

John Witte, Jr.

Faith, Freedom, and Family



Untersuchungen über Recht und Religion 2

Mohr Siebeck

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Bernhard Sven Anuth, Michael Droege, Stephan Dusil,
Jörg Eisel, Jürgen Kampman, Hermann Reichold
und Hildegard Warnink

2



John Witte Jr.

Faith, Freedom, and Family

New Studies in Law and Religion

Edited by

Norman Doe and Gary S. Hauk

Mohr Siebeck

John Witte, Jr. is Robert W. Woodruff Professor of Law, McDonald Distinguished Professor of Religion, and Director of the Center for the Study of Law and Religion at Emory University School in Atlanta.

Norman Doe is Professor of Law and Director of the Centre for Law and Religion at Cardiff University, UK.

Gary S. Hauk is Senior Editor at the Center for the Study of Law and Religion and Historian of Emory University in Atlanta, Emeritus.

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For Gertie Witte and John Reid

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Royal Courts of Justice, London, 1994 (watercolor on paper), by Judy Joel. Used by permission of Bridgeman Images.

Faith

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A Child and Her Mother Appearing before a Judge, from *Justiniani in Fortiatum* (vellum). French School, ca. fourteenth century. From the Biblioteca Monasterio del Escorial, Madrid, Spain. Used by permission of Bridgeman Images

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Artaxerxes Granting Liberty to the Jews. Woodcut from Gustave Doré Bible. Courtesy, Pitts Theology Library, Candler School of Theology, Emory University

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Peasant Wedding, 1568 (oil on panel), by Pieter Bruegel the Elder (ca. 1525–69), Flemish. From the Kunsthistorisches Museum, Vienna, Austria. Used by permission of Bridgeman Images

Preface and Acknowledgements

Faith, freedom, and family together form the bedrock of a good life and a just society. But this foundation has suffered seismic shocks of late from vibrant religious pluralism, profound political changes, and new conceptions of marriage and family life. This volume retrieves the major legal and theological teachings that have shaped these institutions, and suggests ways to strengthen and integrate them anew. Part 1 maps the interdisciplinary field of law and religion and highlights the work of several scholars of law and religion who have defined and defended the place of faith in law, politics, and society. Part 2 documents the development of freedom in the West, analyzes several innovative Christian theories of human rights, and parries the attacks of several modern rights skeptics. Part 3 reaffirms the family as a cornerstone of faith and freedom historically and today, even while defending some modern reforms of family law. It closes with appreciative responses to several close reviewers of my recent books. The appendix includes a bibliography of my work over the past forty years and two lengthy interviews that place this work in biographical and intellectual context and map some of the new frontiers and challenges of faith, freedom, and family around the globe.

Most of these chapters first appeared in specialized journals and anthologies over the past two decades. I have cited the original publication data in the opening note of each chapter, and I thank the publishers for allowing me to repurpose and rebundle this material here. All the chapters are reedited and reformatted, and several of them are abridged and updated a bit. Together, these chapters aim to illustrate different dimensions of my work in law and religion, and to introduce and evaluate a score of major scholars whose work has shaped this wide interdisciplinary field.

Fifteen years ago, I was privileged to publish a similar collection of scattered chapters, titled *God's Joust, God's Justice: Law and Religion in the Western Tradition* (2006). That collection proved to be an effective exercise in stock-taking and integration and provided readers with a good overview of my work in law and religion in the first third of my career that had not appeared in monographs.

This volume has the same aspiration for what I hope will be the second third of my career (he says, with hands folded).

I am deeply honored that a world leader in the study of law and religion, Professor Norman Doe, has lent his formidable name and talents to this collection as editor. For the past quarter century, Doe and his colleagues in the Cardiff Centre for Law and Religion have been vital trans-Atlantic allies with our Emory Center for the Study of Law and Religion. His own pathbreaking work on Anglican, broader Christian, and still broader Abrahamic religious legal systems has been a model of comparative legal and theological study that has transformed the field. In particular, his brilliant Cambridge volume on *Christian Law: Contemporary Principles* will long endure as a classic manifesto on Christian ecumenism and ecclesiology. As editor of this volume, Professor Doe was kind enough to help identify the chapters that appear in these pages and to write a sweeping and moving introduction to my work in this field. I am profoundly grateful for his efforts.

I am equally honored that Dr. Gary S. Hauk has lent his exquisite talents to this volume as coeditor. A writer, editor, ethicist, and historian, Hauk served in the President's Office of Emory University for more than thirty years as vice president and secretary of the University and later as deputy and then senior adviser to the president. He also served for many years as the historian of Emory. My Center colleagues and I are delighted that he has joined us as our senior editorial consultant. Hauk has given exquisite editorial shape to a score of major new volumes published by our Center and dozens of scholarly articles and releases. He is simply the best editor I have ever worked with. He has applied his elegant wordsmith skills to improve every page in this volume and added his own beautifully crafted foreword. My college creative writing instructor, who spilled much red ink on my primitive papers, would be proud to read Gary's kind words about my writing style.

It has been a true joy to work with these two wonderful brothers, friends, and colleagues on this volume. In addition, I am deeply grateful for the hard work of our Center's chief of staff, Amy Wheeler, and our director of business and finance, Anita Mann. I have benefited from deep conversations with my Center colleagues Frank Alexander, Abdullahi An-Na'im, David Blumenthal, Michael Broyde, Rafael Domingo, Timothy Jackson, Justin Latterell, Michael Perry, Philip Reynolds, Steven Tipton, and Johan van der Vyver, each of whom gave valuable advice on one or more of these chapters.

It has been a great privilege to serve as the McDonald Distinguished Professor of Religion and to receive generous annual support from the McDonald Agape Foundation. My deepest thanks to the foundation president, Peter McDonald, and his father and founding president, the late Ambassador Alonzo L. McDonald, for

their wonderful friendship to me over the past two decades. The Woodruff Professorship at Emory University has provided further generous professional support and standing, and I remain most grateful to Emory President James W. Wagner and his then chief of staff, Gary Hauk, for securing my appointment to this university professorship – an honor made doubly sweet in that I am filling the chair held by my great late mentor, Professor Harold J. Berman.

My warm thanks to Daniela Taudt, Lisa Laux, Susanne Mang, and their colleagues at Mohr Siebeck for taking on this volume and applying their usual high standards of publication and marketing. I am deeply grateful to my friends and coworkers Professor Mathias Schmoeckel, at the University of Bonn, and Professor Michael Welker, at the University of Heidelberg, for recommending this project to the publisher. It is a special treat to have this volume selected as the inaugural volume in Mohr Siebeck's new book series, *Untersuchungen über Recht und Religion*.

As Norman Doe's introduction makes wonderfully clear, faith, freedom, and family are not only academic subjects that have occupied me deeply over the years. They have also been the deep and abundant blessings of my life. My faith has offered eternal inspiration. My freedom has opened endless opportunities. And my family has always anchored me – my wonderful parents now of blessed memory; my three sisters and their families; the love of my life, Eliza Ellison; and our two daughters, their husbands, and our five grandchildren. Faith, freedom, and family always come first in my life, and without them, books like this would not be worth doing.

I dedicate this volume to my dear sister and brother-in-law, Gertie Witte and John Reid. Gertie has been my big sister from the start, and we have been close friends as adults, sharing deep conversations, having wonderful times and trips together, and enjoying a special love and trust that has carried each of us through some hard valleys. When Gertie married John, I gained a big brother, and he, too, has been a wonderful friend and trusted confidant over many years, a patient and expert information technology guru for Eliza and me, and a great fishing partner to tackle the early morning surf and to reel in the piscine blessings often awaiting us. Both Gertie and John have faced severe health challenges over the past years, now made worse by the crippling isolation inflicted by COVID-19. Dedicating this book to them is no balm for their ailments, and no substitute for a visit which I hope will come again when the pandemic cloud lifts. But this book is a weighty testimony of my enduring love for each of them and my eternal gratitude for their many years of friendship.

John Witte Jr.

Foreword

Let me tell you about the writer you will encounter in this book – not John Witte the eminent scholar, popular teacher, or world-traveling lecturer but the person who puts pen to paper, fingers to keyboard. That is the only thing about this book that I have any authority to comment on, the rest being beyond my expertise. Having taught writing to university students for a number of years, and having ghostwritten scores of essays and speeches for university presidents and others, I know a little of how other people’s voices work on the page. Having edited hundreds of essays for publication on topics ranging from U.S. economic policies to religious ethics, and from South American history to public health, immigration, racial justice, and radiology, I know a little about how to “make the rough places plain.”

When I first met John Witte, he was not yet the writer I would get to know. He was an avid young researcher – still in his twenties, I think. He was looking for a sixteenth-century tome held by the Pitts Theology Library of Emory University, where I was then working. I’ve long since forgotten which book he wanted from the marvelously rich rare-book collection of that library, but I have a hunch that it probably had not been held, let alone opened, since the library had acquired it many years before. At that moment, John was almost fresh out of Harvard Law School and new to the Emory campus, where he had followed his mentor, Harold J. Berman, the first Robert W. Woodruff Professor of Law at Emory Law School and arguably the father of the field of law and religion.

In the thirty-some years since that first encounter, John has continued his rummaging through collections of old books in some of the oldest, most prestigious libraries in the world, from the Bodleian to the Library of Congress, and from the Vatican to the treasure troves of the eminent universities on the Continent. Nor has he limited himself to dealing with the dust and vintage musk of ancient pages. He reads everything newly published that has even a tangential relationship to his broad-gauged field of law and religion. Along the way, though, he has contributed his own substantial bibliography of books, articles, chapters, reviews, op-eds, and published lectures to the libraries and websites of the world. I count more than forty monographs and anthologies that he has written, edited, or coedited. Now a world-class scholar, he has succeeded Hal Berman as a Robert W. Woodruff Professor, the most

illustrious rank that Emory University bestows. Above all, he is a prodigious and disciplined devotee of the writing desk.

For several years now, as my own career has shifted, I have had the privilege of working with John in bringing a few of his publications to press. John's work consists in bringing an immense amount of learning, analysis, and fresh insight together to expand the Witte wing of the library. My work consists in editing the nearly finished drafts of his work. I have by far the easier job.

To receive a John Witte manuscript for copyediting is like receiving the keys to a newly built home. When you walk in, you can be confident that the architect has created an attractive design, the carpenters have framed the place solidly, the plumbing works, the walls bear fresh paint or wallpaper, and the furniture fits the scale of the rooms. Your work as the copyeditor will not be – as it is with some manuscripts – to repair the bathroom fixtures, rehang doors, patch the roof, or shore up the rickety banister to the second floor. No – you will have not much more to do than to make sure the English sounds felicitous, the punctuation is correct, the footnotes conform to the same style, and consistent nomenclature appears throughout (if “Sharia” is capitalized with no apostrophe on page 2, it should be capitalized with no apostrophe on page 10, etc.). Your job, then, is like that of an inspector – to ensure that there are no paint splotches on the floor, no tears in the lampshades, no cracks in the window panes, and no bugs under the sink. It's mostly cosmetic work, no big deal.

What, then, is it like to inhabit the house of John Witte's prose, as you, the reader, are about to do? Here are a few of the furnishings and embellishments you can expect to enjoy.

Duos and Pairs

Trained as a lawyer by the prominent minds at Harvard, John adopts a customary lawyer's way of setting the table. Unlike the usual tableware, however, John's place settings are not commonplace. You would not be surprised to encounter at your local courthouse a legal document that uses phrases like “each and every,” “whys and wherefores,” “bequeath and entrust,” “demit and resign,” “transmit and convey” – each pair of words essentially repeating and echoing (there, I did it) each other. The lawyerly purpose here is to ensure that every nuance of meaning is wrung, squeezed, extracted, drawn out, and distilled from each phrase to cover every square centimeter of a client's interests.

John does use such duos, but with a different rhetorical purpose and to better effect. His pairs enlarge our understanding of his point. In Chapter 1, for instance, he asks how legal and religious “ideas and institutions, methods and mechanisms, beliefs and believers” influence each other. Here the overlap-

ping worlds of law and religion comprise not just ideas but also institutions. Methods are important, but so are the mechanisms for implementing them. Beliefs are abstract, but believers make them personal.

In that same chapter, he comments that “religions help to define the meanings and measures of shame and regret, restraint and respect, and responsibility and restitution that a human-rights regime presupposes.” The pairs in this sentence bring balance to our understanding. Shame is not the same as regret, for we may feel one without feeling the other, while both may arise from the same mistake. Nor is what restrains me necessarily the same as what commands my respect (I may not respect private citizens who carry guns in public, but I probably will be restrained by their weapons from insulting them). Restitution follows responsibility. Such abstractions require not only the specificity of definition (meaning) but also the concreteness of measurement.

Chapter 31 offers the observation that the family is “the first school of love and justice, nurture and education, charity and citizenship, discipline and production.” Again, the pairs here offer not just balance, and not even opposition (though love and justice are sometimes presented as antitheses). Rather, they stand almost in apposition, in mutual elaboration, as nurture implies education and vice versa, while charity suggests citizenship and vice versa.

Triads

Perhaps because John is a Trinitarian Christian, or perhaps just because the world actually depends somehow on triads, like three-legged stools, the reader of his prose frequently encounters threesomes of concepts, objects, or actions (see what I did there?). Chapter 31 seems to be particularly rich in this regard, although examples abound throughout the book. Here is one from that chapter: “For Chrysostom, marriages are ‘incarnations’ of divine love, sacrifice, and commitment; families are ‘living icons’ of traditions, memories, and rituals.” These two sets of triads do something like what pairs do. Love, sacrifice, and commitment all expound on each other, just as traditions, memories, and rituals all amplify each other’s meaning. One word of the triad could not do all the intended work, and even two of the three would leave the meaning poorer.

In another passage from Chapter 31, John hits his stride with a string of trios: “Churches for nearly two millennia – and states for even longer – have set out ideals, guides, rules, and procedures for sexual etiquette, courtship, and betrothal; for marital formation, maintenance, and dissolution; for conjugal duties, debts, and desires; for parental roles, rights, and responsibilities.” The only thing that could have made this sentence perfect would have been limiting the number of triads to three instead of four. Sometimes, though, one sacrifices concision for completeness.

For more on the threeness of things, see John's exploration of the notion in Chapter 2.

Repetition

At times John puts his excellent legal training to use as if he were a courtroom lawyer prosecuting a case or defending a beleaguered and hapless accused. Take a look at Chapter 23, where the instance is too long to quote fully here. Taking on certain arguments that the concept of human rights is both a burden and an empty promise, John concedes certain points by repeatedly saying "of course" before demonstrating the vacuity of each of those arguments. Each time he uses the phrase "of course," we can expect a hammer to nail his own counterargument more firmly in place. There will be no getting out of this rhetorical box for the hapless scholars whose critiques he packs up for storage in the attic.

In less forceful but no less effective ways, John uses repetition subtly to organize paragraphs, as he does in this passage in Chapter 35: "That someone wants to engage in these activities voluntarily for reasons of religion, bravery, custom, or autonomy makes no difference. That other cultures past and present have allowed such activities makes no difference. That these activities don't necessarily cause harm in every case also makes no difference." In Chapter 31: "The channeling, expressive, and signaling functions of church, state, and society are part of the complex communicative dimensions of the marital family. *Complex* because so many different sectors of society are in communication about the marital family and its members. *Complex* in that the modes of communication range from subtle signals and nudges to overt statements and visual media depictions. And *complex* because of the range of subjects being communicated."

This way of marshaling the substance of a paragraph by repeating a particular word or phrase at the beginning or end of successive sentences appears again and again. It is enormously helpful to the reader not only in following the argument but also in retaining the substance.

Alliteration

Another of John's favorite devices, somewhat akin to repetition and triads, is his frequent use of alliteration – the repetition of an initial consonant – to good effect. In Chapter 32 we encounter the "patriarchy, paternalism, and plain prudishness of the past," and later on we come across literature "describing, defending, or decrying" various legal changes. Chapter 37 gives us an alliterative triad when John describes the family as a "cradle of conscience, a chrysalis of care, and a cornerstone of ordered liberty." The hard c's against the epiglottis crystallize everything.

Here are a few other examples, all from Chapter 31 (and note the couple of triads): “the more subtle and sensitive symbolic, sacrificial, and symbiotic ways that spouses learn to intuit and respond to each other’s needs, cares, and desires”; “Mothers communicate their very bodies, blood, and being with their children”; “confession, contrition, compensation, and conciliation, and a renewed commitment.”

Parallelism

Finally, one of the more irksome lapses in stylistic nicety that copyeditors encounter is lack of parallelism – when parts of a sentence should look and act the same but don’t. Sentences (or at least their editors) want things to line up, so that the reading mind makes sense of them more easily. If there’s a “not only,” a “but also” should follow. An “either” should have an “or” nearby, and an “on one hand” should soon have another hand waving. And whatever follows the second element should be similar to what follows the first (“that’s not only *the way it’s done* but also *the way it should be done*”).

John handles parallelism as one should. Sometimes the parallels are nothing more than a series of verbs and nouns marching as if in columns through the sentence, verbs to the left, nouns to the right: “polygamy routinizes patriarchy, jeopardizes consent, fractures fidelity, divides loyalty, dilutes devotion, fosters inequity, promotes rivalry, foments lust, condones adultery, confuses children, and more” (Chapter 35). Sometimes the parallelism consists simply of a series of adjectives, each with the same prefix: “low-paid employees, who are usually unassuming, unnoticed, unheralded, and unreported” (Chapter 31). At other times, the parallelism joins two clauses into a long sentence the way a dovetail joint locks together two boards at right angles: “Not only do some of these arrangements jeopardize many of the state-protected rights and privileges of spouses and children that depend on a validly contracted marriage, but the creaky accommodations and concessions in various Western lands also can easily fall apart.” (Chapter 32).

What I conclude from reading thousands of pages of John Witte’s prose, across several years and through many books, is that he has mastered not only the mission, matter, and methods of this habitation called law and religion but also the stylistic and rhetorical graces to make dwelling there worthwhile. Pull up a chair, turn the page, and make yourself at home.

Gary S. Hauk
Atlanta, 2021

An Introduction To the Work of John Witte Jr.

Norman Doe

Faith, freedom, and family, the three things people will die for.
– John Witte Jr.

Family, faith, freedom. Things for which to die. Things for which to live. Things for which to be born. John Witte has dedicated his life to family, faith, and freedom – personally and professionally – both before and since his appointment as the Robert W. Woodruff Professor of Law, McDonald Distinguished Professor of Religion, and director of the Center for the Study of Law and Religion at Emory University. This volume is testimony to his prolific scholarship – global in reach, relevance, and reputation. This introduction – such an honor to write – is a reflection, often using his own words, on his prodigious work, his deep thought, and his impact in and beyond the academy. It is not a full-scale evaluation of the studies appearing in the pages to come and in his many other publications. It is an attempt to understand the reasons behind, influences upon, and meaning of his explorations over forty or so years in the realms of law and religion in general and faith, family, and freedom in particular. In so doing, it draws critically on his vision, hard work, and self-understanding.

John Witte was born into the nexus of family, faith, and freedom. His Dutch parents immigrated to Canada in 1953, and family and faith were crucial aspects of his early life in Ontario. He explains:

I am a Christian believer, and I have been a member of a Christian family from the very beginning. My parents . . . were of the Christian Reformed faith. I was brought up in that tradition, catechized both at home and at church, sent to Reformed primary and secondary schools, and imbued with the idea that Christianity is the fundamental part of life.¹

¹ Interview with John Witte Jr., May 6, 2015, Handong International Law School, Pohang, South Korea, https://www.johnwittejr.com/uploads/5/4/6/6/54662393/handong_interview_2015.pdf, 1: hereafter Handong Interview. A slightly edited version appears as “Handong Interview” in the Appendices.

Witte progressed to Calvin College, in Grand Rapids, Michigan, a liberal arts college founded by the Reformed Church. These were indeed formative years. He studied with, among others, the philosophers H. Evan Runner and Nicholas Wolterstorff (later of Yale Divinity School), who taught him “to discern the religious sources and commitments implicit or explicit in historical and modern ideas and institutions,” such as law and politics,² and with whom he was to collaborate around their shared interest in Christian approaches to human rights.³ At Calvin College, Witte majored in history, philosophy, and biology, and took the Medical College Admission Test, the Law School Admission Test, and the Graduate Record Examinations. While these gave him considerable freedom of choice about a future career, Witte decided that “the field of law was the place where I could find an interesting venue for exploring some of the deep questions about the role that Christianity played in shaping civilization.” He graduated with the degree of Bachelor of Arts (BA) in 1982.⁴

Witte then planned to pursue a doctor of jurisprudence (JD) and/or a doctor of philosophy (PhD) degree. He wanted to study law and history at Yale Law School and the Yale history department with the Reformation scholar Steven Ozment (1939–2019). It was not to be. Ozment left Yale for Harvard (where, from 1990 to 2015, he was McLean Professor of Ancient and Modern History). But Harvard had no joint JD/PhD program with the history department. As a result, Witte writes, “I was left with the dilemma of where to go.” So “I wrote to Harold J. Berman at Harvard Law School, whose work I had read at some length as a college student, and asked what I should do.” Berman must have recognized at once someone with obvious potential, aptitude, and enthusiasm. Witte recalls, with typical admiration and respect, that Berman “was very generous in responding with a hand-written two-page letter, inviting me to come work with him.” It was, for Witte, “a deep privilege to sit at the feet of a great master who was wrestling with some of the fundamental questions of law and religion in the Western tradition.” Indeed, Berman was

a man who had sacrificed much for the sake of coming to the Gospel, accepting it notwithstanding his Jewish upbringing and with the result of eventual ostracism by his family.

² John Witte Jr., Heidelberg Lecture, “Promotionsfeier der Theologischen Fakultät,” University of Heidelberg, February 8, 2017, lecture on receiving Dr. Theol., *Honoris Causa*, hereafter Heidelberg Lecture, 3.

³ Interview with John Witte Jr. at the Institute of Sino-Christian Studies, Hong Kong, August 9, 2019, https://www.johnwittejr.com/uploads/9/0/1/4/90145433/witte_interview_christianity_human_rights_and_culture_r_.pdf, hereafter Hong Kong Interview, 2 and 13. A slightly edited version appears as “Hong Kong Interview” in the Appendices.

⁴ Handong Interview, 2.

Berman worked me very hard, forty hours a week, during the time I was going to law school; my Dutch Calvinist work ethic carried me in that context.

Witte wrote his thesis on the scientific revolution and the law.⁵

From these early years, Witte acknowledges the lasting influence of three particular scholars. The first is Berman (1918–2007). They worked together closely for over twenty years. Berman, the “twentieth-century master of the idea of law and revolution,” taught Witte “the importance of mapping the shifting belief systems in the evolution and revolutions of the Western legal tradition.” In turn, Berman had been influenced by own his mentor while a student at Dartmouth College, the historian and philosopher Eugen Rosenstock-Huessy (1888–1973), whose work on change and continuity following revolution Berman applied to legal transformations that came with, for example, the papal revolution of the twelfth and thirteenth centuries, the Lutheran revolution of the sixteenth, the English Revolution of the seventeenth, and the French and American revolutions of the eighteenth century.⁶ Legal development – transformation and reformation – has a prominent place in Witte’s work, and Witte dedicated a book to Berman, his “mentor, colleague, and friend.”⁷

A second influence was Herman Dooyeweerd (1894–1977), Dutch professor of jurisprudence at the Vrije Universiteit, Amsterdam (1926–65), for whom “founding metaphors and motifs or fundamental law ideas” both anchored and transformed “the basic ideas and institutions of a given civilization,” such as in the Christianization of Rome, the Middle Ages, the Protestant Reformation, and the French Revolution.⁸ Early in his career, Witte edited a volume of lectures that Dooyeweerd delivered in 1937 in Amsterdam. In the introduction, Witte unpacks brilliantly the originality of Dooyeweerd as a Christian thinker who used biblical and Christian teachings

⁵ Handong Interview, 1.

⁶ Handong Interview, 8–10. See, for example, Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983); Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 2006); see also Harold J. Berman, *Faith and Order: The Reconciliation of Law and Religion* (Grand Rapids, MI: Eerdmans, 1993).

⁷ John Witte Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002). See also John Witte Jr., “A Conference on the Work of Harold J. Berman,” *Emory Law Journal* 42 (1993): 419–589; John Witte Jr., “In Praise of a Legal Polymath: A Special Issue Dedicated to the Memory of Harold J. Berman (1918–2007),” *Emory Law Journal* 57 (2007): 1393–643; and John Witte, Jr. and Christopher J. Manzer, “Introduction” to Harold J. Berman, *Law and Language: Effective Symbols of Community*, ed. John Witte, Jr. (Cambridge: Cambridge University Press, 2013), 1–35. See further Chapter 11 herein on Berman.

⁸ Handong Interview, 10.

to understand law, politics, and society, and “the natural, voluntary, and contractual social institutions” between “the individual and the state,” that is, between the public and the private spheres.⁹ He later took up Dooyeweerd’s complex Christian theory of rights, which he summarizes in this volume.¹⁰

Witte sums up: “Those two big figures had a deep influence on me early in my scholarly life.” He explains, “What I have taken from [Berman] and Dooyeweerd is the idea that there are fundamental seams, transformative moments, watershed periods” throughout history – and he builds on this idea, particularly with regard to his keen interest in “the consequences of what happens when there is a bend in the stream” or “fundamental shift” in juridical change.¹¹

The third influence was another Dutchman, the theologian Abraham Kuyper (d. 1920). Witte says:

Kuyperian thinking remains an important orientation for me in terms of a set of intellectual habits and methodological instincts . . . particularly the basic respect for scripture, tradition, reason, and experience; the emphasis on social pluralism and sphere sovereignty, and the wariness of political, ecclesiastical, or any other kind of monism or monopoly in social organization and authority structuring; the appetite for covenant thinking; the insistence that everyone operates with a basic worldview [of] beliefs, values, or metaphors.¹²

Kuyper, too, makes regular appearances in Witte’s work, including in the lectures and articles he produced for the centennial conference on Kuyper’s

⁹ Herman Dooyeweerd, *A Christian Theory of Social Institutions*, ed. John Witte Jr., trans. Magnus Verbrugge (Toronto: Paideia Press, 1986).

¹⁰ See Chapter 16 herein.

¹¹ Handong Interview, 10. See, for example, his overviews of major eras and shifts in law and religion in Chapters 4, 14, 24, and 37 herein, as well as his “Introduction,” to *Christianity and Law: An Introduction*, ed. John Witte Jr. and Frank S. Alexander (Cambridge: Cambridge University Press, 2008), 1–32; and his introductions to his monographs, *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007); *The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered* (Cambridge: Cambridge University Press, 2009); *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*, 2nd ed. (Louisville, KY: Westminster John Knox Press, 2012); *Sex, Marriage, and Family in John Calvin’s Geneva*, 2 vols. (Grand Rapids, MI: Eerdmans, 2005, 2022); and John Witte Jr. and Joel A. Nichols, *Religion and the American Constitutional Experiment*, 4th ed. (Oxford: Oxford University Press, 2016).

¹² Hong Kong Interview, 1–2. Kuyper had also been prime minister in the Netherlands from 1901 to 1905. See further Chapters 1, 2, and 10 herein.

Stone Lectures at Princeton Theological Seminary in 1998¹³ and Witte's receipt of the Kuyper Prize at Princeton the next year.¹⁴

These formative early years – including the lasting influences of Berman, Dooyeweerd, and Kuyper – were followed by Witte's move from Harvard to Atlanta. Why Atlanta? Emory University had established a law and religion program in 1982 as part of a broad effort to develop a truly interdisciplinary character for the university. The program founders were James T. Laney, then president of Emory, and Frank S. Alexander, professor of law and a former Berman student. They believed in the vital need for focused scholarship and teaching in this new field, enabling students and scholars to probe tensions between church and state, religion and politics; to understand the nuances of Jewish, Christian, and Islamic laws and their place in modern nations; and to explore the religious foundations and dimensions of law, politics, and society. In the interdisciplinary study of law and religion, the program faculty set out to “enhance understanding of law without diluting rigorous legal study, and [to] widen the horizons of religious education without propagating a particular faith or ideological agenda.” In a constitutional order celebrated for its “wall of separation” between state and religion, and at a time when “no other major U.S. law school devoted serious scholarship or teaching to the field of law and religion,” it may not be surprising to find that the program “met with suspicion, even hostility, in some quarters.”¹⁵ But the new program blossomed.

Three years later, in 1985, the university appointed Harold Berman as the first Robert W. Woodruff Professor of Law. Berman brought with him Witte, who in turn became the director of the Law and Religion Program and later succeeded Berman in the Woodruff Chair. Witte recalls: “I had the privilege of following Berman from Harvard . . . to Emory . . . in order to build up this law and religion center. . . . I've been at Emory ever since.”¹⁶ From 1987, the program grew into the full-fledged Center for the Study of Law and Religion with Witte as its director. It was established to convene the best minds, produce innovative scholarship, facilitate challenging conversations, and train the next generation of academics, lawyers, and religious leaders to advance global conversations at the intersection of law and religion focused on religious perspectives, legal perspectives, and interdisciplinary methods. The

¹³ John Witte Jr., “The Biology and Biography of Liberty: Abraham Kuyper and the American Experiment,” in *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century*, ed. Luis Lugo (Grand Rapids, MI: Eerdmans, 2000), 243–62.

¹⁴ John Witte Jr., “God's Joust, God's Justice: The Revelations of Legal History,” *Princeton Theological Seminary Bulletin* 20 (1999): 295–313.

¹⁵ Center for the Study of Law and Religion (CSLR), <https://cslr.law.emory.edu/about/index.html>.

¹⁶ Handong Interview, 1.

Center offers six degree programs, a score of cross-listed courses, several multiyear research projects, student and visiting fellowships, regular international symposia, conferences, and lectures, two book series, the *Journal of Law and Religion*, and *Canopy Forum*. The Center's projects and fellows have produced nearly four hundred books and thousands of articles. The current focus reflects the breadth of expertise of its members, all of whom are distinguished in the areas of their particular specialties: law and Judaism; law and Christianity; law and Islam; and law, religion, and human rights. Currently, new focus areas include law, religion, and jurisprudence; law, religion, and social justice; and law, religion, and health. More recently, the Center has extended its interests to Hinduism, Buddhism, and other religions.¹⁷

Witte's flair and energy for organizing ambitious, high-profile, and topical events is evident in the conferences he has conducted through the Center. A landmark came in 1991, when the Center hosted an international conference, "Christianity and Democracy." Eight hundred participants from five continents heard former U.S. President Jimmy Carter and Anglican Archbishop Desmond Tutu deliver keynote addresses.¹⁸ Further public-facing and ambitious conferences dealt with such subjects as religious freedom; proselytism; the rights of children; sex, marriage, and family life; and Islamic family law. Each event yielded several new books. Witte's industry for fundraising is second to none – and he seems to have inherited more than a little of what modern sociology of religion characterizes as the classic northern European Protestant business acumen. By 2000, the Pew Charitable Trusts had provided a \$3.2 million "Center of Excellence" grant matched by a \$10 million endowment from Emory University. In all, the Center has attracted around \$25 million in grant funding.¹⁹

The bedrock for all this energy, exploration, and endeavor is Witte's rich and powerful understanding of "law and religion." Honed over years of thinking, it contains three streams, which Witte himself explains as follows. The first is the *dialectical interaction* of law and religion: "Religion gives law its spirit and inspires its adherence to ritual, tradition, and justice." Equally, "law gives religion its structure and encourages its devotion to order, organization, and orthodoxy." Moreover, while each discipline is distinct, "law and religion share such ideas as fault, obligation, and covenant and such methods as ethics, rhetoric, and textual interpretation. Law and religion also balance each other by counterpoising justice and mercy, rule and equity, discipline and love." This dialectical interaction gives the two disciplines vitality and strength: "Without law at its backbone, religion slowly crumbles into shallow

¹⁷ CSLR, <https://cslr.law.emory.edu/about/index.html>.

¹⁸ It led to the book John Witte Jr., ed., *Christianity and Democracy in Global Context* (Boulder, CO: Westview Press, 1993; repr. London: Routledge, 2018).

¹⁹ See: <https://cslr.law.emory.edu/about/index.html>.

spiritualism. Without religion at its heart, law gradually crumbles into empty, and sometimes brutal, formalism.” They also “cross over and cross-fertilize each other,” interacting: *conceptually* (for example, sharing such concepts as sin and crime, covenant and contract, righteousness and justice, and mercy and equity); *methodologically* (sharing, for example, hermeneutical methods to interpret texts, casuistic methods of argument, systematic methods of organizing their doctrines, forensic methods of sifting evidence and rendering judgments); and *institutionally* (for example, through multiple relations between both political and ecclesiastical officials and offices).²⁰

The second stream of thought in law and religion might be styled *the religiosity of secular laws*: “the laws of the secular state retain strong religious dimensions.” “Every legitimate legal system . . . has what Harold Berman calls an ‘inner sanctity,’ a set of attributes that command the obedience, respect, even reverence of both political officials and political subjects.” Like religion, “law has authority” (it is “decisive or obligatory”); “law has tradition” (for example, in precedent, principles, and practices); and “law has liturgy and ritual” (for example, courtroom procedure, professional pageantry, and legislative language).²¹ These commonalities between law and religion may differ in origin and purpose (temporal and spiritual), but they exist profoundly in substance and form. These are products of the centuries-long interaction of law and religion in the Western tradition, Witte shows in several chapters in this volume, and in several other historical monographs.²²

The third stream might be styled *the juridical character of religion*: “Religion maintains a legal dimension, an inner structure of legality, which gives religious lives and religious communities their coherence, order, and social form.” Importantly,

Legal habits of the heart structure the inner spiritual life and discipline of religious believers, from the reclusive hermit to the aggressive zealot. Legal ideas of justice, order, judgment, atonement, restitution, responsibility, obligation, and others pervade the theological doctrines of countless religious traditions. Legal structures and processes . . . define and govern religious communities and their distinctive beliefs and rituals, mores, and morals.²³

However, law and religion may be in tension: as “Every major religious tradition has known both theonomism and antinomianism – the excessive legalization and the excessive spiritualization of religion,” so “every major legal tradition has known both theocracy and totalitarianism – the excessive sacralization [and] secularization of law.” Equally, as “every major religious tradition strives to come to terms with law by striking a balance between the rational

²⁰ Heidelberg Lecture, 1–2. See further Chapter 1 herein.

²¹ *Ibid.*, 2. See further Chapter 11 herein.

²² See especially Chapters 4–9, 14–15, 25–29, and 34–37 herein.

²³ Heidelberg Lecture, 1–2. See further Chapter 13 herein, where Witte takes up my work on “law at the backbone” of Christian ecclesiology and ecumenism.

and the mystical, the prophetic and the priestly, the structural and the spiritual,” so it is that “every major [secular] legal tradition struggles to link its formal structures and processes with the beliefs and ideals of its people.”²⁴

These are inspirational understandings of the relationship between law and religion. But they come at a high price. Their pursuit, study, and substantiation all clearly necessitate an interdisciplinary expertise – the specialist knowledge and methods of jurists and theologians, of historians and sociologists, and of philosophers and political theorists. So how does Witte see himself within this multifaceted field of law and religion? He says, “I am not a philosopher, political theorist, ethicist, or theologian, though I dabble in these fields. I am a lawyer and legal scholar, focused on the history of law and religion.” He works, therefore, on faith, freedom, and family “largely as a historian,” tapping into “the wisdom of the Protestant and broader Christian traditions on fundamental questions of law, politics, and society.” He says he is not a politician seeking “to hammer out political platforms,” nor a litigator pressing constitutional cases. However important that work is for the law and religion field, that is “just not my vocation,” Witte writes.²⁵ Indeed, “I have long felt that my calling is to be a historian.” “In college and certainly in law school, I became interested in the Protestant Reformation as a . . . transformative moment in the history of the West, and the influence the Protestant reformers had . . . on law, politics, and society.”²⁶ Witte links this calling to his earlier experiences: “My parents and pastors taught me from the beginning that Law and Gospel belong together, that scripture goes hand in hand with tradition, and that historical experience has deep meaning [and] purpose for those who have eyes to see and ears to hear.” “I have translated all this schoolboy instruction into a commitment to studying the history of law and religion in the Western tradition.”²⁷ Not only this: Witte has a deep respect and affection for the work of modern legal historians and has edited or otherwise contributed to several volumes to honor their valuable scholarship and includes chapters on several of them in this volume.²⁸

²⁴ Heidelberg Lecture, 3. See also John Witte Jr., “The Interdisciplinary Growth of Law and Religion,” in *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe*, ed. Frank Cranmer et al. (Cambridge: Cambridge University Press, 2016), 247–61; “The Study of Law and Religion in America: An Interim Report,” *Ecclesiastical Law Journal* 14 (2012): 327–54; “Afterword,” in *Leading Works in Law and Religion*, ed. Russell Sandberg (London: Routledge, 2019), 197–205.

²⁵ Hong Kong Interview, 3.

²⁶ Handong Interview, 2, 11–12.

²⁷ Heidelberg Lecture, 3.

²⁸ See, for example, John Witte Jr. et al., eds., *Texts and Contents in Legal History: Essays in Honor of Charles Donahue* (Berkeley, CA: Robbins Collection, 2016); John Witte Jr., “Hugo Grotius and the Natural Law of Marriage: A Case Study of Harmonizing Confessional Differences in Early Modern Europe,” in *Studies in Canon Law and Common*

The methods Witte uses as a historian of law and religion are characteristically triadic:

I try to study this history with three “R’s” in mind – *retrieval* of the religious sources and dimensions of law in the Western tradition, *reconstruction* of the most enduring teachings of the tradition for our day, and *reengagement* of an historically informed religious viewpoint with the hard legal issues that now confront church, state, and society.

At the same time, Witte bears three “I’s” in mind; he explains: “Much of my historical work is *interdisciplinary* in perspective, seeking to bring the wisdom of religious traditions into greater conversation with law, the humanities, and the social and hard sciences.” Moreover: “It is *international* in orientation, seeking to situate American and broader Western debates over interdisciplinary legal issues within a comparative historical and emerging global conversation.” Also: “it is *interreligious* in inspiration, seeking to compare the legal teachings of [Roman] Catholicism, Protestantism, and Orthodoxy,” and “sometimes” those of Judaism, Christianity, and Islam.²⁹

However, these methods of Witte’s make particular demands on the ethics of scholarship. As such, he recognizes five responsibilities that attach to the Christian scholar. First, *stewardship*: “As a scholar, one critical responsibility is to be a good steward of the wisdom, knowledge, and methodology that you acquired in your profession and to maintain and develop it, to continue to teach it to the next generation, to prepare the next generation of scholars to stand and succeed you.” Second, *discipline*: “If your Christian vocation is to be a scholar, be the very best scholar and teacher you can be.” Third, *accessibility*: scholarship should be expressed “in and on the terms that anyone can understand.” Fourth, *influence*: “Christian scholars . . . must try to find ways of reforming and improving their profession or discipline to accord better with what the faith teaches,” finding themes “where the Christian tradition has had or can have notable influences.” Fifth, *engagement*: “Christian scholars have different ways to engage the community, the polity, and public debate.” On one hand, “One can simply produce scholarship, write it, teach it, lecture about it, and equip other specialists to take the work and run with it. That is a lot of what I do. I do [not] spend a lot of time doing the litigation, lobbying, and legislative work that are a natural outgrowth of what I do.” On the other hand, scholars may engage in “legal debates about faith, freedom, and family: they participate in cases, they craft legislation, they work hard . . . with the other leaders of the culture” on “hard questions” – through op-eds,

Law in Honor of R. H. Helmholz, ed. T. L. Harris (Berkeley, CA: The Robbins Collection, 2015), 231–50; John Witte Jr., “Canon Law in Lutheran Germany: A Surprising Case of Legal Transplantation,” in *Lex et Romanitas: Essays for Alan Watson*, ed. Michael Hoeflich (Berkeley: University of California Press-Robbins Collection, 2000), 181–224. See further Chapters 11–13, 17–24, 35–37 herein.

²⁹ Heidelberg Lecture, 3.

debates, television appearances, and other social media: “That is equally important and responsible Christian scholarship.”³⁰

Witte has a deep appreciation of the horizons open to Christian scholars of law and religion and the fields in which they may live out these responsibilities of stewardship, discipline, accessibility, influence, and engagement. First, there is the field of secular law. On one hand, Witte accepts the “common sentiment” that Christian faith and the legal profession may be “incompatible” or at least “in tension.” Quoting Luther’s claim, “Juristen, böse Christen” (Jurists are bad Christians), Witte accepts that law is often seen as “a grubby, greedy, and ugly profession, and some of that is true.” However, law is “fundamental,” one of the “universal solvents of human living,” and “a society without law would quickly devolve into hell itself.” And so “we need Christians at work in the law.”³¹ For example, in the field of secular law, Christian lawyers have a distinct and active part to play in the field of human rights on the basis that: these are “natural gifts of God”; “human beings are created in the image of God”; and “God has given us the gifts of [for example] companionship of other humans.”³² Witte himself has taken the lead in several important projects on Christianity and human rights,³³ following these with studies on perspectives of other religious traditions globally.³⁴

Another field to which Christian scholars of law and religion may contribute is ecumenism and inter-Christian dialogue. One challenge is for “Catholic, Protestant, and Orthodox Christians to develop a rigorous ecumenical understanding of law, politics, and society” and “together to work out a comprehensive new ecumenical ‘concordance of discordant canons’ that draws out the best of these traditions, that is earnest about its ecumenism, and that is honest about the greatest points of tension.” For Witte, “few studies would do more both to spur the great project of Christian ecumenism and to drive mod-

³⁰ Handong Interview, 10–11.

³¹ *Ibid.*, 15–16. See also, for example, John Witte Jr., “What Christianity Offers to the World of Law,” *Journal of Law and Religion* 32 (2017): 4–97. See further Chapter 2 herein.

³² Hong Kong Interview, 9–10.

³³ See, for example, John Witte Jr. and Frank S. Alexander, eds., *Christianity and Human Rights: An Introduction* (Cambridge: Cambridge University Press, 2010); Witte, *Christianity and Democracy in Global Context*.

³⁴ See, for example, John Witte Jr. and Johan D. van der Vyver, eds., *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague: Martinus Nijhoff Publishers, 1996); John Witte Jr. and Michael J. Broyde, eds., *Human Rights in Judaism: Cultural, Religious and Political Perspectives* (New York: Jason Aronson Publishers, 1998); John Witte Jr. and M. Christian Green, eds., *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2012); John Witte Jr. and Michael Bourdeaux, eds., *Proselytism and Orthodoxy in Russia: The New War for Souls* (Maryknoll, NY: Orbis Books, 1999); John Witte Jr. and Richard C. Martin, eds., *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, NY: Orbis Books, 2000).

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