

131 LPT

Draft

Published as Brett T. Wilmot and John Witte, Jr. *God's Joust, God's Justice; Conversations in Religion and Theology* (17 October 2007), *Wiley on Line Library* <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1479-2214.2007.00121.x>

God's Joust, God's Justice: Law and Religion in the Western Tradition, Witte, John , Grand Rapids, Mich : Eerdmans, 2006 (ISBN : [0802844219](#)), xiv + 498 pp., Pb \$30.00

John Witte's latest volume is a fine contribution to the contentious contemporary academic debates about religion, law, and politics. His focus is less on the theoretical battles surrounding the relentless secularism of the dominant liberal tradition and more on the history out of which the modern paradigms of law and politics emerged in the West. In *God's Joust, God's Justice: Law and Religion in the Western Tradition*, Witte offers a fairly comprehensive narrative of the interplay of law and religion in the Western tradition, with particular emphasis on the American experience. This is a fine book and one worthy of serious attention, as it adds historical perspective to what often seems a largely ahistorical treatment of religion in law and politics that plays out in equally ahistorical arguments about the First Amendment of the U.S. Constitution. The end result is a compelling account of how law and religion have always been intertwined in the Western tradition and how the continued health of this tradition suggests that they should continue to be so.

I must admit that my own inclination is often toward the ahistorical in these matters, so Witte's book forced me to confront my biases. For those with similar preferences, Witte challenges us to be more holistic and nuanced in our approach to questions of religion in public life by becoming more sophisticated in our understanding of the historical interplay of law and religion in the Western tradition. Witte provides evidence that 'even today, the laws of the secular state retain strong religious dimensions and depend upon some of the enduring religious teachings of the West' (p. 26). Rather than focusing on Enlightenment arguments regarding the autonomy of law (and morality) from religion and the epistemic challenges to religious beliefs as valid sources for public discourse, Witte provides a more complex, historical picture of how religion and law have complimented and challenged each other in the Western tradition. It is a fascinating story.

Witte accomplishes this laudable goal using two complementary strategies. First, he provides us with a rich and detailed history suggesting that the rise of core ideas associated with human rights, liberty, and democratic government have been preceded by theological insights and debates within the West's religious traditions. Second, he turns to more contemporary topics, including our understanding of human rights, of the religious clauses of the First Amendment, of criminal punishment, and of marriage and family, in order to show how debates in each of these areas are informed by contributions and insights from our religious traditions, even when these contributions are not always obvious or recognized. Thus, the book as a whole provides both a historical account of the interplay of religion and law and evidence of this continued 'cross-fertilization' in both the theory and substance of contemporary legal and political debates.

In the first collection of chapters (one through four), Witte 'traces the religious sources and dimensions of Western rights talk' in four stages: 'classical Rome, the Papal Revolution, the Protestant Reformation, and the Enlightenment era' (p. 26). The thesis here is that the web of institutions, practices, and principles captured by the language of 'human rights' has a history that owes far more to religious sources than is often acknowledged. 'Contrary to conventional wisdom', Witte argues, 'the theory and law of human rights are neither new nor secular in origin. Human rights are, in no small part, the modern political fruits of ancient religious beliefs and practices' (p. 69). One could hardly find a blunter rebuke to modern secularism and its insistence that progress, security, and generally all the goods of modernity depend, in large part, on the privatization of religious beliefs and the continued secularization of the public sphere, particularly in law and politics.

So many of our contemporary discussions about religion, law, and politics focus on a conceptual analysis of the liberal tradition, and the historical narrative often goes no further back than to Thomas Hobbes, John Locke, and Immanuel Kant in order to provide the political and philosophical justifications for the rise of the modern secular state. This narrative credits the achievements of peace and stability largely to the secularization of law and politics in the West. As Witte notes, the resulting 'secular movements have removed most traditional forms of religious influence on Western law' (p. 26), failing, often, to credit or even acknowledge the historical role that religion has played in the rise of modern legal and political institutions and practices. Witte's history achieves at least two important results relevant to this debate. First, he convincingly shows that any simplistic juxtaposition of traditional religion and modern law and politics that suggests a fundamental antagonism between them regarding the importance of human rights is

simply misguided. Second, he makes a strong case that law and politics are both served by promoting and protecting an active role for religion in public life.

The first point is significant, but the second drives much of the argument of Witte's book. There is reason for concern regarding efforts, past and present, to exclude or marginalize religion in public life. One problem is that these efforts have not made religion any less powerful as a cultural force; rather, the result has been, in many cases, to force religious communities to view public culture (including the culture of modern law and democracy) as antithetical to authentic religious lives and values.¹ Moreover, as is too often apparent today, when theological sophistication in public discourse is unappreciated, many politicians are rendered inarticulate when seeking to engage religious communities except in the most basic (and often base) terms. From Witte's perspective, this is a disaster:

Religion is an ineradicable condition of human lives and communities. Religions invariably provide many of the sources and 'scales of values' by which many persons and communities govern themselves. Religions inevitably help to define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. Religions must thus be seen as indispensable allies in the modern struggle for human rights. (p. 68)

In other words, we ignore and marginalize religion at our peril. The exclusion of religions from the public realm of law and politics and the inability to engage robustly with our theological heritage and religious communities both undermines a powerful potential resource in support of human rights and distorts many of these religious traditions by encouraging a false dichotomy between the fruits of modern political and legal principles and authentic religious life.²

The middle chapters of the book (5 through 9) cover 'Law and Religion in American History and Today'. Here, Witte provides both historical origins and normative readings of the U.S. Constitution's First Amendment. Witte also critically scrutinizes the 'wall-of-separation' language that has so dominated the last century's treatment of religion in public life. The chapters present a fascinating account of the radical nature of the colonial and Revolutionary periods. Children of the Protestant Reformation and in the midst of a break with the *ancien régime*, the public intellectuals of that time, theologians and philosophers alike, exercised enormous influence in this fluid period of our history. We are given a window to this period through a very thoughtful and detailed contrasting of the efforts by

John Adams and Thomas Jefferson to shape the new republic regarding the role of religion in law and politics.

With so much at stake, it is illuminating to see just how essential theological concepts and concerns were in articulating and defending the legal and social arrangements that prefigured the rights and liberties that would be eventually enshrined in our state and federal constitutions. Our own public discourse cannot but compare unfavorably in contrast with the philosophical and theological sophistication of the politicians and divines of this period, and Witte does a wonderful job presenting these voices to us, drawing widely from representatives from this period. It is the juxtaposition between Adams and Jefferson, however, that drives much of the middle third of the book. 'Both Jefferson and Adams', Witte points out, 'were self-consciously engaged in a new experiment in religious liberty' (p. 248), and an examination and understanding of their differences proves invaluable in tracing the evolution of the American experiment with religious freedom.

In Chapter 5, Witte takes us back beyond the more traditional focus on Jefferson and his rhetoric of a wall of separation between church and state. Here, Adams and Puritan theology provide the lens through which we see some of the earliest systematic reflections on religion in the life of the colonies and the new nation. The language of 'covenant' dominates here, and Witte suggests that 'Adams came to see this Puritan covenantal theory of ordered liberty and orderly pluralism as a critical antecedent, analogue, and alternative to the Enlightenment contractarian theories of individual liberty and religious pluralism that were gaining prominence in eighteenth-century America' (pp. 143-144). The story here is one of mutual influence between the evolving presuppositions of Puritan theology regarding the natural liberty that God bestows on all persons in calling them to covenant with God and the need to protect this liberty at a constitutional level under law, especially as this liberty was exercised in the form of a growing religious pluralism. 'By the eighteenth century', suggests Witte, 'Puritan writers began to view this covenantal relationship between God and persons in more open and voluntarist terms' (p. 148). This theological concern with individual liberty of conscience led to greater tolerance of the religious diversity that was the inevitable result of the exercise of such liberty. He concludes, 'It was only a short step from this [theological] formulation to the more generic and generous religious liberty guarantee of the 1780 Massachusetts Constitution that John Adams drafted' (p. 148).

Through this narrative, we come to understand how religious liberty as a political principle is rooted in a theological understanding of the individual's relationship to the community

and to God. As Witte concludes at the end of Chapter 5, 'American religious, ecclesiastical, associational, and political liberty were grounded in fundamental Puritan ideas of conscience, confession, community, and commonwealth. American religious, confessional, social, and political pluralism, in turn, were bounded by fundamental Puritan ideas of divine sovereignty and created order' (p. 168). At least in its earliest formulations, the political principle of religious liberty was meaningful precisely because of the theological framework out of which it grew and the social context in which it was applied: a Christian commonwealth comprised of the natural (Christian) diversity that one would expect to arise under conditions of 'ordered liberty and orderly pluralism'. It is important to note, however, as Witte does later in Chapter 8, that this first expression of religious liberty required 'the state to balance freedom of many private religions with the establishment of one public religion' (p. 247). On this model, to be meaningful, individual liberty requires public order based on common values. While individual conscience must not be coerced in matters of religion, liberty of conscience must be protected while recognizing that 'every polity must establish by law some form of public religion, some image and ideal of itself, some common values and beliefs to undergird and support the plurality of protected private religions' (p. 247). Witte notes that this model of religious liberty 'dominated the nation' in the first century and a half of its existence (p. 249).

In Chapter 8, we find this earlier account of religious liberty associated with Adams contrasted with the Jeffersonian model that is more familiar to us today. 'To end a millennium of repressive religious establishments, we are taught, Thomas Jefferson (1743–1826) sought liberty in the twin formulas of privatizing religion and secularizing politics' (p. 243). To Witte's credit, he challenges the ways in which this 'Jeffersonian logic' has been exercised in jurisprudence, and he adds important nuance to Jefferson's position, noting that 'Jefferson's views on disestablishment and free exercise [are] considerably more delphic than was once imagined' (p. 244). Between the ' "tempered" religious freedom' of Adams and the 'robust freedom of exercise' of Jefferson, Witte seeks to find a third way of conceiving of religious liberty, one that draws insight from both of these predecessors. He describes this as movement toward a 'new freedom of public religion' (p. 256), and he traces this through an analysis of evolving Supreme Court rulings on religious themes. Among the conclusions he reaches here are 'that public religion must be as free as private religion', 'that freedom of public religion sometimes requires the support of the state', 'that public religion cannot be a common religion', and 'that freedom of public religion also requires freedom *from* public religion' (pp. 260–261 [original emphasis]).

All but the last claim might draw skeptical responses from those who take a more Jeffersonian narrative for granted; however, Witte offers good reasons for rethinking the interplay of religion and law in the public sphere, reasons informed by history and yet conscious of the distinctive character of modern life. Public religion needs to be as free as private religion because religion, as a cultural repository for values and conceptions of the good life, 'provide leaven and leverage for the polity to improve' (p. 260). Because of the degree to which government touches all aspects of our lives, 'few religious bodies can now avoid contact with the state's pervasive network of education, charity, welfare, child care, health care, family, construction, zoning, workplace, taxation, security, and other regulations' (p. 260). Thus, the demand of 'complete separation is impossible', and providing 'public religious groups and activities with the same benefits afforded to all other eligible recipients' simply promotes religious freedom and should not raise the specter of religious establishment (pp. 260–261).

In addition, while Adams may have been confident that a ' "mild and equitable" establishment of one public religion' (p. 248) was consistent with, and necessary for, preserving private religious liberty, Witte is not. He is clear that by defending the freedom of public religion he is not seeking a 'common religion' but rather the interaction of 'a collection of particular religions' in the public sphere: 'It must be a process of open religious discourse, not a product of ecumenical distillation. All religious voices, visions, and values must be heard and deliberated in the public square' (p. 261). Finally, while seeking to temper what has become too great an emphasis on protecting the nonreligious from unwanted expressions of public religion, Witte acknowledges the need to ensure that the state does not 'coerce citizens to participate in religious ceremonies and subsidies that they find odious' (p. 261). That being said, he insists that the nonreligious should take more individual responsibility to engage in 'voluntary self-protections from religion' (p. 262) rather than relying on the blunt instrument of constitutional law to strip the public sphere of religious content and thereby burdening religious freedom unnecessarily.

The final third of the book focuses on 'Law, Religion, and the Family'. The first two sections provide a kind of comprehensive framework for understanding law and religion in the Western tradition in general and in the American experiment with religious freedom in particular. The last section's more focused exploration of marriage and the family in the Western tradition is offered as further confirmation of the complex cross-fertilization of religion and law as manifest in past and present treatments of family and marriage. Each chapter is interesting in its own right, and the topics certainly provide support for Witte's

general thesis. For those with particular interests in marriage and the family, there is significant value to be gained from Witte's fluid movement between history and contemporary themes of marriage and family life. In fact, many of these chapters could serve as models for how to use history and tradition constructively without succumbing to a deadening traditionalism. I gloss over this section here in the interests of brevity, not from any desire to minimize the value of this material.

The conclusion of the book seeks to challenge legal scholars and representatives of the Western religious traditions in terms of how each group engages matters of religion and law. After a brief survey of the evolution of legal study in the United States, Witte calls for a 'new paradigm . . . to take full account of the religious sources and dimensions of law' (p. 457). As his historical narrative has revealed, law and religion are institutionally, conceptually, and methodologically related. 'Law gives religion its structure', and 'religion gives law its spirit' (p. 460). He concludes: 'Law and religion . . . are two great interlocking systems of ideas and institutions, values and beliefs. . . . Without law, religion decays into shallow spiritualism. Without religion, law decays into empty formalism' (p. 461). Having made a compelling case for broadening and deepening our treatment of religion and law in modern life by reclaiming the rich history of their interplay in the Western tradition, Witte challenges legal scholars and theologians alike to contribute to what might be called a cultural renaissance in their treatment of religion and law.

Witte notes with approval that 'in recent years, American legal education has become more open to studying religious sources and dimensions of law' and that 'a growing number of law schools now also teach courses in Christian canon law, Jewish law, Islamic law, and natural law' (pp. 461-462). He also recognizes that there are several challenges that need to be overcome if this trend is to continue successfully. Among these is a need for more dialogue between Western Catholics and Protestants, on the one hand, and the Eastern Orthodox tradition, on the other (p. 462). Additionally, Witte hopes that more scholarly attention will be paid to those figures that continued into the modern era to champion a more integrated approach to religion and law. As he notes, 'many of the best accounts of the history of Christian legal, political, and social thought stop in 1625[,] . . . the year that the father of international law, Hugo Grotius (1583-1645), uttered the impious hypothesis that law, politics, and society would continue even if "we should concede . . . that there is no God, or that the affairs of men are of no concern to him" ' (p. 463).³ As resources for providing an alternative to the 'great secular projects of the Enlightenment',

Witte suggests that these forgotten voices need 'to be retrieved, restudied, and reconstructed for our day' (p. 463).

A third challenge in the project being proposed by Witte is to make 'modern Christian teachings on law, politics, and society more concrete' (p. 463). 'The legal structure and sophistication of the modern Christian Church as a whole', he insists, 'is a pale shadow of what went on before' (p. 464). Having defended a more expansive role for public religion in modern law and politics, Witte wants to be sure that the church does not 'lose its capacity for Christian self-rule . . . [nor] its members lose their capacity to serve as responsible Christian "prophets, priests, and kings" ' (p. 464). The goal, he says, is 'to help Christians participate in the public square in a manner that is neither dogmatically shrill nor naively nostalgic but fully equipped with the revitalized resources of the Bible and the Christian tradition in all their complexity and diversity' (p. 464).

His fourth challenge is aimed at members of the Christian community as a whole (Catholic, Protestant, and Orthodox) 'to develop a rigorous ecumenical understanding of law, politics, and society' (p. 464). Witte argues that 'few studies would do more both to spur the great project of Christian ecumenism and to drive modern churches to get their legal houses in order' (p. 464). In other words, while the work of reconciliation around the theological divisions separating these great traditions may continue for generations to come, 'there is more confluence than conflict in Catholic, Protestant, and Orthodox understandings of law, politics, and society, especially if they are viewed in long and responsible historical perspective' (p. 464). In this case, the mundane may shepherd the spiritual: efforts to elaborate common ground on worldly matters of law, politics, and society may ultimately inspire more trust and confidence when theological differences are the focus.

Finally, Witte sees the history of the Western tradition as one strand of an even more complex web of Christian narratives regarding the interplay of religion, law, politics, and society. 'Christianity has become very much a world religion. . . . Strong new capitals and captains of Christianity now stand in the south and the east – in Africa, Korea, China, India, the Philippines, Malaysia, and well beyond' (p. 465). The experience of Christian faith in these locals and the differences in understandings of theology and anthropology may provide unique and challenging alternatives to the Western experience. As Witte notes, 'It would take a special form of cultural arrogance for Western and non-Western Christians to refuse to learn from each other' (p. 465). Thus, in the end, Witte sees his own project as contributing to an important interdisciplinary reclamation project in the West and as an initial offering in an international project of intra-Christian dialogue on law and religion.

I hope that this review does some justice to the scope of Witte's book. It is impressive in many ways, not least in its ambitions to force a significant reevaluation of what our history tells us about the rise of modern paradigms of law and politics and the role that religion has played. It is an ambitious and generous volume that will, I believe, prove an excellent resource as we continue to wrestle with the complexities of the modern experiment with religious freedom. When combined with recent scholarship by philosophers and political theorists challenging the hegemony of the liberal tradition's secular model of law and politics,⁴ Witte's project suggests that we are, indeed, living in interesting times. With that in mind, I want to end this review by raising a few questions raised by Witte's book.

I applaud Witte's achievements here, and I tend to agree with the conclusions reached, particularly in the middle section of the book, regarding the importance of defending and promoting a more public role for religions. I share, too, his vision of an 'open discourse' in which 'all religious voices, visions and values must be heard and deliberated in the public square' and in which 'all public religious services and activities, unless criminal or tortuous, must be given a chance to come forth and compete, in all their denominational particularity' (p. 261). My concern is that while there has been a great deal of theoretical and historical work done recently to justify this more expansive role of religion in public life, there has been too little focus on working out the details of how such a discourse would work. There remains a tension, I think, that needs to be resolved between the Enlightenment's insistence on a common human reason as the basis for confidence that 'truth is great and will prevail if left to herself, . . . unless by human interposition disarmed of her natural weapons, free argument and debate',⁵ and the position, common among the religious and nonreligious alike, that religious convictions cannot be justified through rational argument. Witte is right that we cannot follow John Adams in relying on some common religion to ground an 'ordered liberty and orderly pluralism'; however, to what common sources can we turn to frame the debate in which all religions compete 'in all of their denominational particularity'?

Here, I think, is where the historical narrative that Witte offers and the theoretical debates to which I have made brief reference need to be brought together. The objective should be to work out, as far as possible, the normative requirements and presuppositions of a truly full and truly free public debate in which religious and secular accounts of human nature, human goods, and the good society encounter one another on fair and equal terms. I believe that neither historical arguments based on the role that religions have played in law and politics in the Western tradition, nor philosophical arguments that presume against the

rationality of religious convictions, are sufficient for grounding such a discourse. And contrary to the nonfoundationalist alternatives suggested by Nicholas Wolterstorff, Christopher Eberle, Michael Perry, and Jeffrey Stout, among others, I would argue that such grounding is necessary.⁶ Thus, I am curious how Witte imagines the public debate opened, as he suggests, to the full range of religious diversity and denominational particularity. Are there common norms and standards of appeal in such a discourse for Christians and non-Christians, theists, atheists, and agnostics? Is victory in this competition of ideas measured solely in pragmatic terms of actual political outcomes, or can we appeal to something beyond consensus by which our claims are ultimately measured? Without the Enlightenment's faith in common human reason and experience as the standard and subject of rational discourse, to what can we appeal together in spite of our deep religious and philosophical differences? These are not necessarily questions that should have been raised and answered in Witte's very fine book, but the thesis of the volume makes such questions unavoidable once we turn from his enlightening account of how religion and law have been related in the Western tradition to the question of how we believe they should continue to be related today and what this might look like in practice.

Response to Brett Wilmot

By John Witte, Jr.¹

¹ Emory University, USA

I am grateful for Professor Wilmot's generous and thorough review of *God's Joust, God's Justice*. He accepts the book's invitation to the reader to become a fellow traveler through the complex history of the interaction of law and religion in the Western tradition. He concludes, as I hope other readers will, that such a history is a valuable caveat if not corrective to the often abstracted and formalistic nature of contemporary discussions about the relationships among law and theology, politics and religion in the United States and elsewhere in the West. And he sees that this history provides persons of (the Christian) faith with a valuable resource to counter what he characterizes as the 'relentless secularism of the dominant liberal tradition'.

Professor Wilmot asks important questions toward the end of his review about the ultimate lessons of the Western tradition of law and religion for the 'normative requirements and presuppositions of a truly full and truly free public debate' between

religious and secular accounts of 'human nature, human goods, and the good society'. He notes the valuable contributions to these debates by such religious philosophers and theological ethicists as Alasdair MacIntyre, Stanley Hauerwas, Jeffrey Stout, and Michael Perry – and one might add Robert Bellah, Don Browning, Martin Marty, Jean Elshtain, Charles Taylor, and others. Wilmot invites my reflection on how an understanding of the history of law and religion can inform these contemporary discussions.

This is not so easy an assignment as it might appear. 'As an historian, you must be very reluctant to go normative', one of my old history professors warned. 'History and prophecy do not readily mix'. Others professors intoned gravely against the cardinal sin of 'Whig historiography' or 'winner's history' – the penchant for focusing on the history of only those ideas and institutions that have survived or 'won' in our day, and deprecating or ignoring those that vanished or were vanquished.

In the quarter century since absorbing those schoolboy instructions, I have come to realize that such prejudices have their own ample dangers of tempting historians to an antiquarian obscurantism and pretended objectivity that can do even more violence to historical texts and traditions – let alone modern readers – than the great original sin of an historian going normative. *God's Joust, God's Justice* is, in fact, a bit of a declaration of independence from such youthful follies, and a small start at rethinking the meaning of a living tradition of law and religion in the West and beyond.

As I indicate in the opening and closing sections of the book, I have gradually settled on a method of doing legal history, as an historian, with three 'r's' in mind: *retrieval* of the religious sources and dimensions of law, politics, and society in the Western tradition, *reconstruction* of the most enduring teachings of the tradition for our day, and *reengagement* of an historically informed religious viewpoint with the hard issues that now confront church, state, and society. I also try to bear three 'i's' in mind. Much of my historical work is *interdisciplinary* in perspective, seeking to bring the wisdom of religious traditions into greater conversation with law, the humanities, and the social sciences. It is *international* in orientation, seeking to situate American debates over interdisciplinary issues within a comparative historical and emerging global conversation. And it is *interreligious* in inspiration, seeking to compare the legal teachings of Catholicism, Protestantism, and Orthodoxy, sometimes those of Judaism, Christianity, and Islam as well. *God's Joust, God's Justice* is something of an apologia for and application of this historical methodology.

Evidently, the first 'i' and the third 'r' in my methodology have not come through clearly enough: how to do 'interdisciplinary reengagement' in a way that might appeal across disciplinary lines to someone in theology, philosophy, or ethics. This is still a work in progress for me, but the book has several examples of how to undertake this – and this in many ways is the challenge of the next several books that I have in mind if not on the writing desk.

One of my techniques is to identify some of the enduring principles of the tradition and then show how they might well work out in our day. I spend a lot of time articulating such principles in the opening chapters of *God's Joust* on human rights, democratic governance, constitutional order, rule of law, and religious liberty. For example, in the trio of chapters on religious liberty in American and international perspective, I identify a whole series of principles or 'Golden Rules' of religious liberty – liberty of conscience, freedom of exercise and expression, religious equality and nondiscrimination, plurality of forms and forums of religion, separation of church and state, and disestablishment of religion. I dig these principles out of the tradition, track down their mixed pedigrees in Catholic, Protestant, Republican, Evangelical, and Enlightenment thought and practice alike, show how they were balanced and applied in various historical contexts, and then press for the repristination and application of these principles of religious liberty in the West, and where apt beyond the West as well.

Another technique is to show the enduring vitality and wisdom of the 'practical reason' of the tradition in dealing with hard issues and institutions at the intersection of law and religion. This technique is featured especially in the several essays in *God's Joust, God's Justice* on the theology and law of the family, a section of the book which Professor Wilmot does not dig through as thoroughly. Here, one sees 2500 years of oft-wise reflections on and examples of how marriages are to be formed, maintained, and dissolved; what roles, rights, and responsibilities husbands and wives, and parents and children have vis-à-vis each other and other actors in society; what places, powers, and prerogatives nuclear and extended families must have in society and culture, and much more. The Western tradition has many examples – and many counterexamples – of how sex, marriage, and family life can be guided and governed, routinized and reformed to deal with these and other questions – at the macro and micro levels. One of my efforts in this and other volumes is to retrieve and reconstruct this tradition of practical wisdom and show how it can inform the laws and theologies of both religious and political communities.

I learned a lot about the study of marriage and family, especially as a young Turk, from the distinguished University of Chicago don, Don Browning with whom I have been privileged to work on several projects over the past fifteen years. Professor Browning and I have edited a couple of books together, and are at the early stages of writing a volume on *Christian Marriage and Marriage Law* that will refine and expand some of these methodological questions. In a recent book, edited with David Clairmont, *American Religions and The Family: How Faith Traditions Cope with Modernization and Democracy* (Columbia University Press, 2007), Browning lays out a number of ways that Christian and religious communities and traditions can approach modern questions of marriage and family life. I am attracted to the Browning-Clairmont typology of approaches, not only as they affect marriage and family questions, but a range of other issues of law, politics, and society as well. This is something of variation on H. Richard Niebuhr's classic typology in *Christ and Culture*, but they go well beyond Niebuhr.

Browning and Clairmont describe, first of all, a dynamic of *evolution*. Many religions, they show, are not univocally opposed to reason, modernity, or even political liberalism. Rather, 'interpretive strands within a religious tradition often see modernization as actually advancing human life'. In this sense, even though 'modernization may loosen the faithful from the authority of tradition', those who remain may also use reason 'to critically challenge the traditional authority structures through its critical deployment'. 'Some groups within a tradition may see this as threatening, while others see it as an important advance in a tradition's thinking'.

A second, and perhaps more moderate stance that religious traditions take to the challenge of modernity is that of *accommodation*. Here the faithful evince 'an ambivalent, but mostly optimistic relationship with modernizing tendencies', accepting aspects of modernity considered good and valuable, even as they select and reject from their traditions. Both evolution and accommodation require a certain amount of religious adjustment to the politics and cultural modernity, while not amounting to a wholesale embrace of secularism.

Browning and Clairmont's third principle, *modulation of distinctiveness*, may be the most demanding in terms of requiring religion to rethink some of the conditions of its relationship to the *polis* and the *saeculum*. *Transformation* is a fourth principle that they identify – not only religion transforming culture, but culture transforming religious tradition. Here, as in law and religion in the West, there is a dynamic and dialectical pull on both sides. Finally, Browning and Clairmont identify a principle of *strategic limitation*, whereby religious traditions seek to 'limit the influence of potentially damaging but

occasionally beneficial dominant cultural norms' through a highly selective, but by no means complete rejection of modernity. They do not suggest a hierarchy or scale among these various religious forms of interaction with contemporary political debates and transformations afoot in familial life. They are simply different strategies, each of which can be observed and has proven serviceable to religious traditions negotiating contemporary family life in the United States.

These five strategies of engagement by religious communities reach beyond the confines of religion and law, and beyond the shores of America. They provide me at least, and hopefully Professor Wilmot as well, with a useful grammar and grid for thinking further about 'the weightier matters of the law' historically, currently, and in the future.