

**Excerpted from a review by Don S. Browning, University of Chicago, for
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The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered
John Witte, Jr. (Cambridge University Press, 2009)

[John Witte, Jr. believes that] the interaction between law and Christianity on illegitimacy is mixed if not downright pernicious. For much, although not all, of the many centuries of the interaction between Christianity and the law, illegitimate children – children born outside of legal marriage – were seen as objects of scorn and rejection.... Part of the condemnation of these unfortunate children was fueled by the Bible itself, for instance in Deut. 23:2 which banned bastards and their descendents “from the assembly of the Lord...for ten generations.” Or again when some Hebrew prophets threatened that “the offspring of an unlawful union will perish,” for they are “witnesses of evil against their parents when God examines them (Wisdom 3:16-17; 4:6).

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 a graven image... for I the Lord your God am a jealous God, visiting the iniquity of the fathers upon the children of the third and the fourth generations of those who hate me, but showing steadfast love to thousands of those who love me and keep my commandments” (Ex. 20:4-6; Deut. 5:8-10). Witte believes these passages are about the sin of idolatry and not the sin of adultery, fornication, or the illegitimacy of children born of such acts.

Nor can this rejection of the illegitimate be placed on the doorsteps 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 that commanded she be stoned. Jesus responded with the words, “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 followed with the words, “Neither do I condemn you. Go your way and from now on do not sin again” (John 8:12). But in spite of these more generous words, the gospel of John, I Corinthians, Galatians, and Hebrews still contain passages that echo the older condemnation of illegitimate sons and daughters for the sins of their parents.

The Church Fathers from the fourth to the sixth centuries took a less punitive stance toward illegitimacy. But, at the same time, they formulated an increasingly strict stance against fornication and adultery – any act that seemed to undermine the integrity and sanctity of marriage. Witte believes

these increasingly harsh codes set the stage for a return of older punitive attitudes. After a period of a more relaxed attitude toward nonmarital births in 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 really not until the 20th century that the unjust condemnation of the illegitimate began to melt away in theology and the 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 the average lawyer that “there were no illegitimate children, only illegitimate parents.”

But this shift of attitude does not mean that all is well with children born from 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, it is 68 percent. 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 have more problems with alcohol, drugs, and abiding by the law.

Witte recommends several interventions that both society and the churches should discuss. Some older remedies should be avoided, such as shotgun weddings or the imprisonment of 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 illegitimate offspring. Local communities should take more responsibility for such children as well. The practice of adoption should be promoted as a way of caring for children of transient unions. And finally, churches, voluntary organizations, schools, law, and even the state should promote legal marriage as the best context for conceiving children and raising them into responsible and socially productive adulthood.

This book has an important message about illegitimacy. It is also a fascinating and well-written primer on the emerging yet neglected conversation between religion and the law.