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Bioethics and Law: Cases, Materials and Problems (By Michael H. Shapiro and Roy G. Spece Jr.)

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BOOK REVIEW

Bioethics and Law: Cases, Materials and Problems. BY MICHAEL H. SHAPIRO & ROY G. SPECE, JR. ST. PAUL: WEST PUBLISHING COMPANY. 1981. Pp. 892. \$23.95.

*Reviewed by Marshall B. Kapp**

Much has been written concerning the desirability of teaching health profession students about bioethics,¹ and several texts have been published to assist in that endeavor.² Similarly, the virtues of including courses in medical jurisprudence in the law school curriculum have been widely accepted,³ and there are at least three fine casebooks⁴ in this field to which teachers and students may turn. Additionally, a number of volumes, predominantly of the anthology type, attempt to combine in one work the subjects of bioethics and the law.⁵ Some of these books may be found useful for the classroom, where increasingly these two distinct but interrelated disciplines are being coalesced into a unified learning experience.⁶ Against this background, Professors Shapiro and Spece have labored mightily and brought forth the first casebook on bioethical issues and principles designed primarily for use in law school courses.

What is this popular new phenomenon called "bioethics," and

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1. See, e.g., K. CLOUSER, *TEACHING BIOETHICS: STRATEGIES, PROBLEMS, AND RESOURCES* (1980).

2. See, e.g., *ETHICS IN MEDICINE: HISTORICAL PERSPECTIVES AND CONTEMPORARY CONCERNS* (S. Reiser, A. Dyck, & W. Curran eds. 1977).

3. See Schramm & Hencke, *The Teaching of Health Law in 1980: Results of a Survey*, 6 J. HEALTH POL., POL'Y AND L. 588 (1981) (69% of law schools responding reported from one to six separate health related courses).

4. W. CURRAN & E. SHAPIRO, *LAW, MEDICINE AND FORENSIC SCIENCE* (3d ed. 1982) (reviewed by M. Kapp, 7 U. DAYTON L. REV. 589 (1982)); D. SHARPE, S. FISCINA, & M. HEAD, *LAW AND MEDICINE: CASES AND MATERIALS* (1978); W. WADLINGTON, J. WALTZ, & R. DWOR-KIN, *LAW AND MEDICINE: CASES AND MATERIALS* (1980).

5. See, e.g., *MEDICAL ETHICS AND THE LAW: IMPLICATIONS FOR PUBLIC POLICY* (M. Hiller ed. 1981) (reviewed by M. Kapp, 306 NEW ENG. J. MED. 1302 (1982)); *BIOMEDICAL ETHICS AND THE LAW* (J. Humber & R. Almeder eds. 2d ed. 1979) (reviewed by M. Kapp, 8 J. PSYCHIATRY AND L. 347 (1980)).

6. See Kapp, *A New Way of Teaching Medical Students About the Law*, 2 AM. C. PHYSICIANS OBSERVER 11 (1982); See also Annas, *The Way We Teach . . . Law and Medicine*, 2 MEDICAL TEACHER 273 (1980).

what is it doing in the law school classroom with its own textbook? The authors define bioethics as the disciplined moral and legal analysis of the "New Biology", a term they employ to describe those developing technologies that have the capacity to extend our powers to control, explain, and predict human attributes and life processes, and to challenge our fundamental assumptions regarding human activities and characteristics. The emphasis is on the basic value conflicts and problems that are engendered or exacerbated by the steady march of scientific "progress."

This subject has great importance in the law school classroom, both in specific courses in Law and Medicine and Bioethics and Law as well as in generic courses which inevitably touch on these issues (including at a minimum Constitutional Law, Criminal Law, Torts, and Jurisprudence). It is essential for lawyers to be educated concerning the underlying policy and value considerations that are raised or heightened by the impact of scientific advancements on the nature and quality of human existence. Without a comprehension of the "Why," the student learns only the "What," and is prepared to function as little more than an intellectual mechanic, capable of charging off to cite legal precedent and follow procedural rules, but with little appreciation for the basic principles and beliefs that are closely held by the affected parties. Michael H. Shapiro, Professor of Law at the University of Southern California, and Roy G. Spece, Jr., Professor of Law at the University of Arizona, both with impressive academic credentials in this field, have coauthored this textbook with the aim of focusing on those aspects of advances in the life sciences that most seriously challenge traditional assumptions concerning the control of human behavior, and of addressing the acute legal and moral problems emanating from these challenges. In this manner, they distinguish their product from those volumes that already cover the more standard topics in medical ethics, health care administration, health services delivery, forensic medicine, and legal medicine generally.

The authors express the hope that legal practitioners, judges, legislators, and other counselors, adjudicators, and rulemakers will find this book profitable. Their primary audience, however, consists of legal scholars and students with an interest in the subject matter, a group for which this text should be considered "virtually obligatory."⁷

The materials are comprised of a rich array of timely (the field is so recent in origin that its raw materials are of necessity current) case decisions, problems, and excerpts from books, speeches, articles, and

7. LeBlang, Book Review, 305 NEW ENG. J. MED. 1421, 1422 (1981) (reviewing M. SHAPIRO & R. SPECE, *BIOETHICS AND LAW: CASES, MATERIALS AND PROBLEMS* (1981)).

public and private reports. The editing is expertly done. Legal, medical, scientific, philosophical, and popular (newspapers and magazines) sources have been surveyed and tapped for this volume. The authors' notes are bountiful and extensive; references to primary and secondary sources are abundant. Original text, thoughtfully crafted by the authors, is frequently interspersed to logically connect and supplement the other items. The individual selections represent the broadest spectrum of perspectives and viewpoints currently available in this highly emotional and controversial area. Background literature on relevant scientific, ethical, and economic matters is provided to illuminate the uninitiated reader.

These materials are bound together by the unifying precept that certain value dilemmas are created or made appreciably worse by the advent of various modern biological technologies. The principal emphasis is on those dilemmas involving the proper limits of personal autonomy, examined through the relationships that come about among private individuals and between private individuals and society. The central issue addressed concerns the legal and moral source(s) of justification for the authority of an individual, or society as a whole, to intervene in or to control the most personal decisions and actions of others.

Five substantive sections comprise this textbook. Part I offers an overview of the subject of bioethics and law and discusses developing technologies in the life sciences, plus recurrent difficulties and ironies in bioethics. Part II deals with control of the mind and behavior, encompassing such topics as rights against coercive use of behavior control techniques, problems of "synthetic normality,"⁸ and the right of access to behavior control technologies.⁹ The third part of the book addresses issues in the closely related fields of genetic control (including procreational autonomy and genetic screening, counseling, and reproductive decisions) and reproductive control (implicating such fundamental autonomy values as the acceptability of "artificially" created human life).

Part IV tackles the agonizing but unavoidable realm of death control; the nature of death and dying, present and anticipated mechanisms of life sustenance, rationales for death control, the proper decisionmaker and decisionmaking process for treatment choices, and criminal and civil liability implications of death control. The final part is made up of materials dealing with organ transplants. Discussion in this area concentrates on dilemmas of available technology, allocation

8. This state is best exemplified by chemically induced "sanity." M. SHAPIRO & R. SPECE, *BIOETHICS AND LAW: CASES, MATERIALS AND PROBLEMS*, 20-22 (1981).

9. *Id.* at 178-79.

and supply, increasing the availability of donated organs, distribution, and the rights of donees.

The few noticeable weaknesses in this book were largely beyond the reasonable control of Professors Shapiro and Spece. The index of subjects covered, as dismayingly seems to be true for most law school casebooks, is adequate at best. Realistic space limitations prevented a comprehensive treatment of all topics that conceivably could have been included. The authors lament, for example, what they acknowledge is inadequate attention to legal and ethical quandaries in biomedical and behavioral research and experimentation. The authors have nothing to be embarrassed about here; they have brought together an enormous amount of relevant material, and any attempt to be more inclusive would have required that the publisher put wheels on the book so it could be easily transported to class. Likewise, Professors Shapiro and Spece could do little to protect against the problem of maintaining timeliness of their statutory and judicial materials. This area of professional endeavor is so fascinating and complex largely because it changes so rapidly — technologically, morally, and legally. Even in the short time since the book's publication, for instance, the United States Supreme Court has rendered several decisions¹⁰ and granted certiorari in other cases¹¹ that do or may substantially affect the resolution of issues presented in these pages. The authors recognize this inherent impossibility of producing an absolutely current textbook in bioethics and the law, and expressly encourage readers to habitually update their knowledge through religious devotion to more current journal and news articles.

This book is by no means intended to be the last word on this subject. It is, however, an excellent first word; a pedagogical tool that will no doubt introduce many future legal scholars and law students to this important area and enthuse them about its intellectual and practical possibilities. It is also a valuable research resource that will soon be found on the shelves of numerous institutional and personal libraries. Most important, because it wisely raises far more questions than it could ever purport to answer, this volume is a strong invitation and aid to future study of these matters, an invitation that will be most difficult for curious and concerned legal minds to resist.

10. *Youngberg v. Romeo*, 102 S. Ct. 2452 (1982) (institutionalized retarded have constitutional right to be protected, to be free of unnecessary restraints, and to receive at least minimal training). See, e.g., *Mills v. Rogers*, 102 S. Ct. 2442 (1982) (remanding for decision on right of involuntary mental patient to refuse treatment).

11. See, e.g., *Akron Center for Reproductive Health, Inc. v. City of Akron*, 102 S. Ct. 2266 (1982) (Court agrees to decide validity of several city ordinance restrictions on abortion).