CHAPTER 2

John Witte, Jr. on Christianity and Law

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1 Introduction: John Witte as a Christian Jurist

John Witte's entire life and vast intellectual output have been marked by one fundamental fact: he is first and foremost profoundly Christian. Witte's Christianity determines his being, his character, his status as a leading scholar, and all his academic work. As a Christian, Witte knows and feels himself to be a child of God, made in God's image, regenerated by the waters of baptism, and called upon to participate in this world in the royal, prophetic, and priestly mission of Christ through his work as a historian and jurist, his dedication to his family and friends, and his commitment to liberty and the communities in which he lives. This vocational, radical, and transformative Christian identity suffuses not only Witte's person but also his work, which form an unbreakable unity. Witte cannot be understood apart from his academic work, nor can the work be understood apart from the man, just as a self-portrait cannot be understood without the artist.¹

To speak of Christianity and law in John Witte—or of law and Christianity; the words can be reversed, because their influence is reciprocal—is to speak of every one of the thousands of pages that Witte has written in the history of law, marriage, family, children, the relationship between law and religion, human rights, religious freedom, and political and social philosophy.² That is why this chapter, to a certain extent, is all-encompassing, because even when Witte approaches other topics and religions, he does so from the analogies and perspectives of Christianity. It is also his own Christianity that has prompted Witte's interest in and love for other religions, which he in no way sees as competitors, but rather as sister faiths (especially Judaism and Islam) or as admirable treasures full of human and divine wisdom (Greco-Roman thought,

Buddhism, Confucianism, Hinduism, and Indigenous traditions). The fact is that every Christian is a *homo religiosus*, a being open to transcendence and in a permanent quest for truth, before being properly a *homo Christianus* by baptismal grace.

Witte’s Christianity is anchored in the Protestant Reformed tradition, and heavily influenced by the well-known Dutch pastor, theologian, and politician Abraham Kuyper (1837–1920), who, within Calvinism, emphasized the sovereignty of Christ over salvation, the world, and indeed all of creation. Thus, words such as “creation,” “sovereignty,” and “covenant” echo with a special musicality in Witte’s writings. As Witte himself states:

Kuyperian thinking remains an important orientation for me. It provides 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; and the insistence that everyone operates with a basic worldview, a basic set of founding beliefs, values, or metaphors, even if they remain mostly implicit.

Over time, Witte, without abandoning his roots, has opened up toward a more interdenominational and ecumenical Christianity, and has broadened his capacity to admire and embrace not only the best of all the families of Protestantism, but also many other aspects of Roman Catholicism and Orthodox

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6 *Faith, Freedom, and Family*, 694.
Christianity. This explains why both ecumenical and interreligious dialogues flow so naturally with him, because of his understanding of Christian unity. Witte feels a deep attraction for everything that is good within Christianity, as well as beyond it, and he bases this on a healthy regard for the creation order, common grace or general revelation, and natural law. This attraction to all denominations and traditions is not in any way a matter of eclecticism, nor of doctrinal relativism. His work exudes conviction and love of tradition, but also openness to the future. He is also aware of the sins of the Christian tradition, both inside and outside the church.

Although Witte’s Christianity is a precondition for understanding his intellectual production, it is not a sufficient condition. Witte’s Christianity must be considered along with what we could call his “fundamental intuition.” Behind all great scholars usually lie one or a few major intuitions that mark their intellectual trajectory. Intuitions in the strictest sense of the term are lights in our understanding acquired without recourse to conscious reasoning. Intuitions are sources of inspiration, with which we fully identify because they show us an attractive path to follow. That is why sometimes intuitions are not expressed in literal words, but in metaphors, of which Witte is so fond. When these intuitions mature in the soul, they end up turning into intentions and these, in turn, evolve into major research projects.

Intuitions are the point of departure and driving force of all serious academic research. We come back to them time and time again throughout our academic lives, just as we return to our birthplace and family home. These intuitions may be original or shared, often reach beyond our own area of knowledge and, every now and then, shed new light on an old idea, opening up a new horizon for knowledge. The intuition of Friedrich Carl von Savigny (1779–1861) and his historical school of jurisprudence, for instance, was to underscore the connection between history and law and to understand the latter as a product of “the spirit of the people” (the Volksgeist).

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10 Friedrich Carl von Savigny, Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissen- schaft (Heidelberg: Mohr und Zimmer, 1814); in English, Of the Vocation of Our Age for Legislation and Jurisprudence (Kitchener, Ont: Batoche, 1999); and Friedrich Carl von Savigny, System des heutigen römischen Rechts, 3rd ed. (Berlin: De Gruyter, 2019).
(1881–1973) had the intuition of purifying law of all extraneous political elements in order to develop a true science of law on the basis of a fundamental norm (Grundnorm).\textsuperscript{11} John Rawls (1921–2002), for his part, understood “justice as fairness,” within the framework of a society of free citizens holding equal basic rights. Therein lay his fundamental intuition.\textsuperscript{12}

The intuition that has marked Witte’s academic life, which he shared with his mentor Harold J. Berman (1918–2007),\textsuperscript{13} is that law and religion have more in common than is apparent at first sight: that law has a religious dimension and religion a juridical one.\textsuperscript{14} Religion and law share origins, principles, values, rites, customs, rituals, formalities, methods, concepts, and hierarchies, and they depend on each other. When this interaction is culturally hidden or even manipulated, religion is diluted into ethereal spiritualism, and law is reduced to coercive regulatory imposition. But when law and religion are held in healthy dialectical relation, each side is improved by the other, and society and its core institutions are best positioned to achieve justice, peace, order, and freedom.\textsuperscript{15}

This fundamental intuition that Witte shares with Berman—his beliefs about “faith in law, and law in faith,” as this book’s title captures it—is very old, even pre-Christian, as Witte recognized already in his earliest published work, in 1981.\textsuperscript{16} His work has consisted in part in excavating this enduring intuition.
and applying it with new insights and overtones in a pluralistic and secularized society. To highlight this intuition’s long lifespan, one only needs to point out that the Latin word for law (ius) is derived from the god Jupiter, or that the ancient Romans used the word sacramentum to refer to judicial processes in ancient legal times, many centuries before Christianity began using the same expression to refer to the signs instituted by Christ by which divine grace is dispensed to humans. During the Middle Ages, divine law was both religious and juridical, as Thomas Aquinas and the great glossators and commentators on canon, civil, and feudal law all confirmed. In the modern age, Gottfried Wilhelm Leibniz (1646–1716) insisted on this connection because he saw law and religion as having a common structure, a common vocabulary, a common formalism, and a shared interest. Yet it is true that this idea has been lost in our secular age and has needed to be relaunched in a different context. Witte has devoted all his efforts to this endeavor since beginning his career at the Center for the Study of Law and Religion at Emory University after completing his legal studies at Harvard Law School with Berman, before both of them moved to Emory in 1985.

For forty years, Witte has been applying and developing this fundamental intuition about law and religion in various fields of legal history, in line with his personal convictions and abilities, but above all with his deepest experiences: his attachment to Protestantism, his love for his family and friends, and his respect for human rights. Witte substantiates all of these commitments with the triad faith, freedom, and family. By way of example, the happy yet sad experience of the life and death of his brother Ponkie (1964–1980), who was born out of a nonmarital relationship and adopted by Witte’s parents, was the


See John Witte, Jr. and Rafael Domingo, eds., The Oxford Handbook of Christianity and Law (Oxford: Oxford University Press, 2023), esp. chaps. 6–8.


Faith, Freedom, and Family.
force that drove Witte to write one of his more beautiful and important books in defense of children’s rights: *The Sins of the Fathers*.\(^{22}\) This is probably Witte’s freshest and most creative book, or at least the one that reflects his innermost personality. It has so far been translated into Chinese (2011) and Korean (2022).

In other chapters of this volume honoring Witte, distinguished scholars Norman Doe, Helen Alvaré, R. H. Helmholz, Nicholas Wolterstorff, and Jonathan Chaplin address the subject of Witte’s contribution to the history of law (especially the relationship between Protestantism and law), family law and human rights, politics, and the relationship between law and religion itself. In this chapter, I focus on the relationship between Christianity and law as such, as part of a specific project that integrates and transcends these other, specific fields in which Witte has stood out as an author. Out of necessity, because Witte’s work must be taken as a whole, I will refer to these other topics, adding cross references.

2 Relations between Christianity and Law as an International Project

Witte has become one of the most outstanding global scholars in the study of the relationship between Christianity and law as a great branch of the massive three-millennium-old tree of law and religion. This project is “interdisciplinary, interdenominational, and international,” as Witte usually categorizes it,\(^{23}\) and right now more than fifteen hundred Protestant, Roman Catholic, and Orthodox scholars (jurists, theologians, philosophers, historians, and sociologists) are contributing to it. Underlying this project is the idea that the relationship between Christianity and law is not merely accidental but inherent, with meta-historical significance and permanent value for the development of humanity.

A great lover of triads, Witte turns to them to explain the project. “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 a historically informed religious viewpoint with the hard legal issues that now confront church, state, and society.”\(^{24}\) Witte believes that Christians must regain a leading role in public life not in a dogmatic or nostalgic way, but “fully equipped

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23 John Witte, Jr., *God’s Joust, God’s Justice* (Grand Rapids: Eerdmans, 2006), x–xi, 4–9; and unpublished lecture on receiving an honorary doctorate in theology at the University of Heidelberg, Feb. 8, 2017.
24 Witte, *God’s Joust, God’s Justice: Law and Religion in the Western Tradition*, x.
with the revitalized resources of the Bible and the Christian tradition in all
their complexity and diversity.”

Just as you have to excavate before building a house, Witte has embarked on
his project by initiating a deep international and interdisciplinary conversa-
tion on the mission of Christianity in the secular era, especially in the field of
law, to ensure that the project is underpinned by solid foundations. At a time
when many intellectuals advocate a public space free from religion, Witte is
arguing that Christian values and principles should be democratically restored
to public life. This is how he puts it:

The easy notions of a public reason that brackets all comprehensive doc-
trines and that brackets especially religious discourse about fundamental
matters of the state is giving way to a more realistic and inclusive epistemo-
logy. Even early architects of religion-free public reason, like John
Rawls and Jürgen Habermas, began to realize that a de-theologized discov-
course, a bleached and bland public reason, could not work in debates
about such fundamental institutions as marriage and family life. Chris-
tians and persons of other faiths, as a consequence, are invited back into
the conversation.

To channel the project, in 2015 Witte founded and began directing the Cam-
bridge Studies in Law and Christianity Series, which to date includes more
than thirty published books. Witte is also a frequent contributor to other col-
lections, such as the Routledge Series on Law and Religion, edited by Norman
Doe, and works from other important presses, including Oxford University
Press and Mohr Siebeck, which have taken on individual titles. Some of this
project’s results and reviews have been published in the Cambridge University
Press Journal of Law and Religion, edited by the Center for the Study of Law
and Religion at Emory. Last but not least, a major instrument for disseminating
this great project has been The Canopy Forum, an online publication published
by the Emory center. The McDonald Agape Foundation has been instrument-
al in launching this project, especially by funding scholarships for research

25 Ibid., 464.
26 John Witte, Jr., “Christianity and Law: Interview, May 2015,” in Faith, Freedom, and Family,
726.
27 Information available at: https://www.cambridge.org/core/series/law-and-christianity
/6D77992447E6BD4E748AE05E137D92B.
/LAWRELIG. In this series, of the twenty-two published titles, nine have been directed or
commissioned by Witte.
fellowships and projects among bright young scholars who have been working with Witte and his center colleagues.

Witte uses a broad definition of Christianity that encompasses the three major Catholic, Protestant, and Orthodox branches, as well as various denominations within them. To date, the Orthodox world is the most underrepresented in the law-and-religion field, thus fulfilling the old Latin adage that law indeed comes from the West, just as light comes from the East: *ex Oriente, lux; ex Occidente, ius.*

Witte has worked hard in his projects to include Orthodox voices alongside other Christian views.

As could not be otherwise in a project of this quality and ambition, Witte refers to law in its broadest sense, which is also the one that best captures its meaning. Law is a regulatory social order of justice, powers, rights, and freedoms, exercised and maintained by institutions that exercise authority individually or collectively, and that affect local, national, international, and global private and public human relations.

The key to understanding the relationship between Christianity and law is that law precedes Christianity in time, but Christianity elevates the very idea of law to a new dimension, which is the dimension of love. Christianity assumed and adopted Jewish and Roman law, but effected a profound spiritualization of law: *ius Evangelio praecedet, Evangelium autem ius elevat* (law precedes the Gospel, but the Gospel elevates law). In the same way that light blinds and harms us when we look too closely, however, so too the relationship between law and Christianity can be blinding when religion comes too close to law, or when law tries to conquer the religious space illegitimately, contravening Christ’s own mandate: “Give therefore to Caesar the things that are Caesar’s and to God the things that are God’s” (Matthew 22:21; Mark 12:17; Luke 20:24).

Witte has approached this massive project in law and Christianity from three different perspectives: one that we could call merely relational, another biographical, and a third jurisprudential. Though operating in different stages of his work, these different perspectives coincide in time and are cumulative and mutually supportive. They are not closed but rather interdependent perspectives, as exemplified by the works coedited by Witte—

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Family Law, which takes a biographical approach, and Christianity and Global Law, which addresses both the relational and biographical perspectives.

3 The Relational Perspective

From the relational perspective, Witte has sought to map the historical, conceptual, categorical, and dogmatic ties between Christianity and law, both as ideas and in their most varied institutional forms and ramifications. That is why the titles of books written from this relational perspective usually include the word “Christianity” (or some denominational version of it) followed by the conjunction “and.”

This relational perspective was strongly consolidated with the publication of his early book on Christianity and Democracy in Global Context, which is a collection of the speeches given by renowned speakers (Desmond M. Tutu, Harold Berman, Richard John Neuhaus, Bryan Hehir, and Jean Bethke Elshtain, among others) at a four-day international conference convened by the Emory center in 1991. With a foreword by former U.S. President Jimmy Carter, who maintained strong academic ties with Emory University for four decades, the book examines Christianity’s positive and negative influences in shaping and consolidating democracies. The conclusion one draws from reading it, in line with Jacques Maritain’s stance, is that democracy was morally and legally enhanced when it became symbiotically related to Christianity.

Early modern Protestantism first embraced the democratic ideal; centuries later, modern Roman Catholicism followed suit, especially with the Second Vatican Council, but above all with John Paul II, who applauded the idea of civic participation and collaboration and peaceful succession among rulers. On the other hand, the tie between Orthodox Christianity and democracy is much weaker, and perhaps this partly explains why Orthodox-majority countries have lagged behind in the process of democratic transformation.

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While the relationship of Protestantism and law has continued to occupy him as a scholar, Witte took a much broader, pan-Christian and interdisciplinary view in *Christianity and Law: An Introduction* (2008), a volume coedited with his colleague and friend Frank Alexander. This marked the start of what we could call his expansion phase. In this volume, prestigious scholars from the fields of law, history, philosophy, and theology—including Luke Timothy Johnson, Brian Tierney, R. H. Helmholz, Don S. Browning, Michael J. Perry, David Novak, David Little, and Norman Doe, among others—analyzed the connections between law and Christianity in the different branches of legal knowledge, ranging from canon and natural law to contract, criminal, and procedural law. This volume constituted Witte’s roadmap for the coming years, as he eventually turned each chapter of the book into a new volume that further studied the relationship between Christianity and law in each specific area of law. Witte personally oversaw his areas of expertise and commissioned other experts to edit the remaining volumes.

First, Witte edited a volume on *Christianity and Human Rights* (2010), again with Frank Alexander. The book was prefaced by South African Archbishop Desmond Tutu, whose opposition to apartheid in his country resulted in his receiving the Nobel Peace Prize in 1984. “I can testify that our own struggle for justice, peace, and equity would have floundered badly had we not been inspired by our Christian faith and assured of the ultimate victory of goodness
and truth, compassion and love against their ghastly counterparts,” the Archbishop declared.\textsuperscript{38} Human rights are not a Christian invention, yet neither are they a creation of the Enlightenment. Rather, they derive from a combination of Jewish, Greek, and Roman teachings with the new and radical teachings of Christ based on the love of every human being with the same love of God. Christianity has illuminated the concepts of dignity, equality, freedom, compassion, and democracy that underlie the modern human rights paradigm, and it has deepened them with its insights into sanctity and grace.

In 2017, Witte and his friend and colleague Gary Hauk coedited the aforementioned study on \textit{Christianity and Family Law,}\textsuperscript{39} which analyzes the contribution of Christian thinkers from Saint Paul to John Paul II in shaping the doctrine and law of marriage and the family. It is undoubtedly one of the volumes where the inseparable unity between law and Christianity in the West is most evident, as Witte has shown in several other monographs, not least his \textit{Sins of the Fathers, From Sacrament to Contract, The Western Case for Monogamy over Polygamy}, and \textit{Church, State, and Family}.\textsuperscript{40} Three years later, in 2020, Witte published two more coedited volumes—one with Mark Hill, Norman Doe, and Dick Helmholz on the relationship between Christianity and criminal law,\textsuperscript{41} and the other with me on Christianity and global law, understood as a law beyond international law, where state interest and cooperation between states give way to a deeper, fuller human solidarity.\textsuperscript{42} Several other volumes in this series of introductions to Christianity and law are in print, most of them with forewords or chapters by Witte, engaging Christianity and freedom, natural law, justice and agape, private law, church law, international law, the laws of conscience, market regulation, migration, and taxation.\textsuperscript{43} Forthcoming in this series are new studies on Christianity and the law of alternative dispute resolution, capital punishment, child law, constitutional law, disability law, education law, evidence law, environmental law, health law, intellectual property law, labor and employment law, legal ethics, poor law, and social-welfare law.

Once the project had expanded and been applied to a broad variety of fields of law, Witte decided to embark on a major review, recapping the best of Christianity’s influence on law in a new, more comprehensive global work \textit{The

\begin{thebibliography}{9}
\bibitem{39} See the chapter by Helen Alvaré herein.
\bibitem{40} Mark Hill, Norman Doe, R. H. Helmholz, and John Witte, Jr., eds., \textit{Christianity and Criminal Law} (London: Routledge, 2020).
\bibitem{42} See list of introductions in Witte, “What Christianity Offers to the World of Law.”
\end{thebibliography}
Oxford Handbook of Christianity and Law. In this collection, which he and I coedited, more than sixty experts from five continents address the relationship between Christianity and law from a historical, theological, juridical, and philosophical perspective. The work sums up Witte’s four decades of work on this subject and, at the same time, is a new roadmap for studying this fertile relationship of Christianity of law historically and in our current age of secularization and globalization. Witte has come back to the ground he excavated thirty years ago and started work on a great building with solid foundations. There is still a long way to go, however.

Witte is also working on a multiyear project with his German colleague, the Heidelberg theologian Michael Welker, on the roles of law, religion, the market, family, health care, the military, and other institutions in character building—a project featuring, among other things, the civic and educational function of law. Law in accordance with justice distills moral values, thus contributing to the moralization of modern liberal societies. Hence the need to draw up a basic civil morality for modern liberal societies and to analyze the appropriate instruments, mechanisms, and procedures for cultivating and enforcing morality.

4 The Biographical Perspective: the Idea of the Christian Jurist

The second perspective from which Witte analyzes the relationship between Christianity and law is biographical. This is no longer just a matter of putting together two ideas and analyzing similarities, differences, and reciprocal influences and connections throughout history, but of ascertaining how Christianity and law are forged and intertwined in the minds and hearts of specific Christian jurists, philosophers, and theologians who, with their writings and actions, have guided law along the paths of justice. In essence, this biographical perspective is a projection of Witte’s own experience as a Christian jurist. Christianity is not a passing fashion, but rather touches upon an essential part of every person’s being as well as supernatural being. Ius ex persona oritur, we could say in the manner of the classics: “law comes from the person.”

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44 The Oxford Handbook of Christianity and Law.
45 See, for example, John Witte, Jr. and Michael Welker, eds., The Impact of the Law on Character Formation, Ethical Education, and the Communication of Values in Late Modern Pluralistic Societies (Leipzig: Evangelische Verlagsanstalt, 2021).
Witte knows better than anyone that Martin Luther had condemned jurists as “bad Christians” (Juristen böse Christen!), yet Witte’s own experience as a Christian jurist is much more decisive than the impulsive reformer’s whimsical cry. On this question, Witte prefers to side with Jimmy Carter, who, when asked about this question, answered, “It is a matter of what we Christians are going to do about democracy” and its law. Indeed, the relationship between Christianity and law has a strong biographical content that cannot be ignored.

The category of Christian jurist encompasses any Christians who have devoted themselves to the cause of justice in its broadest sense and have had a significant impact on law and the legal system. Being a Christian jurist does not necessarily entail having a law degree or having practiced law; rather, it involves having made an important contribution to law that has enlightened legal systems and political communities with Christian values. John Paul II, for example, never studied law. Even so, during his lifetime he was called “the Pope of human rights” and was awarded an honorary doctorate in law by the University of La Sapienza. Something similar can be said of the philosopher Jacques Maritain, whose contribution to the Universal Declaration of Human Rights makes him worthy of the title of Christian jurist. One could cite many more such examples: Isidore of Seville, Thomas Aquinas, Catherine of Siena, John Calvin, Martin Luther King Jr., Oscar Romero, and many others.

This biographical approach is based on the empirical fact that specific human beings, flesh and blood, are behind the significant developments and reforms of law, as is also the case in empirical science. Just as the history of the theory of relativity would not have begun in 1905 without the Swiss patent-office clerk Albert Einstein, so the concept of constitutional courts would not have taken hold in Western Europe in the 1920s without the Austrian-American jurist Hans Kelsen.

The biographical approach has great potential for the study of law and legal history because it shows both the complexity and ambiguity and even the accidental nature of historical and modern legal systems. What lies behind legal documents and rules are facts and, beyond them, people. The who of the...
person always prevails over the what and the how. To the extent that critical legal actors are Christians, the law and legal systems that they shape are, of necessity, imbued and permeated with their Christian values and beliefs. The reason is that legal systems are simultaneously a whole in themselves and thus, to a degree, self-sufficient, but also a part of and thus interdependent with other parts of society. Christian jurists participate not only in legal institutions and the church but also in many other institutions in their societies, thus carrying their faith into those other systems.

John Witte has used this biographical approach to the study of law and Christianity throughout his many monographs on the history of family law, religious freedom, and human rights. He has returned again and again to retrieve and reconstruct the work of many of the “legal titans” of the Christian tradition, as he calls them—especially Lactantius, Augustine, and Chrysostom among the Church Fathers; Gratian, Lombard, Hostiensis, Raymond of Peñafort, and Aquinas in the Middle Ages; Luther, Melanchthon, Calvin, Beza, Althusius, Cranmer, Hooker, and Vittoria in the Reformation era; Grotius, Coke, Selden, Blackstone, Adams, Madison, Jefferson, and Story among the early moderns; and Kuyper, Dooyeweerd, Maritain, Brunner, King, Niebuhr, and their modern progeny. One of Witte’s strengths has been to read these historical figures in and on their own terms and in their own contexts, but then to extract enduring lessons from their writings for the ongoing legal challenges of the tradition and of our day.

In 2005, Witte began to extend this biographical approach with an eventual eye to creating a multivolume and multiauthored series on Great Christian Jurists in World History. He began with the publication of The Teachings of Modern Christianity on Law, Politics, and Human Nature, in which—again in collaboration with Frank Alexander—he brought together a series of outstanding essays on central modern Roman Catholic, Protestant, and Orthodox Christian figures in the world of the relationship between Christianity and law. But it was really in 2015, with the appearance of the Cambridge Studies in Law and Christianity Series, that Witte expanded this project, commissioning volumes from legal historians around the world, which he has published in this Cambridge series (on the first millennium, England, Spain, France, the Netherlands, and the United States), in Norman Doe’s Law and Religion Series with Routledge (on Italy, the Nordic countries, Russia, Latin America, and Poland), and with Mohr Siebeck (on Germany) and Federation Press (on Australia). In
this biographical project, Witte has written specific chapters on jurists (Johann Oldendorp, John Calvin, Johannnes Althusius, John Selden, Abraham Kuyper, and Harold Berman),\(^{53}\) coedited the book on German jurists in collaboration with Mathias Schmoeckel,\(^{54}\) but above all set up teams, collected financial support, coordinated with publishing houses, and written forewords (for the Polish, Russian, Latin American, and Italian volumes).

Such an extensive project, in which the methodology has been steadily polished with experience and experimentation, and which involves so many different people, has inevitably produced mixed results. In each volume, one can criticize whether a particular jurist deserves the status of Christian in the strict sense, even whether the person chosen deserves the status of jurist. There are also notable absences; for example, Thomas More should have been included among the English jurists. Overall, however, and with ever greater success, most legal historians have risen and responded to this idea of reappraising the biographical perspective to legal history and appreciating the expansive category of a “Christian jurist.”

The fact that the project is divided into geographical areas and nations, rather than chronologically, apart from the volume on the first millennium, is also open to criticism. But Witte has mapped the path as he has gone along. Instead of outlining in advance a perfect methodology, which does not exist, and then applying it, what he has done is to explore the issues, analyze them, and gradually polish the methodology over time. Law, like cooking, entails a lot of artistry, and this can only be learned by practicing. The highly visible result is manifest and has served to let outsiders know what is happening with law and Christianity in each country studied. The strong language barriers and the local nature of law are two further real obstacles that only a global project like this one is capable of overcoming. While the project has prompted strong criticism from conventional legal historians, this is outweighed by the amount of support the project enjoys and the promise that it holds as it opens ever wider frontiers of law and Christianity.\(^{55}\)

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\(^{54}\) Mathias Schmoeckel and John Witte, Jr., eds., *Great Christian Jurists in German History* (Tubingen: Mohr Siebeck, 2020).

The third perspective from which Witte addresses the relationship between Christianity and law endeavors to build a general jurisprudential framework, based on Christian values, for a pluralistic society. Following in the footsteps of his mentor, Harold Berman, who at the end of his academic career devised an “integrative jurisprudence,” Witte is seeking theoretically to integrate and harmonize the Christianity-law relationship by creating a narrative suitable for a pluralistic, post-Christian society. No modern jurist has trodden this path yet, but, if I may say so, Witte’s subconscious has already prompted him to work on it. One only has to read the reflective conclusions of his latest historical books—reflections that are ever more extensive, ever more theoretical, and transcending the main historical topic of the book. One glimpses a change of focus in Witte’s intellectual project—from “retrieval” of the relationships of Christianity and law and the teachings of great Christian jurists to “reconstruction” of a Christian jurisprudence for our modern day.

Witte is a man of synthesis, an intellectual cartographer, adept at generating new understandable paradigms. He knows how to create narratives and convincingly explain religious and, in particular, Christian phenomena to anyone familiar with the world of the transcendent. He demonstrated this with his studies on Protestantism and law, as well as with his histories of marriage, family, and children, and of religion, human rights, and religious freedom. He is now on a relentless quest for a new paradigm between faith and law, between Gospel and culture in the context of a pluralistic and highly secularized society. After reflecting and heading such a large group of people for so many years, Witte now intends to offer the world a more personal and all-encompassing theoretical reflection on the relationship between law and Christianity. He does not aspire to be a theologian or a philosopher, which he is not, but a legal theorist of the relationship between Christianity and law in its broadest sense within the framework of the relationship between religions and law.

Witte judges that the necessary protection of nonbelievers and secular thought is not a sufficient reason to erect a Berlin Wall between law and religion, particularly between Christianity and law, as if their relation were a taboo subject. Any exclusion of religion from the public sphere will always be

57 See, for example, The Blessings of Liberty, 290–303.
58 See chapters by Helen Alvaré, Nicholas Wolterstorff, and Jonathan Chaplin herein.
artificial, because law has an unavoidable religious dimension. In the West, this religious dimension is mainly Judeo-Christian. It is not surprising that, in his acceptance speech upon receiving an honorary doctorate in theology from the University of Heidelberg, Witte used the metaphor of the cathedral to refer to law: “The law is like a massive medieval cathedral, always under construction, always in need of new construction. It stands at the center of the city, at the center of matters spiritual and temporal, at the center of everyone’s life.”

If, up to now, Witte has been occupied, as a historian of law, with telling us the story of how this cathedral was built, it now seems that he himself wants to participate in its design and construction, putting his best talents at its service.

As Witte is so fond of triads, some of which I have already mentioned, I will venture to turn to them in this initial phase of this new, more theoretical perspective in order to encourage Witte to continue along this path. In addition to the triads he has already generated, I offer four more that I think capture Witte’s thinking, and which I gladly submit for consideration and critique.

6 Christianity, Community, Culture

Christianity provides a unique metadimensional Trinitarian paradigm for the law, one that illuminates all the legal aspects from within and without. If the revelation of God as Father, Son, and Holy Spirit (Matthew 28:19) is the central mystery of Christian faith and the center of the whole of reality, this mystery must enlighten all human existence and dimensions, including the legal realm.

The doctrine of the Trinity understands God relationally. The Triune God is certainly a unique and absolute unity, the Absolute One, whose three divine persons manifest the pure communication of love, the most profound depths of free self-giving. Each divine person freely gives the plenitude of love to the others, glorifying them. This revealed truth serves to illuminate a united and diverse political community; the greater the diversity, the greater the unity, and the greater the unity, the greater the diversity. This sense of communal inclusion, which does not exclude other communities but rather affirms that all are part of a global community, calls for a cultural change. Our Western

59 Witte, lecture on receipt of honorary doctorate; and idem, “Afterword: The Cathedral of the Law,” in idem, God’s Joust, God’s Justice, 466–67.
60 On Witte’s triads, see Gary S. Hauk, foreword to Faith, Freedom, and Family, xix.
secularized culture has often promoted fragmentation, territorialization, and exclusionary nationalism.

7 Creation, Covenant, Conscience

Creation occupies a central place in Witte’s thought. It is a manifestation of God’s infinite love, which permeates the entire universe, and most particularly the human being, made specifically in God’s image and likeness (Genesis 1:27). Creation establishes a covenant between God and humankind over the created order. A covenant institutes a more solid and permanent framework than a contract, because the covenant includes the natural order of creation and assumes a conceptual framework of truths that cannot be altered by mere human consent. God does not enter into contracts, but God does enter into covenants. Moreover, every human contract that respects the natural order and puts God as a witness becomes a covenant (for example, marriage). Conscience is a divine light within human beings that helps them to interpret God’s will in every covenant. This creation-covenant-conscience triad clashes with a world vision based on mere chance without creation, where human liberty is reduced to simple freedom of choice without respecting the natural order, and the conscience is mistaken for personal conviction without a recognition of prior truths.

8 Law, Liberty, Love

Christianity has elevated law, liberty, and love to a new divine order. Law cannot be reduced to pure legalism because justice reaches all dimensions of reality and participates in the same created order (ius divinum). Liberty is a gift of God to fulfill our obligations to God, to ourselves, to others, and to the universe as such. Liberty is the necessary, though not sufficient, condition for fully loving God and, in God, all creatures and the created universe. Law’s mission is to protect this liberty as one of the most precious divine gifts, as it is to protect and impart justice: without justice there is no love, and love perfects justice by imbuing it with charity. This triad of love, liberty, and law is in direct

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63 The Blessings of Liberty, 290–303.
opposition to the triad that reduces law to legalism, freedom to arbitrariness, and love to personal satisfaction.

9 Sovereignty, Society, Solidarity

Witte employs a broad concept of sovereignty, inherited from Kuyper, which can be applied to God, to the nation-state, to the smaller political community, and to all institutions (family, church, school, business) and power structures that order society according to the principles of liberty and justice. Witte conceives society as a network of relationships and institutions united by the bonds of cooperation and solidarity, a solidarity born of the sharing of all human beings in the one and only image of a Triune God. This law of human solidarity, without excluding the rich variety of persons, cultures, and peoples, assures us that all men and women are truly brothers and sisters.

10 Evaluation and Impact

As I have indicated, Witte's work on Christianity and law is a reflection of his own life—a deeply Christian man, educated in the Protestant Reformed tradition, in love with history and law, and committed to the challenges of his time. Following the example of his mentor, Harold Berman, Witte has placed his faith at the service of the ideals of justice and law. Witte can be defined as a Christian jurist who has devoted himself primarily to the study of the relationship between law and religion from a historical perspective. He has done so primarily in the area of the influence of Protestantism, especially in the early stages of its first reformers—and, by extension, in the areas of human rights, religious freedom, and marriage and the family, which he has traced from classical and biblical sources to the latest legal developments.

Over time, Witte has spearheaded a bold and far-reaching project that aims to encompass the relationship between law and Christianity as such, in which more than five hundred scholars from five continents are collaborating, making him one of the leading scholars in the field. He is working on this contribution from three perspectives: a purely relational one, a biographical one, and a jurisprudential one. Despite having already borne much fruit, the project still requires greater methodological clarity and maturity. Witte is an instinctual and experimental thinker; he maps the scholarly and methodological path as he goes along, letting his sources and intuitions guide and inspire him. What he still needs to produce is an extensive programmatic series of publications.
that create a paradigm for the study of the relationship between Christianity and law in modern pluralistic societies. His article entitled “What Christianity Offers to the World of Law” is only a first draft of that bigger effort. Witte knows this and is working on it. The theoretical and jurisprudential part is fundamental to consolidate and complete his life-long project. This theoretical part could be based on the four alliterative triads that I now suggest, inspired by Witte’s works: a) Christianity, community, culture; b) creation, covenant, conscience; c) law, liberty, love; and d) sovereignty, society, solidarity.

64 Faith, Freedom, and Family, 57–66.