Using the form below you can split a topic in two, either by selecting the posts individually or by splitting at a selected post.

New topic title

Forum for new topic: The Religion & Culture Web Forum

Split selected posts  Split from selected post

Welcome to the Religion and Culture Web Forum's public discussion board for May 2008. In this thread you will find the invited responses from Brian Bix, Don Browning, Christine Hayes, David Novak, and Charles Reid, Jr.

To leave your own question or response to John Witte's essay or to another posting, choose "post reply." In order to submit a comment, you must register with a personal user ID and password.

Debra Erickson
Editor, Religion and Culture Web Forum

John Witte, Jr.'s essay shows why he is one of the most valuable contributors to current debates about marriage. His work displays the benefit of unearthing and reflecting upon the historical background of our current practices, thereby infusing greater depth and nuance into our understanding of those practices and our debates about them. Prof. Witte’s work is especially useful because it reminds us of the religious origins of many our institutions, helpfully tracing these roots through Catholic, Protestant, Jewish and Islamic traditions. All of this is in contrast to the unfortunate tendency in many parts of the Academy to cleanse ideas of any religious coloring they once had.

The religious covenant traditions also remind us of important lessons about marriage that we manage too often to forget: that there is a
social interest in citizens’ marrying, and staying married (especially, but not exclusively, when there are children born to the marriage); and that it is both unfair and unwise to have an imbalance between how hard it is to get out of a marriage and how hard it is to get into the marriage.

In the short space I have, I want to offer some thoughts relating to current family law practice and doctrine to supplement the insights Witte has given us about marriage and covenant marriage. As Prof. Witte indicates, covenant marriage laws have been passed in only three states: Louisiana (passed in 1997), Arizona (1998), and Arkansas (2001). Though similar proposals have been considered by many state legislatures, none have passed since 2001, and there is little indication of many (or, indeed, any) passing in the near future. There is a need to reflect on why there has been so much resistance to this proposal, given that it creates no mandatory rules, but only a new option for those who choose it. There is also a need to explain why the take-up rate has been so low (around 2% or 3%) in those few states where there was sufficient support for covenant marriage for the law to be passed.

Obviously, in general, it is better that people take their marital commitments seriously than that they do not. However, we need to be reminded that the relationship of culture, religion, law, and divorce rates is (unsurprisingly) very complex. Divorce and marriage rates are full of unexpected data, difficult to interpret, as the following examples attest. First, contrary to popular belief, divorce rates in recent years appear to be on a steady decline. Second, many of the areas of the country that are the most religious are also those with the highest divorce rate. Third, women are far more likely than men to file for divorce (leaving some to speculate that the rising divorce rates of prior decades was a product of men who continued to behave badly – through domestic violence, adultery, and other misbehavior – while changing norms and greater equality in the workplace made divorce more of an option for badly treated women than it had been before). Fourth, the marriage rate in certain minority communities is far lower than the national average, a fact that is notoriously hard to explain, but some attribute to different understandings of marriage (where the men of those communities demand more traditional, hierarchical marriage, and the women demand a more egalitarian marriage).

As for the value of being able to enter a binding commitment to abide by religious rules or religious tribunals, I admit to ambivalence. On one hand, I think the ability to enter binding (and legally enforceable) agreements generally extends autonomy, though there need to be some public policy limits (as there are today with the enforcement of secular premarital agreements). Also, the ability to enter religious agreements would be in some tension with our respect for sincere changes in religious belief: if one member in a couple no longer feels affiliation with (e.g.) the Islamic or Orthodox Jewish community, is it right to still subject him or her to the dictates of that community? I
think that this is a genuinely hard question (even putting aside First Amendment concerns about enforcing such arrangements).

Prof. Witte is right to bring our attention to the role religion has played, and still can play in making marriage a better and more lasting institution, but the proper role of law in all of this is harder to ascertain.

Brian H. Bix
University of Minnesota

The covenant marriage initiatives of Louisiana, Arizona, and Oklahoma received attention in the news media when they first began. Mainline churches, however, have ignored this movement. Yet this experiment raises important questions for public theology. We should recall that no set of issues received more public attention from both Protestants and Catholics over the last 400 years than marriage and family. This was true at least until the middle of the 20th century.

John Witte states that the covenant marriage option is an answer to the emerging idea that marriage is only a private contract that can be easily established and broken. Although this image of marriage gained ground in the Enlightenment, Witte believes the rise of no-fault divorce helped consolidate it as the modern legal framework of marriage. Since covenant marriage requires premarital counseling, the signing of a document about the meaning of covenant marriage, and counseling or a two-year waiting period before a divorce, it is anything but a freely and easily made and broken private contract.

What is at stake, therefore, in covenant marriage is the legal and cultural meaning of marriage. It is a small beachhead in legal theory and practice for the return of an older, although now reconstructed, view of marriage. Witte is correct in suggesting that covenant marriage is a response to the idea of marriage as a private contract. No-fault divorce was one of the sources of this more private view, but there are other sources as well. A series of Supreme Court rulings beginning in the 1960s dealing with contraception, reproductive rights, abortion, interracial marriage, and same-sex relations have emphasized privacy and liberty as key components of marriage and other sexual relationships.

In addition, there are new efforts to give legal recognition and protection to what is now called “private ordering” of a variety of intimate relationships. The doctrine of private ordering is central to the proposals for family law reform in the prestigious American Law Institutes’ (ALI) 2000-page report titled Principles of the Law of Family Dissolution (2002). [1] University of Utah law professor Martha Ertman

Anonymous
believes that the Principles systematizes what is already happening in family law. She writes, “...family law already defers to private ordering in many instances, and indeed increasingly tends toward privatization.”

What does this mean? It means that law is taking a step beyond private contracts witnessed by the state. It is honoring in the sexual field however people have decided to order their lives – whom they live with, have intimate relations with, have children with, and when such relationships end and then get refigured into new relationships. The new law of private ordering is less a law about private contracts than a law about implicit contracts in private relationships that are initially formed, dissolved, and reconfigured outside the witness of the law. In searching for a metaphor to conceptualize this new direction, Ertman comes up with the metaphor of the “handshake,” but even then, the implicit handshake.

The doctrine of private order is the hot, cutting edge of most contemporary family law theory. It means that law dealing with sexual relationships only functions to solve disputes when private ordering goes wrong. Note the title of the ALI report; it concerns family “Dissolution,” not family formation. As Boston University law Professor Linda McClain says, law should respect and follow, not lead or channel, the “self-governing” inclinations of its citizens. Support for private ordering also comes from leading family-law scholars such as Stanford’s Lawrence Friedman, Emory’s Martha Fineman, University of Missouri’s June Carbone, Arizona State University’s Ira Ellman, and Duke University’s Katherine Bartlett.

This doctrine is leading toward a growing equivalence between marriage and cohabitation, giving parental and visitation rights to multiple adults in a child’s life, using marriage-like privileges to support a variety of nonmarital adult interdependent living arrangements, and in the hands of scholars such as Martha Fineman, toward delegalizing marriage altogether and extending its privileges instead to support a variety of other dependent adult situations.

Covenant marriage is not about eliminating or discouraging state support of needy adults and children. It is about reconstructing our legal and cultural image of marriage and family formation. It tries to reinstitute the channeling functions of family law, but in a non-coercive way. Interesting research is coming from the new institutional economics applied to both the social sciences and law that seems to support the wisdom of covenant marriage as a legal concept. Notre Dame Law professor Margaret Brinig and the recently deceased University of Virginia sociologist Steven Nock have done amazing research showing that legal marriage – more than wealth, education, and other variables – correlates best with good outcomes for child wellbeing.

They demonstrate that legal promises, witnessed by community, make
a difference in a couple’s trust and willingness to give unconditioned love in a marriage. Using large data sets of longitudinal studies, they demonstrate the significant difference between cohabitation and marriage in producing investment in the relationship – an insight that even the prestigious Principles of the Law of Family Dissolution has not achieved. Legal promises have powerful “signaling” capacity that instill trust, lead couples to invest more in their relationship, and inspire more help and support from extended family and community. [3] The Brinig-Nock research helps us understand the social consequences of public covenants, in marriage and other sectors of society. [4]

Finally, Nock himself studied the consequences of the covenant marriage legislation in Louisiana. Although only a small portion of the population has elected the covenant option, it seems to have positive effects over a period of time. Principally, it helps couples value the institution of marriage itself. They learn to value the institution rather than simply the ups and downs of their daily interpersonal relationship. They divorce less and feel more secure in having children. In short, institutions seem to make a difference, even in our intimate lives. The idea of covenants, witnessed by community, or God, or both, seems to convey this truth.

Don Browning
University of Chicago


Anonymous

John Witte’s essay, “More Than a Mere Contract,” shows what many of us have long known, that Professor Witte is the leading scholar of law and theology at work today. This essay is based on his magisterial book, God’s Joust, God’s Justice, yet it is more than a synopsis of that
book. Instead, he applies the findings and conclusions of that book to the question of “covenant marriage,” something already instituted by three states of the United States of America and under consideration by more than half of the others.

Professor Witte is clearly in favor of this reinstitution of marriage as more than a mere contract in order, as he puts it, “to help offset the corrosive effects of America’s experiment with a private contractual model of marriage.” His essay is a reasoned and learned argument for a retrieval of the status quo ante of marriage in the West. It is not what some liberal critics of covenant marriage will no doubt term a “reactionary” position.

As he has done in his previous work on the history of marriage law, Professor Witte shows the religious precedents for marriage as a covenant, even though he carefully indicates this does not lead to any argument for religious prerequisites for any kind of civil marriage, even for a kind of marriage that borrows from the religious concept of covenant. In this response I would like to emend his point about the role of contract in traditional Jewish marriage, by which I hope, nevertheless, to actually enhance his overall case for the primacy of covenant in Jewish marriage especially [see Part 1 below]. I would then like to make a more philosophical point about the institution of covenant marriage in American law, viz., that it might be too little and too late for the crisis in the institution of marriage itself in western secularized societies [see Part 2 below].

Part 1-------

Concerning Jewish marriage Professor Witte writes: “Jewish . . . tradition[s] . . . have long taught that marriage is a contract – called the ketubah in Judaism . . . But [it has] also long taught that marriage is more than a mere contract.” First of all, Jewish marriage itself is called kiddushin, which actually means “sacrament.” There does not seem to be any difference between the rabbinic designation of marriage as sacrament and the biblical designation of marriage as covenant (brit). (The most one could say is that rabbinic sacramental marriage strengthened and added to the rights of women in marriage more than was the case in biblical covenant marriage.)

However, neither designation assumes that Jewish marriage itself is a “contract” in any way at all. Nevertheless, especially since the publication in 1927 of Louis M. Epstein’s study of the ketubah called The Jewish Marriage Contract, many scholars have assumed that the ketubah really is a contract. In fact, some scholars of Jewish law in the United States and Canada have attempted to argue that some of the stipulations of the ketubah can be invoked as contractual conditions in civil courts adjudicating divorce proceedings between two Jews who are the parties to a ketubah. This is a both a scholarly and a political mistake in my view, and I would suggest that Professor Witte distance himself from it.
The fact is the word ketubah simply means a “written document.” In and of itself, especially as it functions now, there are no contractual elements in it at all. Everything in it is a stipulation of what the groom owes the bride because of her acceptance of his marriage proposal, a proposal the groom has made to the bride in fulfillment of God’s commandment to marry and raise and care for a family (beginning but not ending with his wife). These stipulations are the ancient stipulations made by the rabbinic authorities, whose divinely mandated authority it is assumed has been accepted by the parties to the marriage itself by their very consent to it. That general consent then extends to the document that explicates the specific obligations of the couple themselves to the Jewish tradition and its divine Lawgiver, then to each other thereafter.

To be sure, in pre-modern times, the couple themselves could contract between themselves certain monetary arrangements unique to their own particular relationship. But, with the loss of civil authority by Jewish courts, especially following in the wake of the French Revolution, specific monetary arrangements (such as pre-nuptial agreements) have become matters of civil law as, indeed, more general monetary considerations have become matters of legislation or civil judicial decree.

Even the minimal monetary stipulations of the ketubah are waived for, among other reasons, nobody today knows the equivalent in today’s currency of the amounts of money stipulated in an ancient now non-extant currency. That means, for all intents and purposes, there are no longer any contractual elements at all in Jewish marriage qua Jewish marriage today in the West (with the exception of Israel, where church-state matters are much more complicated). As such, Jewish marriage in fact is now solely a sacramental or covenantal institution.

Part 2--------

My more philosophical point to Professor Witte is as follows. The reasons, it seems, traditional Jews have been willing to enter into civil marriages (supplemented by specifically Jewish rites) are twofold. One, they want the social benefits of being civilly married (though these benefits have rapidly decreased in an age when a growing number of couples have opted for non-marital “partnerships”). Two, they have not seen the institution of civil marriage as contradicting what they mean by “marriage” (both for Jews and non-Jews). As such, Jewish marriage adds to rather than departs from a commonly accepted notion of what marriage is. That being the case, especially for the second reason, Jews should welcome covenant marriage as being more akin to what they consider to be Jewish marriage, and what Judaism considers to be marriage for all others as well.

Nevertheless, the judicial extension of the right to marry to same-sex couples in the State of Massachusetts (and in all of Canada by
legislative fiat) shows that what is now considered to be “marriage” civilly contradicts the Jewish idea of marriage being a union of a woman and a man, whether that man and that woman be Jewish or not. Yet, as I understand the institution of “covenant marriage,” there is nothing to prevent two women or two men from entering into a state sanctioned covenant marriage anywhere this is allowed for the more usual contractual marriages. That is clearly a contradiction with traditional ideas of marriage, a contradiction that did not arise in the past.

That is why I think covenant marriage will, in the long run, do little to alleviate the familial crisis in secularized western societies. Furthermore, what is to prevent clergy, who now also solemnize civil marriages, from being required to officiate at any union that could be solemnized by other civil officials? In other words, the time might be ripe for religious traditionalists, both clergy and laypersons, to get out of the institution of civil marriage altogether – any civil marriage, even a “covenant” civil marriage.

That is why I think the way for traditionalists (virtually all of whom are religious) to go to strengthen the more traditional idea of marriage as more than a contract (and a unilateral one at that) might be twofold. One, they might argue that since there is less and less agreement in civil society about what marriage is – and thus whom it includes and whom it precludes from participation therein – civil marriage should be replaced with the institutions of “domestic partnerships.” Two, that would leave marriage per se as the religious, sacramental or covenantal institution it seems to have always been for the Jews, Christians, and Muslims who have availed themselves of it.

Religious traditionalists could then decide whether or not they want to also enter civil partnerships with their spouses (and, by extension, with the children issuing from their marriages). And, if they do, there would not be the contradiction that seems to be emerging now, even with civilly sanctioned covenant marriages. So, for example, an elderly bachelor brother and spinster sister, who share long term domicile, could also have a similar domestic partnership, without any implication that such an arrangement looks too much like prohibited incest.

In other words, by extending the institution of domestic partnership beyond even the most liberal notions of marriage today, the real institution of covenant or sacramental marriage could be returned to its more original and conservative definitions, and to the social contexts in which it has most meaning and most consistent support.

=======================

David Novak
University of Toronto
John Witte Jr.’s essay issues a call to American religious institutions to develop strategies of reform and engagement in response to the negative consequences of our national “experiment with a private contractual model of marriage” which has resulted in easy-in/easy-out marriages. The loosening of marriage formation and marriage dissolution rules has had a corrosive impact on the institution of marriage itself with women and children bearing the primary costs in the form of single parent households, depressed incomes and increased behavioral, learning and socialization problems. Witte points to recent covenant marriage laws – which conceive of marriage as a presumptive permanent sacrifice, a public and deliberative event not easily dissolved – as one response to the regrettable modern view of marriage as a transient and terminal private contract for sexual intimacy.

It would be difficult to argue cogently against the view – now supported by solid research – that stable and enduring relationships built on trust, love, mutual respect and commitment are more conducive to human health and happiness than unstable, transient relationships characterized by distrust, discord, disrespect and infidelity. Likewise, few would argue against the view that societies have an interest in encouraging (or a right or a duty to encourage, depending on one’s political theory) the formation of the conditions that are conducive to human health and happiness.

At issue, however, is the question of the means by which those conditions might be secured. Witte appears to be confident that covenant marriage (as exemplified in Lousiana, Arizona and Arkansas) can recapture traditional ideals of marriage that were lost with the advent of contract marriage. The bulk of the essay focuses on the historical roots of the American common law tradition of marriage in ancient Jewish, Christian and Islamic teachings on marriage as covenant. The reasonable implication is that the recasting of modern marriage as something more than a mere contract (a goal I would applaud) can be readily achieved with the help of, and by means of a return to, traditional religion (an assertion about which I am less certain).

Data on religion and divorce raise some intriguing questions. Drawing on data from the US Census Bureau and the National Center for Health, the Associated Press computes that the highest divorce rates are found in the Bible belt states and that divorce rates are higher among Evangelical or born-again Christians than they are among all other Christian denominations. Moreover, the divorce rate among atheists and non-believers (21%) is lower than that among Jews (30%) born-again Christians (27%) and all other Christian denominations combined (24%). Similarly, studies by the Barna Research Group point to the same conclusion: faith commitment is not an indicator of, nor does it ensure, stable and enduring marriages.
One might object: Not everyone who self-identifies as Born-again or Baptist necessarily adopts a covenantal approach to marriage and thus the high divorce rate among self-identifying Born-agains and Baptists does not discredit the claims of the proponents of covenant marriage. But then, one must surely also concede that not everyone who self-identifies as an atheist or non-believer necessarily adopts a contract approach to marriage.

And to recognize this possibility is essentially to concede the point that faith/religion is not infallibly or even strongly correlated to stable and enduring marriages, or in Witte’s terms, to a view of marriage as essentially a contract or a covenant. Otherwise, how are we to explain those pesky atheists and non-believers who manage to create stable and enduring marriages, who celebrate and articulate the “higher” and “deeper” dimensions of marriage without the benefit of religious instruction or theism? These observations raise questions about the utility of calling upon the resources of traditional religion in the effort to reverse the “corrosive effects of America’s experiment with a private contractual model of marriage.”

The problem is this: it is entirely possible that the “glue” that held marriages together in earlier centuries derived less from the covenantal values provided by Jewish, Christian and Muslim tradition and more from socio-economic and cultural factors (impediments to economic independence for women, impediments to reproductive choice saddling women with larger numbers of children or even premature death in childbirth; cultural expectations of submissive behavior on the part of wives, etc.). As socio-economic and cultural factors have shifted – an arguably good thing – flawed marriages have dissolved – also an arguably good thing yet one that brings in its wake new ills for women and children (including those outlined by Witte).

It is a question, however, whether the new ills arising from increased rates of divorce would be best addressed by a return to conceptions of marriage promoted by earlier traditions when those conceptions entailed and often still do entail equal or greater (if less publicly visible) ills. I am not suggesting that Witte has made this suggestion; he seems to be arguing simply for a return to the valuation of marriage as a good that transcends the contractual and as an institution that should balance stringent formation rules with stringent dissolution rules. These features may indeed be found in traditional religious conceptions of marriage but, we may suppose, not exclusively there.

Thus, although Witte chooses to focus on the affinities between traditional religious conceptions of marriage and the modern covenant marriage model, that choice would appear to be a historical rather than an essential one. If so, then the historical role of western religious traditions in creating and sustaining a covenant marriage model does not preclude the possibility of covenant-style marriages (marriages whose value transcends the merely contractual) on non-theistic
grounds.

The recognition of diverse means toward the goal of reconceptualizing marriage on a covenant rather than contract model underlies Witte’s call to translate America’s “growing cultural and religious pluralism into a more concrete legal pluralism on marriage and family life.” Presumably the semi-autonomy he contemplates for “Catholic, Hindu, Jewish, Muslim and other groups to conduct their subjects’ domestic affairs in accordance with their own laws and customs, with the state setting only minimum conditions and limits” would include the autonomy of atheists and non-believers to ground the special status of marriage as a permanent commitment entailing trust, love, and mutual respect in a non-theistic ethic of some description. (After all, why would one wish to disadvantage a group that evidently enjoys a modicum of success in stemming the rising divorce rate?)

Two final thoughts: It is important not to jump too quickly to the conclusion that privatized marriage and no-fault divorce in and of themselves are the cause of the financial and social ills that Witte hopes to reverse. In America today there are deep socio-economic forces that work against the interests of families – even traditionally configured families. When two married adults working full-time year-round are unable to raise their families above the poverty level, what encouragement is there for creating and sustaining marriage? When families are not assured of basic economic and social security, then marriages – both contract and covenant – will suffer and dissolve (the rise in divorce associated with the recent mortgage crisis is testament to this fact).

The reverse argument appears to be equally true: when divorced individuals and single parents are not penalized for their life choices, and have access to economic opportunities and social support services, many of the ills associated with divorce and single parenting are reduced (which may be a “good enough” outcome given the alternative of remaining in emotionally, verbally or physically abusive relationships, for example). Until we develop labor policies, economic policies and social support systems that recognize the importance and reality of “families” in all their diversity and the rights and needs of children in particular, we must think twice about blaming “failed marriages” on the shift to contract marriage.

This leads to a second thought. Is it really clear that the rules governing marital formation and marital dissolution must be balanced in their stringency? While certainly no good would derive from loose rules of formation and stringent rules of dissolution (other than the questionable good of simply ensuring that lots of people get married and stay married!) why would it not be desirable to have very stern rules of formation (given the high costs of a poor marriage) and rather loose rules of dissolution (again, given the same high costs of a poor marriage). In other words, if we embrace the goal of promoting stable and enduring relations of a positive nature – it might be argued that
that goal is best achieved by erecting impediments that would reduce rash and ill-advised marriages and by granting rapid remedies when marriages cease to be stable and positive. Of course, such a view entails a shift in perception of marriage and perhaps even child-rearing as less of a right and more of a privilege – a perception that has precedent in other cultures and time periods.

--------------------

Christine Hayes
Yale University

Anonymous
Posted: 12 May 2008 22:11    Post subject: Charles Reid's response to John Witte

I write this as we prepare to celebrate commencement at the law school where I teach. In many ways, it is the most solemn event in our academic year—professors and students dressed in gowns they would never ordinarily want to be seen wearing; families gathered from around the nation if not the world; the long list of graduates read to great applause and delight.

This ceremony, of course, marks an important transition in life. It symbolizes on the part of students the assumption of responsibilities. It represents on the part of faculty the discharge of duties performed well. It acknowledges the sacrifice and support of parents and loved ones. It is no trivial event.

Among his claims, John Witte points to the importance of the liturgy surrounding marriage to make the case that marriage has been seen, culturally and religiously, as something more than a revocable, private exchange of consent affecting two, and only two, persons. Whether one speaks of Christianity, Judaism, or Islam, entry into marriage is nearly always cloaked in ritual precisely to symbolize the mutual undertaking of responsibilities and the community’s promise to stand with the couple in seeing to their fulfillment.

Witte’s argument puts me in mind of the work of the Polish anthropologist Bronislaw Malinowski (1884-1952). Raised a Catholic, he abandoned the faith of his youth in favor of an agnosticism more congenial, he thought, for the dispassionate observation of many cultures. He concluded, regarding marriage, that it might come in many forms: "monogamy, polygyny, and polyandry; matriarchal, and patriarchal unions, households with patrilocal and matrilocal residence.” [Sex, Culture, and Myth (New York, Harcourt: 1962), 3]. What was common to marriage, however, in whatever form it took, was liturgy. As Malinowski put it, marriage “has to be concluded in a public and solemn manner, receiving, as a sacrament, the blessings of religion and, as a rite, the good auspices of magic.” (3).

The marriage liturgy, like a commencement ceremony, is intended to
commemorate a transformation in the life of the person and that person’s relationship with others. Prospective lawyers have the rights and privileges that come with their degree—they may now sit for the bar and represent the interests of others in court. Married persons similarly acquire many rights and duties—including the right to call on society for support in fulfilling their newly-assumed obligations.

As I read Professor Witte’s argument, he makes the case that covenant marriage reflects the same deep urge in the human psyche to commemorate in law the solemnity of the commitment that the parties, their families, and the community at large have all assented to liturgically. Something important has happened that affects not only the two persons exchanging consent but the public at large—and this must receive the appropriate consecration and support of society.

Professor Witte correctly notes that the “contract” model that prevails in modern-day America, in which marriage is treated as the least of all contractual obligations, terminable at the will of one of the parties, has failed. He notes as well that historically, American law made substantial accommodation for marriage as a more permanent union, serving not only private but public interests as well. Parties, on this older model, might freely consent to marry one another, but could not define for themselves the union’s terms or conditions, which were established for them by a state still deeply in debt to an ecclesiastical law that prized such values as fecundity and enduring, self-giving commitment.

This model was gradually displaced in the twentieth century through such legal means as the enactment of no-fault divorce. As Professor Witte rightly points out, the contract model that now prevails nearly everywhere achieved its pride of place out of an overly-optimistic belief that complete marital freedom would be beneficial to all concerned. Experience, however, demonstrates that absolute freedom comes at considerable cost—high rates of abortion, single-parenthood, and the indigence and want that accompany a hedonistic pursuit of self-interest as opposed to the satisfaction of the natural requirement that we see to the good of spouse and children.

Professor Witte, it should be noted, is not proposing to uproot the contract model. His proposal, properly understood, is a call to religious believers and state officials alike to get serious about the obligations of marriage. He wants American religious communities to “think more seriously about restoring and reforming their own bodies of religious law on marriage, divorce, and sexuality, instead of simply acquiescing in state laws and culture” and he asks that “American states, in turn . . . think more seriously about granting greater deference to the marital laws and customs of legitimate religious and cultural groups.” This is an ambitious project which has my support.

=================================

Dr. Charles J. Reid, Jr.