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Book Review of Genetics, Ethics, and the Law

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George P. Smith, II, *Genetics, Ethics, and the Law*. Tarrytown, N.Y.: Associated Faculty Press, 1981. Pp. 241. \$28.50, cloth; \$18.50, paper.

Reviewed by Larry I. Palmer

George P. Smith's explicit thesis in this small monograph on a large topic is built upon several propositions, or suppositions, about the proper relationship of law to science. Some scientific evidence indicates that our genetic endowment affects human health as well as behavior; genetic researchers have made great strides in developing techniques for genetic manipulation of several biological organisms; genetic engineering (as these techniques are called), if and when applied to the human species, presents the opportunity for positive and negative eugenics; and as these possibilities for negative and positive eugenics emerge, society must weigh its traditional notions of the sanctity of human life against the possibility of an improved quality of life (p. 2).

Smith's implicit thesis is that law should not inhibit the development of human genetic manipulation. Throughout the book he uses terms that indicate he has adopted a normative position on topics. For instance, in his opening paragraph he takes the position that a percentage of children are born with "genetic deficiencies" (p. 1). From a scientific point of view, there is no such thing as a genetic deficiency, even though human beings may desire to avoid certain characteristics. Moreover, the organization of the book can be understood only if one assumes that Smith has adopted a normative position on law.

Each of the book's nine chapters is relatively short, ranging from ten to twenty pages, plus footnotes. Smith may have intended to write essays, but each chapter unfortunately is written in the style of a short law-review article, with footnotes taking more space than text. For example, Chapter 8, dealing with the potentially provocative topic of the interaction of science and ethics, has three pages of text and five pages of footnotes. The footnotes dominate the chapters, making the book difficult to read.

Smith adopts other methods of traditional legal scholarship that limit the utility of the book. The book is not about genetics as an important aspect of the biological sciences but in fact about the manipulation of genes, what he calls genetic engineering. As a result it is fair to say the book concentrates on the implication of certain techniques or procedures without much attention to an appreciation of the substance of the underlying science. Smith's implicit thesis is thus built upon the lawyer's technique of assuming facts—i.e., that human gene manipulation will be possible soon—and then writing short essays based on that one assumption. The reader is thus given little insight into the dynamics of the science of human genetics.

In order to deal seriously with "genetic engineering," the reader must be apprised of the interplay between basic research in genetics and engineering innovations. This interplay is particularly important in human genetics, which is significantly more complex than animal genetics. The techniques now available for screening for certain genetic diseases, such as amnio-

centesis, may be used in genetic engineering programs, but there are significant social and economic issues that must be faced before the legal issues become important. At present, the major issue that amniocentesis presents is how to keep the use of the technique "medically relevant."

Smith's discussion of an evolving notion of "genetic health" fails to present the social issues and the potential legal issues associated with knowledge of genetics in their appropriate social context. For instance he thinks that the well-known Massachusetts case on withholding treatment for mentally retarded persons, *Belchertown State School v. Saikewicz* (373 Mass. 728, 370 N.E.2d 417 [Mass. 1977]), stands for the broad proposition that "quality of life" is a legally appropriate standard in dealing with a "genetically defective individual," in this case, a retarded sixty-three-year-old man. He does not point out that the *Saikewicz* court went to great pains to avoid a "quality of life" judgment. Furthermore, other courts have explicitly rejected a quality-of-life type of analysis in dealing with mentally retarded individuals. (See, e.g. *Matter of Storar*, 52 N.Y.2d 363, 420 N.E.2d 64 [N.Y. 1981].) Smith's presentation is more of a brief for one particular view than a thoughtful analysis of problems dealing with mentally retarded individuals.

The discussion would be more helpful if it dealt with a problem associated with human genetics that has positive and negative factors of equal weight. Issues that arise in the neonatal nursery, for example, are more provocative and analytically more significant than those in *Saikewicz*. On the positive side in the neonatal nursery setting, medical officials are dealing with parents whose hopes for the future are symbolized by the newborn. On the negative side, the doctors must also decide whether to use the available medical technologies or to use the at-risk newborn for the purposes of research or experimental treatment. For lawyers there are two significant aspects of dealing with the neonatal nursery. First, there have been very few "legal cases" dealing with decision making within the neonatal nursery and only recent attempts to regulate. Second, the neonatal nursery is a setting where genetic therapy is likely to take place. Whether these attempted therapies constitute genetic engineering is open to debate. A mentally retarded sixty-three-year-old man with cancer, as presented in *Saikewicz*, presents a host of other important issues but in itself suggests little to do with genetic engineering.

On the whole, I do not recommend this book to law teachers interested in law and science or in law and medicine. The author presented a highly emotional subject matter without an analytical framework. Since he does not face up to the uncertainties within the science of genetics, he is unable to consider that there may be a corresponding uncertainty in law as it encounters genetic issues. The revolution in biological techniques does present challenges for law, but these important scientific endeavors are entitled to a more creative approach than Smith has provided.
