
James P. Prennetta Jr.
BOOK REVIEW


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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

* Vice President and General Counsel, VIATEL Inc., New York, New York. B.S. 1984, University of Connecticut; J.D. 1987, The Catholic University of America, Columbus School of Law.

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

institutional model of family life. Within his book, Professor Smith structures four divisional themes for analysis: challenging or restructuring the concept of family, reproductive privacy or social responsibility, intra-familial and external discontinuities, and the dissolution of the family unit. 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, with attendant rights of adoption and uses of non-traditional forms of reproduction, is viewed by some as evidence of America’s cultural breakdown. 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. Feminism, as yet another important cultural force, has both challenged and re-stated the historical roles of women in contemporary heterosexual marriages.

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 Procreative 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.
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.” 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.

The analytical framework Professor Smith constructs, in attempting
to evaluate the various conflicts raised throughout this book, comple-
ments his own status as a situationalist. Accordingly, rather than util-
ize rigid or unyielding a priori ethical standards as constructs for deci-
sion 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. The
inherent character of this balancing test requires economic, legal,
medical, social, ethical, and individual costs to be measured against
societal benefits. The ultimate course of action or resolution of con-

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. DWORKir, LIMITS: THE ROLE OF LAW IN
18. See SMITH, supra note 3, at Ch. 8.
19. See id. at Ch. 9.
the penultimate norm of "love, simple kindness or mercy." 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."