

11-1-1982

[Book Review of] *Genetics, Ethics and the Law*, by George P. Smith, II

Albert Moraczewski

Follow this and additional works at: <http://epublications.marquette.edu/lnq>



Part of the [Ethics and Political Philosophy Commons](#), and the [Medicine and Health Sciences Commons](#)

Recommended Citation

Moraczewski, Albert (1982) "[Book Review of] *Genetics, Ethics and the Law*, by George P. Smith, II," *The Linacre Quarterly*: Vol. 49: No. 4, Article 16.

Available at: <http://epublications.marquette.edu/lnq/vol49/iss4/16>

Book Reviews

Genetics, Ethics and the Law

George P. Smith, II

Associated Faculty Press, Inc., Gaithersburg, Md., 1981, xiii + 241 pp., \$19.95. Distributed by University Publications of America, 44 N. Market St., Frederick, Md. 21701.

Overview

The advantage of a three noun title is that it concisely states subject area. The disadvantage is that it says too much and the prospective reader may have a set of expectations regarding what will be covered while the author actually has written something quite different. Such was the experience of this reviewer. This book does indeed treat of genetics, of ethics and of the law, but manages to blend them in an unexpected manner.

The unwary reader (as this reviewer was) may expect that the "genetics" in the title refers to current medical genetics — genetic disorders, diagnosis, treatment and counseling. While the book does not overlook these elements, the major emphasis is on genetic engineering — the deliberate manipulation of elements of inheritance by a variety of technologies.

Because the book has a futuristic orientation, the legal dimension of the book not only reviews a number of court decisions involving genetic disorders, but also looks forward to what the law should be in order to achieve certain societal goods. Inasmuch as George P. Smith, II, is a professor of law at the Catholic University of America, with a special interest in the area of law, science and medicine, it is not surprising that the legal discussions, though brief, are treated more fully than those dealing with either the scientific aspects of genetics or of ethics.

Having discovered that the material covered by the book is somewhat different than his expectations, the reviewer asked himself the question, what are the author's objectives?

A reading of the author's introduction sheds some light. After making a few statements regarding the prevalence of genetic disorders, he goes on to describe the potential role of the "new biology" in treating more effectively individuals afflicted with inherited diseases. He sees genetic engineering utilizing a wide range of techniques to manipulate human genes, e.g., gene deletion surgery, test tube fertilization, parthenogenesis and amniocentesis. He identifies a deep rooted desire in humans to improve the race. As the means for society to achieve that goal, he proposes comprehensive programs in eugenics — negative and positive.

Thus, the author writes:

As man begins to induce and manipulate life, he must also begin to question the limits of free will and of self-determination. As man acquires these God-like powers, he must endeavor to execute them with a rational purpose and in a spirit of humanism; he should seek to minimize human suffering. Genetic engineering that contributes to the social good should be utilized fully (p. 2).

Discussion of several possible genetic engineering programs will highlight the important legal and social choices that society must confront as these programs become possible to implant (p. 2).

Gradually a picture emerges: Professor Smith seems very much concerned about eugenics. A quick glance at the section conveniently labeled "Conclusions" provides further clarification. There he states:

Although some assert that eugenic control or controlled breeding is dangerous, foolhardy, destructive of the integrity of the family, and violative of

the human right to determine the size of the family unit, the unalterable fact is that population forecasts indicate that the world soon will be overpopulated if appropriate actions are not taken. Genetic planning and eugenic programming are more rational and humane alternatives to population regulation than death by famine and war. Efforts at fetal experimentation designed to master the genetic code and thus improve the overall quality of life are to be encouraged and, indeed, valued to an extent beyond the sanctity of creation (p. 164).

A few more quotations will reflect the author's eugenics orientation:

Efforts designed at preventing the deterioration of human quality, whatever the causes, made under the rubric of negative eugenics will, perhaps, in the short run, be more effective and stand a greater [sic] likelihood of wider public adoption than moves to sustain positive eugenics (p. 11).

A strong enough social policy need exist to justify the imposition of the parental duty to prevent defective birth by contraception or abortion and to impose liability for the failure to do so (p. 18).

Imposing a duty on the parents to abort a genetically malformed fetus after science identifies the malformation is consistent with the social ethic that seeks to minimize human suffering; it would achieve the greatest good to society as a whole, for the prospective parents, and even for the fetus [!] (p. 18).

Now the reader begins to perceive what may be the goal of the book: to promote a program of negative and, eventually, positive eugenics. This he does by a consideration of the various components which would prepare for, and make up, such a program. When one examines the various chapter headings and respective contents, their consistency with the apparent purpose is evident.

Chapter I discusses "Changing Values and Perceptions." After briefly reviewing several genetic diseases and their impact on individuals and society, the author states that:

The social costs of maintaining genetic variation of the types seen previously is arguably so great and the personal suffering so intense that artificial selection against them is ethically, as well as economically, the wisest, most humane and most equitable solution (p. 11).

In Chapter II, "Implementing a Negative Eugenics Program," Professor Smith deals directly with the manner by which a negative eugenics program could be realized. The steps would include genetic screening and amniocentesis, as well as restrictions on marriage and reproduction.

The third chapter, "Vagaries and Informed Consent," treats the issues of applying informed consent to cases of eugenic sterilization and voluntary sterilization, and then considers the issues of consent to human experimentation and of fetal consent.

Chapter IV, "Wrongful Life v. Wrongful Birth — An In Depth Consideration," reviews a number of the historical cases which appear to lead up to the situation where a child may be able to sue his parents for "wrongful life," that is, for having been conceived and allowed to be born with a genetic defect.

The fifth chapter, "The New Biology and a Program for Positive Eugenics" looks at the technology available to implement such a program: artificial insemination, in vitro fertilization, embryo implants, and cloning and parthenogenesis.

As the title of the next chapter, "The Legal Response," suggests, the author considers briefly the judicial and legislative response to cases involving the use of artificial insemination involving donor semen (AID). These he takes as being representative of the sort of legal and social problems which the more esoteric reproductive technologies of the new biology (described in the previous chapter) would encounter.

Chapter VII, "The Scientific Method and the New Biology: An Overview," briefly examines the role of the government regulations in exercising control over scientific and medical research. In addition to commenting on the role of self-regulations, Professor Smith reviews briefly the federal regulations designed to protect the rights of human subjects in research. He also mentions the work of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research [established in 1974, but subsequently and successively replaced by two other groups: the Ethics Advisory Board of the Department of Health, Education, and Welfare (1977), and the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research]. As a means of resolving "... the rather troubled relationship between ethics and the life sciences ...," the author would "... promote total cultural revision, or revolution rather than to focus on individual normative behavior." This would require "the development of contemporary and 'fresh' ethic for the life sciences ..." (p. 131).

Chapter VIII, "The Bioethical Conundrum: A Consideration in Microcosm," examines the interaction of science and ethics. The author urges that a pragmatic ethic "... which requires that one make choices that offer a maximum of desirable consequence, does seem to fulfill the goal of collective responsibility" (p. 146).

The final chapter, "Science and Religion: Compatibilities and Conflicts," looks briefly at three religious views—the Roman Catholic, the Protestant and the Jewish—with regard to artificial insemination and sterilization. At one point in this chapter Professor Smith states:

Churches and religious teachings will either be molded to reflect the new ethics of the age or will die out (p. 157).

Evaluation

How does one evaluate such a work? With some reluctance I must admit to an overall impression: this book is a piece of propaganda. It is an attempt to argue for and promote a cause: the acceptance of a program in eugenics.

The basic thesis of the book is to be rejected. A program of eugenics, negative and positive, would be inimical to the true well-being of individuals and of society. The implementation of the eugenics program, as the author describes, would require, for example, the abortion of defective unborn children. Thus, in addition to the statements quoted above (his page 18), he writes:

Parents and the medical profession, knowing of the risk of incurring liability for wrongful life, will become much more conscious of the child's right to a healthy mind and body and be less hampered with notions of the sanctity of human life. This will reap benefits for society in that such concern by parents and medical practitioners will greatly decrease the number of persons dependent on society for their support and existence. The debate between defects and non-existence will become a matter of the past as recognition of the right to exist without defects becomes accepted (p. 82).

The rights of individuals become subordinated to society in the name of research and the social good:

[The private researcher] ... will determine whether his research should be totally utilitarian, providing the greatest good to the greatest number even if it may compromise the rights of some individuals ... (p. 133).

While there is an important relationship and interdependence of the individual person and the community, the former cannot simply be subordinated to the latter. Society exists for individuals, so that each person can more readily work out his or her own eternal destiny.

Because the reviewer cannot claim any expertise in the field of law, he cannot critique the legal dimensions of this work in any adequate way. The book appears to have been done in stages in such a way that newer material was added to certain chapters and not to others. Although the book has a copyright of 1981, it does not include, for example, a reference to the birth of Louise Brown, the world's first known "test tube baby," in July of 1978.

Some of the author's statements on genetics are not quite correct. On page 120, he brings up the issue of the XYY chromosome and states that evidence suggests it is related to increased aggression. From this, then, he raises the question of whether this information should be communicated to the child. However, more recent studies have indicated that the only factor which seems to be definitely correlated with the XYY chromosome is an increased stature, rather than an increased aggression. (See Thaddeus E. Kelly, M.D., *Clinical Genetics and Genetic Counseling*, [New York Medical Publishers, 1980], p. 155.)

Unfortunately, Professor Smith seems to make errors fairly easily. His very first footnote to the introduction mistitles the work of Andre Hellegers, calling it "Problems of Bioethics" when the actual title is "Problems for Bioethics" and refers to the Sacred Congregation of the Doctrine of the Faith as the Sacred College on the Doctrine of Faith (p. 3).

Professor Smith also has the habit, apparently, of making sweeping generalizations. For example, "extraordinary measures undertaken to prolong a life of suffering is unjust to the individual in question and to the societal standard of decency and humanity" (p. 9). He does not explain what he means by extraordinary measures, either in that paragraph or subsequently. In view of the fact that in ethical discussions the question of extraordinary measures has played an important role, it is surprising that he does not take more care in describing what he means. Extraordinary measures could mean measures or procedures which are heroic, experimental, untried, hazardous, or they could mean, as used in ethical literature, procedures which do not hold out the reasonable hope of benefit or which would place an excessive burden on the patient. These are significantly different meanings of the expression "extraordinary" measures which must be kept in mind. Furthermore, merely to say that extraordinary measures to prolong a life of suffering are unjust to the individual, does not sufficiently recognize the fact that the patient may choose to continue living in spite of the suffering. Professor Smith seems to ignore the fact that suffering can be controlled by a combination of environment and appropriate medications, such as is done in hospices.

Chapter IX raises the question of science and religion and seems to be replete with unsupported assertions. For example, he writes, "Yet, there has been a prolonged conflict between religion and science" (p. 153). As a reference for this he refers — without quotation — to Bertrand Russell's *Religion and Science*, published in 1935. Smith goes on to say, "Perhaps one of the basic reasons for the built-in conflict has been the difference in focus of religious creed and scientific theory" (p. 153). To say "built-in conflict" is to assert that there is an incompatibility which is rooted in the very nature of religion and science. Such an assertion would require a good deal more than merely a footnote reference. What is freely asserted can be freely denied.

The author's statement regarding religion, again, is another sweeping generalization:

Religion, to a considerable extent, consists in the way of feeling sometimes more than a set of beliefs. The beliefs are secondary or supportive of these feelings. There are some things people believe, then, because they feel as though they are true; and such feelings and beliefs are a source of mystery and incomprehensibility to the scientific mind. Faith is an unknown and rather primitive principle to the scientist (p. 153).

This sort of statement reflects what one would expect from an adolescent who has just discovered that he or she has a mind. One could point to a number of scientists of eminent stature, down the ages to the present, who were also persons of faith: Copernicus, Galileo, Kepler, Newton, Pasteur, Planck, etc.

The author makes a statement regarding the Roman Catholic religion and its constant teachings regarding "the sanctity of creation." However, he fails to state what he means by "sanctity of creation," an expression which he uses periodically in his book. One persistent difficulty in his discussion of religion and science seems to be that he clumps all religious beliefs into one collection basket. Anyone with a knowledge of religions would recognize that there are clear differences among the world religions as well as within each.

The author seems to contradict himself. On page 153 he says, "Yet, there has been a prolonged conflict between religion and science. Perhaps one of the basic reasons for the built-in conflict has been the difference in focus of religious creed and scientific theory." Later, he states, "Viewed modernly, between the statement of theological principle and the scientific method of inquiry of investigation there is really no conflict because there is no interrelationship or mutual dependence" (p. 154).

In representing the Catholic view on certain aspects central to the consideration of his work, the author writes,

The Church then, thus, stresses the fact that coition be recognized *solely* as an act designed for procreation . . . (p. 155, emphasis added).

Certainly this statement is deficient in that it fails to recognize the Church's official teaching that marriage is not only for procreation but also for the bonding and perfection of the husband and wife:

Marriage is not, then, the effect of chance or the product of evolution or unconscious natural forces; it is the wise institution of the Creator to realize in mankind a design of love. By means of the reciprocal personal gift as self, proper and exclusive to them, husband and wife tend toward the communion of their beings in view of mutual personal perfection, to collaborate with God in the generation and education of new lives (Pope Paul VI, *Humanae Vitae*, no. 8).

The same theme has been repeated in many ways by the present pope, John Paul II.

The author has apparently read widely, at least as reflected in the copious references cited in his notes for each chapter, but makes free generalizations which he supports by a reference often not without any quotation, so that there is no way of determining to what extent the person he cites supports the position he takes.

Finally, an observation or two need to be made with regard to the physical aspects of the book. This hardbound book has 64 pages of actual text, 102 pages of notes and references, and 70 pages devoted to 10 appendices. A brief (four pages) index is included. The body of the book is apparently reproduced from a typed manuscript which, unfortunately, was made from a small (about eight point) elite type with too much letter-and-word spacing for the size of the characters. The result is that it makes for difficult reading. This reviewer felt as if his eyeballs were being stretched, as well as his credulity.

The book is not recommended for a newcomer who is seeking to know something about genetics, ethics and the law. It may be of interest to someone already familiar with the interaction of genetics, ethics and the law, who wishes to see what can happen if a purely secular and pragmatic ethic is applied to genetics.

— Albert Moraczewski, O.P.
Pope John XXIII Center