

THE RIGHT TO LIFE. By A. Delafield Smith. Chapel Hill: The University of North Carolina Press, 1955. Pp. ix, 204. \$3.50.

"EUGE! Belle! Dear Mr. Smith!" So wrote Hume in congratulation to a certain Mr. Smith on the publication of his book, *The Wealth of Nations*. I fear he could not have written with the same enthusiasm to the Mr. Smith who has authored *The Right to Life*.

The jacket announces formidably that "*The Right to Life* is the distillation of a philosophy worked out during a long career of private work and public service [in the law]."¹ But one is hardly prepared for the sheer novelty of the dialectic.

Mr. Smith's central position is that society has an ethical, indeed religious, duty to support and maintain each of its members and that the individual's corresponding moral "right to life" should be translated by law into an enforceable legal right.² According to his analysis, "Nature" provides of its riches without stint to "life" and to man in his precivilization state; its resources are there for all who will take. The essence of "Nature's laws" is that "Nature" has no "power whatsoever to oppose at will the demands of life upon its resources."³ Man, during the "uncounted centuries throughout which he lived in an environment that he himself could, with the aid of its laws, dominate"⁴ developed self-reliance and independence. But as society developed in complexity each man became dependent upon other men rather than directly upon "Nature." A major consequence of this process was that man's independence, freedom, self-reliance and moral stability were destroyed as modern society substituted for his "right to life" the hazard of being cut off without resources or with, at best, only the degradation of charity. As Mr. Smith sees it, this regrettable state of affairs can be corrected only by having society assume the same responsibility for "life" that the Creator originally assigned to "Nature."

He would accomplish this result by law—but by law ethically constructed. He complains that law is generally misunderstood to involve the exercise of authority. Properly viewed, however, law is, as in "Nature," the operation

1. The author was a practicing lawyer from 1916 until 1937 when he joined the legal staff of the Social Security Board. His career and interest have since centered upon the field of social welfare legislation and administration.

2. But four of the thirteen chapters represent something of an unrelated detour, three presenting the author's view that delinquent or neglected children should be placed in the custody of individual guardians and one urging that social service work be handled on a "professional" basis. Chapters 9-12.

3. P.17. One recalls the rather more pungent "Der Herr Gott ist raffiniert aber boshaft ist Er nicht" attributed to Einstein. ("God may be subtle but he isn't plain mean" is Wiener's translation, though better German scholars than I have suggested that "wily" might be an improvement over "subtle.") The Einstein quotation denies the classic Manichaean position: in physics at least, Nature has no feedback; once the right stops are found the organ will always play the same way. WIENER, *THE HUMAN USE OF HUMAN BEINGS* 188 (1954).

4. P. 25.

of inexorable rules which merely state the consequences of alternative action. Since the only ethical action is voluntary action of man's "will" un-compelled by authority, the only ethical law is nonauthoritative, stating in advance the consequences of alternative courses of action and leaving to each man the voluntary choice of his own route through his own "will." Thus the responsible, free and ethical man can exist only where (1) society offers its resources on the basis of need as a matter of legal right, (2) the law is a nonauthoritative, clear statement of the consequences of alternative action, and (3) the individual is left to make his own choice through his own will and to pay his own piper.

Mr. Smith catalogs the specific elements of the "right to life" which he considers the individual should be able to enforce against society by law. They include a job, wage insurance, food, shelter, clothes, remedial health service, education up to the peak capacity of the individual to absorb it, vocational training, rehabilitation, and as society's capacity grows, additions such as raised minimum shelter standards.

Mr. Smith does not unduly burden his book with consideration of the means or mechanics of his program. Financial, administrative and political implications are ignored except for a passing observation that taxes should be based upon capacity to pay. Mr. Smith enthusiastically joins the deplorers of "socialism," of whatever gait, on the ground that government interference with the productive system involves government agencies in "authoritative methods," and "such dictatorial methods as price-fixing and other restraints upon human initiative."⁵ He is "greatly troubled to hear the word 'socialism' applied" to his own program; in fact there is nothing socialistic about it because

"the mere introduction of a need factor into our distributive process and the interposition of controls in that process essential to see that basic needs of individuals are met, can be achieved without the exercise of productive management or direct participation in industrial enterprise."⁶

Moreover he is at some pains to point out that the life obligation he would assure by law is not an obligation of the "state" but of "society"—an asserted distinction which he leaves unelaborated.

He has rather more to say of his views on the legal tools to be used. The "tax power" of the government rather than the "police power" is the proper vehicle, for police power is "authoritative" and has no place in social legislation or in the development of ethical man. And most carefully preserved must be that "most significant of all constitutional safeguards . . . the division of powers—legislative, executive and judicial."⁷ He has concluded too that law should be clear, certain and detailed so that administration may concern itself with its proper function of serving rights and not determining them.

What may be said of all this? The semanticist may be expected to raise an eyebrow at the giddy way in which Mr. Smith shinnies up and down the

5. P. 200.

6. Pp. 199-200.

7. P. 163.

abstraction ladder, casually metaphorizing "life," "Nature," "freedom" and many more. The theologian and general philosopher will doubtless question Mr. Smith sharply on his concepts of free "will," "Nature" and the Creator. The student of jurisprudence will entertain reservations at the offered parallel between the probability statements we call physical "laws" and man-made law regulating society. The functional analyst of the legal process will harbor a certain skepticism at the sophistication of Mr. Smith's enthusiasm for conceptual distinctions between the tax power and police power, between authoritative law and alternative-stating law and among the functions of the legislature, the executive, and the judiciary. The anthropologist will be surprised at the apparent indestructibility of Rousseauian notions of man in a more primitive state; and the caveman in his slow primordial way might have wondered at Nature's guarantee of life as he disappeared into the maw of the smilodon. The political scientist will ponder the political power repercussions of Mr. Smith's program, be struck by his apparent insensitivity to the problem, and find ingenuous his handling of concepts of socialism, the state and society. The economist will want to know something about the financing of the program, its economic implications and will doubt the validity of Mr. Smith's estimate that his proposal is a "mere" adjustment in the distributive process. The historian and sociologist will recall Fourier and Owen, New Harmony and Oneida, and ask Mr. Smith for his data on the response of man in the mass to assured economic security. The 1956 psychologist will be less sure than Mr. Smith of the character building results of 100 per cent permissiveness. And the general reader will likely think the book a strangely undisciplined potpourri of native American radicalism, conservatism and philosophic anachronisms (meta and pro)—all steeped in a personal religious broth and served up in a style unlikely to dispel the generally shaky literary reputation of lawyers.⁸

Though I think it a fair question to ask the excellent press which published the book why it chose to do so, I shall not here press upon Mr. Smith any of these questions. In the first place, there are some nuggets in the pan and I am grateful for them. It seemed to me worthwhile to be reminded that:

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8. Perhaps the generally cirro-didactic impression may be caught from this paragraph:

"Actually an individual who lacks an unconditional assurance of life is like an electric wire carrying a high voltage current without proper insulation. As the electric carrier lacking insulation yields its strength to the atmosphere, so human beings dissipate their energies in an environment which keeps them in subjection. The primary difficulty is that society tends to engulf the individual. When individuals weaken, society disintegrates. The pattern of legal right and obligation which is intended to bind society together thus proves its inadequacy. The death of cultures is, therefore, due in my opinion to the failure of society to see that individuals are provided with the means of retaining their independence despite their constantly increasing dependency upon their fellow men. We need, I think, to retain this point of view when we examine our social and economic pattern. It should be our guide in all proposals to make that pattern more fertile and productive in terms of human character and personality." P. 25.

"At present we have full employment with only sixty-odd million employed individuals and ninety-odd million other individuals. These latter compose our incapacitated and unemployable groups. All of us are members of these incapacitated and unemployable groups for a large portion, and most of us for the major portion, of our lives. . . ."⁹

Or, to cite an analytic shot well on target:

"An individual's rights are not conditioned, legally or ethically, upon his assumption or performance of obligations. I am aware that this is the reverse of what is repeatedly urged, but it is true nevertheless. . . . You may insist that, taken all together, an individual's rights and obligations are mutually dependent (though even of this point I can find no support in the Christian ethic), but individually they certainly are not. If you come to me as a lawyer to have me help you enforce some right that has in fact accrued to you, I am not in the least concerned from that point on about your obligations. I am concerned only with the other fellow's obligation on which your right is founded. You may have obligated yourself in acquiring the right; but it is quite as likely that you did not."¹⁰

But, more importantly, what Mr. Smith has basically done is to spread out to public view his personal social credo—his own dream of how men should live together under law. The rest is trimmings—and it partakes of, captiousness to attack the trimmings and leave the core untouched. Shall his social thesis of responsible, independent, economically secure man in an ethical society be rejected—or his hope that the law may be shaped to achieve this end? Surely not on grounds of Utopianism. I should have thought that no one would ever again belittle the importance of the Utopian; indeed, one may well argue on the historical evidence that for the long game idealism is the only pragmatic. If this is so, whatever we may think of Mr. Smith's command of analysis, prose, philosophy or the social sciences, we may yet respect his dream and the rare willingness of this practicing lawyer to set himself to the agonizingly hard job of thinking through for himself his personal conception of the relationship of ethics, society and law.

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9. Pp. 45-46.

10. P. 52.

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