

FAMILY RIGHTS: FAMILY LAW AND MEDICAL
ADVANCE Elaine Sutherland and Alexander McCall Smith
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TRADITION AND THE BIOLOGICAL REVOLUTION: THE
APPLICATION OF JEWISH LAW TO THE TREATMENT OF
THE CRITICALLY ILL by Daniel B Sinclair, (Edinburgh
University Press, 1989) 117pp, ISBN 0 85224 636 6.

The rapid advances in medical technology over the past decade have had a profound impact on the beginning and end of life. At the beginning of life, advances in prenatal technology have moved the line of fetal viability back to earlier stages of pregnancy and the new reproductive technologies have opened up new ways of forming families. At the other end, life support machines enable doctors to maintain the bodily functions of seriously ill persons, blurring the distinction between life and death. These advances have raised serious dilemmas that challenge lawyers, ethicists and theologians. The books reviewed here, while vastly different from each other in their content, must be situated within the debates surrounding modern bioethical dilemmas.

Family Rights: Family Law and Medical Advance is a collection of seven essays situated against the backdrop of the changing form and role of the family. The essays are arranged around a central theme of the impact of medical advances upon the family and family law responses to it. They discuss important issues of interest both to those interested in medico-legal issues and family law as well as to a wider audience.

The issues surrounding the new reproductive technologies are addressed in two essays. In "Reproductive Technology and the 'New' Family", Bernard Dickens considers the challenge of the new reproductive technologies to traditional understandings of the family and criticises the lack of sympathy by traditional institutions towards the infertile. In addition to considering the issues raised by donated eggs and sperm, such as presumptions of paternity and legitimacy and the relevance of knowing one's genetic makeup, he also considers the family law issues raised by *in-vitro* fertilisation and surrogate motherhood.

The issue of surrogacy is considered again in Sheila McLean's "Mothers and Others: The Case for Surrogacy". McLean outlines the arguments for and against surrogacy, and criticises traditional stereotypical images of women which influence opposition to surrogacy, arguing that the law should be less interventionist in its approach to the choices made by individual women.

The rights and duties of women during gestation are the topic of Elaine Sutherland's "Regulating Pregnancy: Should We and Can We?" Addressing recent developments in fetal rights, which create a situation of potential conflict between the pregnant woman and her fetus, Sutherland considers arguments for and against intervention in a prenatal context.

The remaining essays concern the role of parents and more broadly families in medical decision making. Alexander McCall Smith's "Is Anything Left of Parental Rights?" addresses the extent to which parental rights to make decisions concerning their children have survived trends towards the growing autonomy of

children. Illustrating his argument with reference to abortion and contraception, he argues that parental rights are now subservient to the welfare principle of the child's best interests.

Douglas Cusine's "The Family and Contraception" provides an interesting analysis of the rights of minors and parents in the context of contraception with particular reference to the *Gillick* case. The role of the family in decision making concerning sterilisation of those with intellectual disabilities is also considered through an analysis of the relevant English case law. The family as decision maker is also considered in David Meyers' essay "The Family and Life and Death Decisions", which addresses the role of the family as medical decision makers for incompetent adults, for newborns and for children. Finally, Ian Pullen's "Patients, Families and Genetic Information" considers the involvement of family members in genetic testing for inheritable genetic diseases; Pullen illustrates the issues with reference to Huntington's Disease.

Family Rights is a very readable collection. While discussing many of the difficult medico-legal areas of today, the authors have avoided heavy use of medical and scientific jargon and explain in lay terms those scientific terms that are used. Readers expecting a bioethical analysis of the issues will be disappointed. This is very much a book (predominantly) by lawyers (academic and practising) and for those interested in family law. Yet the book's analysis of the ways in which medical advances have impacted on the family, assisting in the shift of rights from parent to child while traditional notions of family and women's role in it have served to undermine the reproductive rights of women, is an important contribution to medico-legal debates. The new reproductive technologies are often criticised for their adverse impact on the family, yet the issue of the impact of medical advances more generally is rarely addressed systematically. Indeed, the fact that *Family Rights* deals with a broad range of topics is one of its strengths.

Daniel Sinclair's book *Tradition and the Biological Revolution*, while also addressing issues concerning medical advances, does so from quite a different perspective. While it too addresses the impact of medical advances, it is in terms of analysing the applicability of Jewish laws to the medical treatment of critically ill individuals. Sinclair's book is essentially a contribution to debate within Jewish law — a topic which may deter many readers who, like myself, have no knowledge of that system. Yet the clear explanations of the technical terms used, the inclusion of a brief introduction to the structure of Jewish law and the author's clear style of writing all combine to make this a very accessible book.

It begins with a fascinating analysis of the distinction between a *goses* (a person in his/her death throes) and a *terefah* (a person with a fatal illness). Under traditional Jewish law a person who killed a *goses* would be liable to the death penalty while the killer of a *terefah* would not, the basis of the distinction being that the death of the *terefah* is inevitable anyway. Sinclair does however make the point that, although the killer of a *terefah* would not be subject to the death penalty, he/she would still be subject to divine or secular penalties since the killing would still constitute the serious offence of bloodshed.

Jewish law permits the removal of an impediment to death of a *goses* but forbids the acceleration of death. Yet, Sinclair argues, the possibilities that exist today in relation to the treatment of the critically ill have blurred that distinction. Sinclair's main argument is that the category of *terefah* is more applicable to the

situation of critically ill individuals than the category of *goses* traditionally relied upon and the remainder of the book is directed towards arguing and illustrating this point.

Sinclair's aim is obviously a call to tradition. His focus is on demonstrating the relevance of traditional Jewish laws for contemporary bioethical issues. To this extent, the book is a debate within Jewish law. Yet the readily accessible style of *Tradition and the Biological Revolution* makes it a book that will be of interest to all teachers and students of medico-legal issues and bioethics. This book not only provides a fascinating account of the relevance of Jewish law to bioethics but also raises the thought-provoking issue of the roles of morality and tradition in the resolution of bioethical dilemmas.

Indeed, both these books are centrally concerned with tradition: the *Family Rights* collection with the impact of medical advances on the traditional family and *Tradition and the Biological Revolution* with the relevance of traditional laws to medical advances. The analysis provided in both is thought-provoking.

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