

*From Sacrament to Contract*, by John Witte Jr.

reviewed by [Donald W. Shriver](#) in the [December 9, 1998](#) issue

By John Witte Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*. (Westminster John Knox, 315 pp.)

We are individualists when it comes to marriage. Since the '60s few people have spent much time talking about "norms" for marriage. What two persons decide about their partnership is their business exclusively, we assume. A book, then, that promises to explore the intimate mixture of religious and legal norms about marriage, and to do so in the context of the past thousand years, may seem fated for neglect by all but a few scholars.

But like many other volumes in the ten-book series "The Family, Religion, and Culture," edited by Donald Browning and Ian Evison, John Witte's work should not be neglected--especially not by pastors and church leaders who know from both experience and education that William Faulkner's dictum applies to marriage as well as to every other aspect of human life: "The past is not dead and gone; it isn't even past." Married people discover soon enough that we all have to deal with the lingering influence of our upbringings. And *law* still hovers over even the most casual sexual partnership to protect the partners against abuse. Finally, *religion* still witnesses to the fact that the relation of man and woman is more than casual.

Witte is Jonas Robitscher Professor of Law and Ethics at Emory University. His book is a dense historical study based on impressive original research, and it is resolutely interdisciplinary. In his lucid research summaries Witte demonstrates that, through a millennium of changing relations between law and religion, neither has succeeded in insulating itself wholly from the other.

"My principal goal is to pull out of this thick fabric of family experience in the West the slender interwoven threads of Christian theology and marriage law and to examine some of the colors and patterns." His book should long be the standard reference for anyone interested in knowing how Europeans have sought to connect the personal and the public in family life.

The title, *From Sacrament to Contract*, identifies the bookends of the study. Witte is principally interested in the history in-between: How Lutherans revised the Catholic sacramental model to give marriage a certain fixed "status" in the secular side of their "two kingdoms"; how Calvinists enriched the context of marriage through a communal, covenantal model that brought church and state into mutual witness; and how the Anglicans imaged marriage as a "little commonwealth" analogous to the "great commonwealth" of England and subject to the hierarchically structured norms and virtues of the latter.

Powerful as these developments were for giving marriage a positive new footing in European and American society, they were also models against which the 18th-century Enlightenment revolted. "Human rights" doctrine gave social association a new independence from the controls of church and state, and marriage became less an "institution" than a contract between two individuals who could make or break that contract at will. "This contractarian gospel anticipated much of the agenda for the transformation of marriage law in the twentieth century, particularly in America," observes Witte.

But in the modern American context, association-by-consent has its own ironies. "The arm of the state no longer knocks at the bedroom door with the same ease that it did in the past. But today, if a distressed party opens the bedroom door for it, the state will reach deeply into the intimacies of bed and board and punish severely those who have abused their autonomy."

Even moderns who abjure legal marriage do not want to dispense with the legalities that protect the freedoms of consent and dissent. In the abstract, modern Western law may be lenient about divorce; but in the concrete, the conditions of a "just divorce" may be more complicated than ever, requiring a "balance between rule and equity, principle and precept," and the "active involvement of trained judges and jurists."

Witte's magisterial work of historical scholarship will be required reading for anyone who wants to understand the legal and theological "genetic code that has defined the contemporary family for what it is--and what it can be," as Witte says at the end of his introduction.

This reader has only two additional things he wishes the book had done, and Witte may be saving both for a future volume. The book is an intentionally Eurocentric study, and I wish that comparisons with extra-European models of marriage had

entered at least the footnotes. Second, Witte assumes that we all understand the current crisis in modern marriages well enough to need only a brief treatment of the way law and theology weave their ambiguous way into that crisis. He hesitates, at the end, to offer us much commentary on how he evaluates the "is" and "can be" of marriage and family in our time. So wise and balanced a study makes me wish that he had offered his own view on what Christians (and their pastors) might say to one another as they wrestle with the lures and pitfalls of marriage.