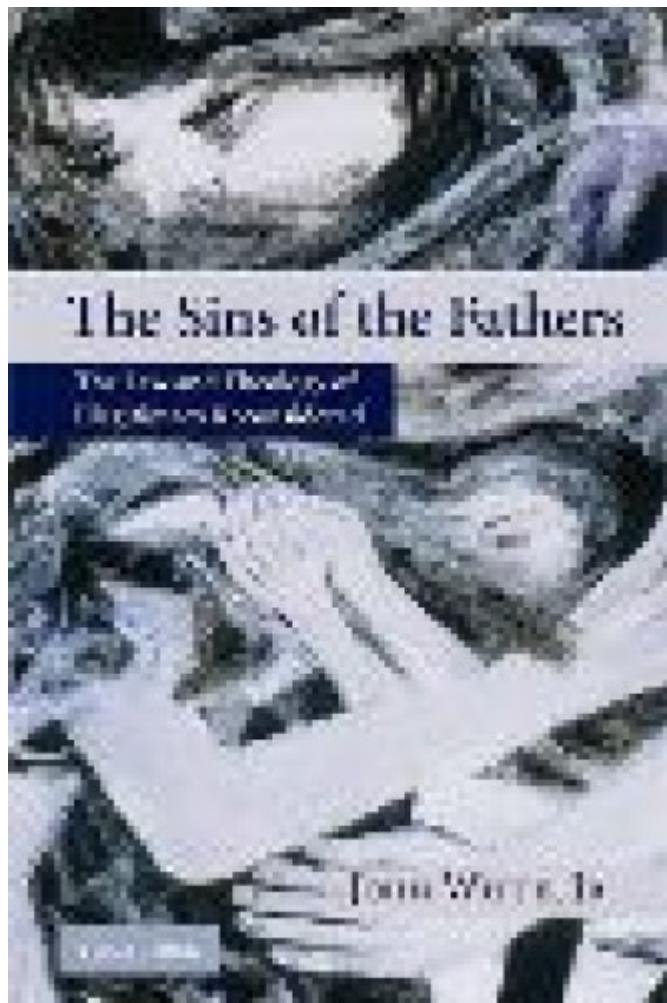


The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered

reviewed by [Don Browning](#) in the [February 9, 2010](#) issue

In Review



The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered

John Witte Jr.

To appreciate this important book, the reader must set it in the context of the emerging dialogue between law and religion. John Witte Jr. has written and edited books on the contribution of Luther's Reformation to modern law, Calvin's legal and theological writings on human sexuality and marriage, the interaction of law and religion in shaping Western marriage and family law, the contribution of Protestantism to human rights, and church-state relations in the United States.

For the most part, mainline Protestant churches have ignored the relation of Christian theology to both ecclesial and secular law. The neo-Reformation theology that has been so influential in these churches since the 1950s takes seriously—perhaps too seriously—the main message of both Luther and Calvin, that we are saved by our faith through grace and not by our works or by the law. As true as this is, it overlooks just how much intellectual and theological energy the Reformers spent on figuring out the place of secular law in the countries dominated by Protestant cultures.

Witte believes that much of this intellectual work on the law—especially on matters of marriage, the family and human rights—was creative and basically constructive for its time and place. But this is not the case for the interaction between law and Christianity on illegitimacy. For many centuries children born outside of legal marriage were objects of scorn and rejection. "For nearly two millennia," we read, "Western law visited the sins of fathers and mothers upon their illegitimate children, subjecting them to systematic discrimination and deprivation. The graver the sins of their parents, the further these children fell in social standing and legal protection." Part of the condemnation of these unfortunate children was fueled by the Bible itself; for instance, Deuteronomy 23:2 bans bastards and their descendants from "the assembly of the Lord . . . to the tenth generation."

Of course, many of the scriptural passages that appear to reject and punish the children of unholy unions are really about God's condemnation of idolatry. For instance, a punitive attitude finds no firm anchor in the biblical adage that "the sins of the fathers will be visited upon their children." Although these words appear at least four times in the Bible, they often occur in texts like this: "You shall not make for yourself an idol, . . . for I the Lord your God am a jealous God, punishing children for the iniquity of parents, to the third and the fourth generations of those who reject me, but showing steadfast love to the thousandth generation of those who love me

and keep my commandments" (Ex. 20:4-6; see also Deut. 5:8-10). Witte believes that these passages are about the sin of idolatry and not about adultery, fornication or the illegitimacy of children born of such acts.

Nor can rejection of the illegitimate be placed on the doorstep of Jesus' teaching and ministry. For example, when the Pharisees brought to Jesus a woman who had been caught in adultery, they challenged him to adhere to the Mosaic law commanding that she be stoned. Jesus responded: "Let anyone among you who is without sin be the first to throw a stone at her" (John 8:7). When none of her accusers cast a single rock, Jesus continued: "Neither do I condemn you. Go your way, and from now on do not sin again" (John 8:11). However, the Gospel of John, 1 Corinthians, Galatians and Hebrews do contain passages that echo the older condemnation of illegitimate sons and daughters for the sins of their parents.

The church fathers of the fourth to the sixth centuries took a less punitive stance toward illegitimacy while formulating an increasingly strict stance against fornication and adultery—any act that seemed to undermine the integrity and sanctity of marriage. Witte believes that these increasingly harsh codes set the stage for a return of older punitive attitudes toward illegitimacy. Witte writes:

These increasingly stern views on sexual sins slowly soaked into the Roman law after the fourth century, and there they gradually combined with existing Roman laws on illegitimacy. It was this combination of the church's elaborate definition of extramarital sex and the Roman law's elaborate doctrine of illegitimacy that slowly gave shape to the emerging Western laws of illegitimacy—provisionally in the legal synthesis of Christian Roman emperors, more fully in the canon law, civil law, and common laws of medieval and early modern times.

In other words, after a period of a more relaxed attitude toward nonmarital births in the time of the church fathers, a new hardening developed, often motivated by the inheritance and property interests of the landed classes.

Witte tells us that it was not until the 20th century that the unjust condemnation of the illegitimate began to melt away in theology and secular law. The human rights movement was part of the reason for this change. By the end of the 20th century, it was commonly held by both the international human rights community and most lawyers that "there are no illegitimate children, only illegitimate parents."

But this shift of attitude does not mean that all is well with children born of nonmarital unions. Changes in sexual behavior, public attitudes and the law have conspired to greatly increase the number of these children. In the United States, nearly 40 percent of all children are born out of wedlock. In the African-American community, 68 percent are. The social sciences have amassed scores of studies showing that these children are significantly less well provisioned with economic and social capital and do significantly worse in school, employment, human relations and marriage. They also have more problems with alcohol, drugs and abiding by the law.

Witte recommends several interventions. Some older practices should be avoided, such as forcing shotgun weddings or imprisoning delinquent parents, thereby compounding their inability to support their offspring. Furthermore, Witte believes that the state has no right to police consensual sex between adults. But it does have the right and duty to legally require and enforce stiff payments by parents, especially fathers, to their offspring who are born outside of marriage. Local communities should take more responsibility for such children as well. Adoption should be promoted as a way of caring for children of transient unions. And finally, churches, voluntary organizations, schools and even the state should promote legal marriage as the best context for conceiving children and raising them into responsible and socially productive adults.

The Sins of the Fathers has an important message about illegitimacy. It is also a fascinating and well-written case study in the emerging yet neglected conversation between religion and the law.