commitment to no-fault remains.

This question of the motivation underlying the pressure for a no-fault scheme might appear to be somewhat peripheral to the issue of whether such a scheme should be introduced, but in truth it is crucial. It is obvious that the terms and scope of any scheme (and hence, most fundamentally, its cost) must depend on its purpose. If the purpose is to compensate the victims of 'medical accidents' regardless of proving that someone was at fault the scheme will cast a wide net and be expensive to run. If the purpose is to reduce the level of medical malpractice litigation the scheme will adopt narrow eligibility criteria (in the definition of what constitutes a 'medical accident') which, in the words of the Pearson Commission, might do little more than convert the ordinary test of negligence in tort into a statutory formula. Moreover, by casting the question of medical negligence in terms of *compensation* for the injured patient, a no-fault scheme simply overlooks other equally important aspects of medical malpractice: accountability of the medical profession to patients; the setting and maintenance of standards within the profession; the attitudes of doctors to patients who have suffered medical injury.

*No Fault Compensation in Medicine* is a record of the proceedings of a joint meeting of the Royal Society of Medicine and the British Medical Association held in January 1989. The collected papers provide an excellent account of the arguments both for and against the introduction of such a scheme into the UK, including detailed information on the operation of existing schemes in Sweden, New Zealand and Finland. What is patently clear is that no-fault is not a panacea for all of the perceived ills of malpractice litigation. The tort system is undoubtedly flawed: it is expensive, slow, arbitrary in its effect (depending, as it does, upon proof of negligence and causation), available only to the poorest (who qualify for Legal Aid) or the richest of patients, stressful to litigants, and can result in the breakdown of doctor/patient relationships (the 'wall of silence'). A no-fault scheme would provide easier access to compensation and reduce delay, but the criteria for eligibility are themselves arbitrary (see pp 94–95), levels of compensation would have to be lower to keep overall costs down (p 95), it removes any element of accountability through the courts without suggesting how this should be replaced (p 72), and it would not necessarily contribute to an improvement in doctor/patient relationships (though cf p 69).

Perhaps more fundamental is the question why the victims of medical accidents (and only some of these, bearing in mind the eligibility criteria) should be in a privileged position in terms of claiming compensation compared to other accident victims (say at work or on the road) when the compensation is to be paid by the state ie by all taxpayers. The philosophical justification for no-fault schemes is that compensation for injury or disability should not depend on the entirely arbitrary criterion of causation, and the logic of this is that schemes should be fully comprehensive, even to the extent of refusing to distinguish between injury by accident, congenital disability or disease (a point that is now recognised in New Zealand). Distinguishing between different *types* of accidental injury is even more illogical. Nowhere in *No Fault Compensation in Medicine* is the argument presented as to why medical accidents should be in a special category (though this is not to suggest that a pragmatic case could not be made).

A useful question to ask in assessing the merits of a proposal to introduce no-fault compensation for the victims of medical accidents is whose interests would such a scheme serve? In this regard it is worth bearing in mind that it is the doctors' trade union, the BMA, which is in favour of the proposal and Action for the Victims of Medical Accidents (AVMA), the only organisation which represents the interests of injured patients, which is opposed. This may seem odd to someone unfamiliar with the background, but it simply exposes the hidden agendas. The fundamental concern of doctors should not be with the mechanism by which injured patients receive financial recompense, but with caring for the patient (which involves explaining what went wrong), improving standards and seeking to avoid similar accidents in the future. This process necessarily involves identifying and correcting errors, and where appropriate *allocating responsibility*. This cannot be achieved under the banner of 'no-fault', which to some implies that culpable errors are irrelevant. For doctors, medical negligence should be first and foremost an ethical, rather than a medico-legal, issue. After all, it is difficult to abide by the principle of non-maleficence by refusing to acknowledge and respond to the problems of 'fault'.

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# Medicine and the Law

Paul Knapman and Iain West,
185 pages, Oxford, £8.95, Heinemann Medical, 1989

This is one of Heinemann Medical's 'Student Reviews', intended to supplement the lecture courses in various subjects.

A small paperback, it is remarkable for the amount of useful information packed within its 185 pages. Written by a London coroner and a forensic pathologist at Guy's Hospital, this dual authorship is reflected in the two main divisions of the book. The first half deals with the legal aspects of medicine and the remainder with forensic medicine and toxicology. Useful appendices offer factual information on medical certification, reporting deaths to coroners and industrial deaths. The legal section spans the usual matters such as medical negligence, the GMC, ethics, the courts, consent, confidentiality and similar topics. Some of this shows a certain legal idiosyncrasy here and there and because the book is small, the inevitable condensation of difficult subjects, such as brain death, leaves some ambiguity. Perhaps a more systematic treatment of the legal principles of malpractice could have been given in place of some of the leading case reports, which take too much space in a book of this size. The sections on death certification and the practicalities of doctor-coroner relationships are excellent, as might be expected from a coroner author. A few factual errors of little importance tend to have crept in, such as the membership of the GMC which is now 102, not 95 as stated. There is a very useful chapter on complaints in the NHS, which is not usually found in this type of book.

The other half of the text is at least of equal value, covering in a very practical way the mainstream topics usually found in forensic manuals. Again space has been a difficult constraint, but Iain West has made the best possible use of his hundred pages. The use of tabulated information has compressed much material into a compact form. Once again, the range and treatment is conventional, which is what the over-

burdened student needs when struggling with a top-heavy curriculum. The familiarity with the subject matter provided by a working forensic pathologist shows through the writing, displaying the healthy scepticism needed when discussing controversial matters such as suffocation, cot death and aspiration of vomit. The vast subject of toxicology has to be squeezed into a few pages, but again the best use is made of these, with tables of common drugs, their effects and toxic concentrations. Drugs of abuse get deserved prominence, not unnaturally from a pathologist who probably sees more on his central London 'patch' than anyone else in the country.

In summary, though this type of book has a number of competitors, albeit usually rather larger, it provides the most concentrated dose of legal medicine available, in a palatable form. With the sad decline in undergraduate teaching in the legal aspects of medicine in this country, the more that accessible and economical written sources become available, the better. The publisher's blurb suggests that it might also be of use to police and probation officers and this may well be true, though medical students will obviously remain the prime target.

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# Logos – Manufactured Motherhood; The Ethics of the New Reproductive Techniques

William J Prior, 213 pages, Santa Clara California, US$11.00, Santa Clara University, 1988

Logos (Vol 9 1988) derives from papers presented at a philosophical conference on Manufactured Motherhood held in the Philosophy Department at Santa Clara University in the Spring of 1988.

Not surprisingly, papers at the conference centred on the topic of surrogacy, since, at the time, the famous decision of Judge Harvey Sorkow in the Baby M surrogate motherhood case was prominent in the headlines.

Many ethical (and legal) issues surrounding the practice of surrogacy are discussed and although a preponderance of the arguments are (by now) well-rehearsed, some contributors present the issues from a new (and sometimes controversial) perspective. In particular, Herbert T Krimmel (Surrogate Mother Arrangements from the Perspective of the Child, p 97) argues that surrogacy is harmful morally to the children thereby created since they may be regarded as mere 'commodities' rather than as of value in themselves. Whilst, no doubt, many would take issue with this view, it has the advantage of highlighting the interests of the children, which tend to become obscured in an over-concentration on the conflicting rights of the parties to the transaction.

As an example of this; June Carbone (The Limits of Contract in Family Law: An Analysis of Surrogate Motherhood p 147) considers the legality and effectiveness of the surrogacy contract. She argues that such contracts are consistent with the interests of the contracting adults and the welfare of the child and contends that it is important that the law takes a declared stance on whether such contracts are to be treated as enforceable or not, since uncertainty as to the validity of the contract is detrimental to all concerned. Whilst at first sight such an argument is persuasive and certainty in the law is to be applauded, on consideration, it is difficult to see how a rigid declaration that such contracts are enforceable can really benefit the child. Only if disputed contracts are dealt with on a 'case by case' basis can the individual child's welfare be given full consideration. A blanket decision on enforceability would not achieve this desired result.

In England the position is more straightforward: commercial surrogacy arrangements were outlawed by The Surrogacy Arrangements Act in 1985 and only private non-commercial arrangements may now exist. Even so, such contracts are unenforceable and void as contrary to the common law and The Children Act 1975. Thus, in all reported cases of such disputes the English courts have followed the wishes of the surrogate mother, whether this has been to retain the child or to comply with the arrangement (provided that the party concerned can demonstrate an ability to provide adequate care for the child).

The volume, then, is recommended for the new perspectives that it brings to issues which remain as controversial as ever. However, caution is urged, in that some of the concerns expressed about current practices are inapplicable to our own situation.

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# Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982

John Keown, 212 pages, Cambridge, £27.50, Cambridge University Press, 1988

Traditionally, abortion is regarded as an area where the law has been influenced heavily by considerations of ethics. Contemporary debates on the restriction of the time limit for abortion and the new RU486 abortion pill feature the same, rather tired, arguments concerning the sanctity of fetal life versus a woman's right to choose. Keown's copiously researched work invites us to look a little deeper at the evolution of law and policy on abortion, and specifically invites us to pay slightly more attention to the sociology of the medical profession than to ethics.

Keown analyses the development of the law on abortion from Lord Ellenborough's Act of 1803 up to and beyond the Abortion Act 1967, paying particular attention to the role of the medical profession in this evolution. The principal thesis of the work is conveniently summarised in the last chapter: throughout the history of abortion legislation the medical profession has exerted an important influence on the determination of when abortion is deemed 'criminal' and when 'therapeutic'. This has two aspects. Firstly, on a political level, the profession supported legislation from 1803 to 1861 (which helped establish its professional status) and in 1967 (which furthered its professional interests). Secondly, on a practical level, the practitioner exercises extensive autonomy in deciding whether a given abortion is therapeutic. On the first point, Keown makes some fascinating observations on how a legal prohibition of abortion, first unambiguously found in the Act of 1803, promoted the cohesion of the professional group of surgeon-apothecaries, the original