

of diocesan tribunals and sometimes ‘the product of what might be called private initiative’ (p 83); and the Duplex Querela, a new remedy available to those presented to benefices, at a time when most jurisdiction over advowsons belonged to the common law courts. When the parliamentary authors of the 1641 Grand Remonstrance complained of dangerous ‘vexations’ resulting from the practices of the ecclesiastical courts, they ‘had legitimate reasons for describing the activities of the courts as dangerous inventions’ (p 90).

In short, this book’s reach is unexpected, moving from the minutiae to the mainstream of macro-history, and for your reviewer more than justifying this new publication.

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Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties

JOHN WITTE JR

Cambridge University Press, Cambridge, 2019, pp xxii + 434 (hardback £95), ISBN: 978-1-107-18475-6

Endings, or at least deliberate finales, are rare in academic writing. There always seems to be something more to say and you never know when a tangent will take you in a whole new direction (which may unwittingly close a volume) and so invariably you seldom have the chance to make your definitive and final statement on a topic. Yet, in this book, John Witte Jr is doing just that: he provides a thrilling finale to an area of his work. In the introduction he writes: ‘After thirty-plus years, I have written what I can on the history, law, and theology of the marital family. I offer this volume as my final word on these themes before moving onto other scholarly fields’ (p xxi).

Witte’s finale is suitably epic. The first six chapters provide a rollercoaster ride through history, visiting the teachings on sex, marriage and family life by those who have shaped the family teachings of the Western legal tradition, including Church fathers, medieval scholastics, early modern Protestants, Enlightenment philosophers and jurists. Witte time-travels from Augustine to Aquinas to Luther to Calvin to Weber to Grotius to Selden to Locke to Wollstonecraft to Hume to Smith to Paley to Bentham. If this was the total of the book then that would be more than enough to mandate its inclusion on reading lists and bookshelves. Yet, for Witte in his finale, this is simply the prologue.

As he puts it, Chapter 7 ‘serves as the fulcrum of the book’ in that it ‘reconstructs traditional teaching into a multidimensional theory of the marital family sphere, with natural and spiritual poles, and with social, economic, communicative and contractual dimensions radiating between these poles’ (p xiv). It is an impressive centrepiece and one which pushes the book into a new direction, drawing upon what has come before, but time-travelling now to the present and to the future. As Witte notes, the chapter ‘in stressing the multidimensionality of the marital family sphere [pushes] against theorists who have sought to flatten it into one dimension, or to abolish it altogether as a separate legal and social institution’ (p 234).

The remaining five chapters use this multidimensional theory to discuss what Witte refers to as ‘several hard issues born of the modern sexual revolution’ (p xiv). Here he turns from history and theory towards practical modern-day challenges. He attempts to situate these issues within the tradition and to reconstruct that traditional teaching in light of these challenges. They are diverse and far-reaching. Again, if these chapters alone constituted the book then that would be more than enough to render it a must-read. Chapter 8 argues that the modern Church’s opposition to children’s rights needs to be overcome. Chapter 9 summarises Witte’s previous work on why polygamy should not be recognised.

The tenth chapter sorts through the arguments for and against the use of faith-based family laws in modern liberal democracies, arguing that religious communities need to get their legal houses in order. Witte takes the approach of arguing ‘against those who regard any state recognition of faith-based family laws as unwise’ (p 305) and also against ‘a fully privatised faith-based family-law system that people can choose in lieu of state family laws’, on the basis that this ‘risk[s] the creation of religious sovereign rivals to the modern democratic state’ and ‘risks placing too much coercive power in the hands of religious authorities who have none of the required constitutional safeguards that bind the state’ (p 304). He argues for a shared jurisdictional model on the grounds that the state has no monopoly on family law and governance but must set some of the basic ground rules.

Chapter 11 continues this theme, exploring the doctrine of private ordering which animates various movements in family law today. In particular, Witte critically explores the work of his Emory colleague Martha Fineman which exploded the ‘foundational myths’ of modern family law. He argues that, although her general critiques are ‘familiar, welcome and largely congenial with traditional teachings’, some of her recommendations are ‘based on questionable premises and sometimes risk more problems than they would solve’ (p 354). Witte concludes that ‘legal equality within marriage is not well served by legal equality between all forms of marriage, or by its wholesale abolition’ (p 365).

Church, State, and Family ends with a lengthy ‘Concluding reflections’ chapter, which sums up the arguments of the book and ends with a call for ‘radical same-sex marriage and LGBTQ advocates [to] stop viewing religious liberty as the enemy’ (p 376) and for ‘Western churches and other religious traditions . . . to rein in their anathemas and actions against same-sex marriage in public life and instead focus on improving the culture of the marital family more broadly’ (p 377).

Whether you agree with Witte’s assessment or not, this is a book which needs to be read. Impressive and epic in scope yet providing an integrated and focused argument, it is a work of first-rate scholarship. For those on this side of the Pond, it has the additional value of introducing a wide literature from America, a movement in which Witte has played an important and pivotal role. This is a fitting final word on the topic by him, though it is to be hoped that there is far more to come on other topics. It is a definitive work but nothing really ever ends. And so in time there will be another work on Church, State and the family, another journey through the historical development, and a further exploration in light of the controversies of that age. But when that book comes to be written, there are two certainties. The first is that Witte’s book will cast a long shadow and will set a high benchmark. The second certainty is that, in future discussions, the list of important jurists who have expounded on the topic will also include John Witte Jr himself.

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