr. McCormick suggested the central question should be: "Will this or that intervention [or omission, exception, policy, law] promote or undermine the integrity of the human person at all stages of development" and at the end of life. Professor Smith subscribes, wisely, to this suggestion and I find myself in agreement as well.

An ethical and philosophical support system or framework for assisting theology in meeting the challenge of adapting to contemporary society is clearly already in place. Both the theologies of the world religions and the New Biology, itself, share a common goal: the alleviation of human suffering. Religions assist in seeking both an explanation for, and a rationalization of, suffering in all of its permutations. Similarly, both in clinical and in non-therapeutic laboratory research, physicians and medical scientists work to enhance the quality of life by improving the human condition, and also by curing. In the final analysis, then, one sees clearly that religion and medical science share the same goal: namely, to but minimize or ameliorate suffering in humankind.

THE CHRISTIAN RELIGION AND BIOTECHNOLOGY succeeds admirably in showing decisively the complementary roles that Law, Religion, and

43. CHRISTIAN RELIGION, supra note 3 at 234. See generally George P. Smith, II, Biomedicine and Biomedical Ethics: De Lege Ferenda, 9 J. Contemp. Health Law & Pol'y 233 (1993).
45. Id. See also Symposium, Moral Issues at The End of Life, supra note 19; William E. May, Is There a Right to Die?, 60 Linacre Q. 35 (1993).
Medical Science play in confronting the complex medical, legal, social, ethical, and philosophical issues of the Age of the New Biology. Without question, this book provides a useful blueprint for reasoned action as the 21st century grapples with its truly awesome powers and responsibilities flowing from the new medical technologies and demonstrates, convincingly, that a bridge of understanding, anchored in enlightened reason and in compassion, is being constructed which links law, religion, and medical science.