
John WITTE, Jr.

The Western Case for Monogamy over Polygamy

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As founding editor and inaugural author of the new Cambridge University Press series on law and Christianity, John Witte, Jr. has written a monumental volume on *The Western Case for Monogamy over Polygamy*. The choice of topic is not accidental. Witte believes, in my opinion correctly, that polygamy will come to dominate public deliberation and litigation in many Western countries in the near future. Statistics support the same conclusion. According to a Gallup poll, in 2013, 14% of American people accepted polygamy—double the percentage (7%) that accepted it in 2001 (Witte, pg. 464). This explains why, though formally prohibited by the law of each state in the United States, the very status of being in a polygamous marriage rarely moves law enforcement authorities to action.

Some academic scholars defend the legalization of polygamy as being the best constitutional, feminist, and sex-positive choice. Many modern Muslims and Fundamentalist Mormons argue in favor of polygamy based on religious freedom, religious equality, self-determination, and nondiscrimination. Many modern liberals argue that the political community must remain neutral on issues affecting ethical independence and for this reason should allow and support all types of consensual adult sexual relationships.

For more than 2,500 years, Western legal systems have defended marital monogamy as a normative standard for family law. They have supported the idea and the practice of monogamous marriage because it brings fundamental private goods to the married couple and their children as well as basic public goods to society. For more than 1,750 years, Western legal systems have also declared polygamy a serious crime, on the ground that it fosters inequity, confuses children, and jeopardizes marital consent. Should this approach change in a post-modern political community? Are there sufficient compelling reasons to keep bans on optional polygamy in globalized liberal democratic societies? Witte asked himself these questions when he began working on polygamy and was clearly guided by them in writing each paragraph of this important and interesting book.

Despite firmly supporting Western monogamy and opposing polygamy (pgs. XVIII, 446, 465), Witte does not dictate to readers answers to the questions. Throughout most of the book, Witte presents himself as an outsider to the debate—an expert who aims to provide reliable information and

a survey of the best historical thinking and arguments on the topic. For this reason, while the book is encyclopedic, its aim is modest: to paint a historical picture of Western polygamy. Achieving this limited goal, however, was a significant undertaking. It required uncovering and interpreting a wide variety of biblical, canonical, civil, and other historical sources from antiquity to modern times.

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The book begins with a long introduction (33 pages), in which Witte provides an overview of polygamy in the current American context as well as the broader Western and global context. His starting point is thus not precisely historical, but social or even political. Witte points out that the exact number of polygamists worldwide is unknown. Around 120 countries representing the vast majority of the world's population either formally ban or do not recognize polygamy (pg. 17). According to sociologists, polygamous cultures represent only 15%-20% of the world's cultures. Many are found in Africa, the Middle East, and Asia. The laws of 55 majority-Muslim countries in these regions recognized polygamy as a valid form of marriage, with the exception of Turkey and Tunisia. In the African polygyny belt, which spans from Senegal to Tanzania, 30%-40% of all married men are believed to practice polygamy. In Muslim-majority Arab countries in Northern Africa (i.e., Egypt, Algeria, Libya, and Morocco), however, polygamy is practiced in less than 3% of all households. In some Middle Eastern countries, such as Saudi Arabia and Yemen, polygamy prevails in 10%-20% of all households. In Asian countries, such as Pakistan and Bangladesh, in which polygamy is more common, a Muslim man may legally marry up to four wives but only with the consent of the first wife or with enough income to support all his wives and children. In nations in which polygamy is legal, it tends to be the prerogative of wealthy and powerful families or the practice of rural and undeveloped communities. In nations where polygamy is illegal, it tends to be the practice of smaller indigenous, tribal, religious, or countercultural groups.

For Muslims, polygamy is an option, not an obligation. The only two Qur'anic verses on the topic aim to restrict rather than encourage polygamy. In the Hadith, the Prophet refused to allow his cousin Ali to take a second wife for fear of harming Fatimah, the Prophet's daughter. The Prophet said, «Fatimah is part of me; whatever hurts her hurts me, and whatever harms her harms me.» More conservative schools of Islamic jurisprudence, particularly the Wahhabi and Hanbali schools, recognize a limited right to

practice polygamy. In the more liberal Malaki and Shafi'I schools of jurisprudence, however, polygamy is seen as a declining, unpopular, and disfavored practice.

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The bulk of Witte's book comprises a long historical analysis of polygamy. In Chapter I, Witte explains why and how Judaism provided the Western tradition with its first laboratory to test the relative merits of monogamy over polygamy. In the Jewish tradition, polygamy involved only polygyny (i.e., one man with multiple wives); polyandry (i.e., one woman with multiple husbands), by contrast, was considered adultery. The Hebrew Bible states that polygamy was sometimes necessary to protect the (would-be) second wife and her children. Several examples of polygamy juxtaposed the monogamous marital ideal of the Genesis creation story with the covenant metaphor found in Prophets.

The dialectic between monogamy and polygamy occupied the attention of rabbis for the first millennium. They allowed Jewish couples to add anti-polygamy clauses into their marriage contracts and anti-polygamy vows into their wedding liturgies. Finally, a famous decree ascribed to Rabbi Gershom in 1030 changed the rules of the Torah and Talmud and brought the Ashkenazi communities in conformity with the monogamous ideal prevailing in Western Christendom.

In Chapter Two, Witte covers the thought of the Early Church Fathers, who did not analyze polygamy as deeply as many other theological, moral, and legal issues. They focused on two main questions: (1) why so many Old Testament patriarchs practiced polygamy with seeming impunity; and (2) how to define polygamy relative to other sexual offenses. On the first question, the Fathers offered justifications that were variously historical (God's temporary dispensation); prudential (natural necessity); developmental (monogamy is now the only virtuous option, according to collective consciousness); and structural (only monogamy serves the goods inherent to marriage). And all four arguments echo in current Western legal systems. On the second question, the Fathers agreed that the focal case of polygamy was having several spouses at one time. But they extended the category to include unauthorized second marriages (i.e., successive polygamy, or digamy). At the same time, most tolerated remarriage after the death of one's spouse (Tertullian was a famous exception), on the ground that the sacramental bond remains only while both parties live. A few Fathers allowed divorcees to remarry even before the first spouse's death, in certain narrow circumstances.

In Chapter Three, Witte focuses on the treatment of polygamy in canon law texts of the first millennium, viewed in the context of evolving Greek, Roman, and German laws. Monogamy was a quintessential institution of Greek society. Greek law, however, did allow a married man to have sex with his slaves and prostitutes with impunity. Roman marriage was also monogamous. But Roman marriage was primarily a social fact, not a contract, with almost no legal effect on the parties; thus, the law had little authority over the constitution and termination of the marriage. A different institution was the so-called *manus* (autocratic legal power of the husband over the wife), which disappeared at the end of the Roman Republic. Christian marriage, monogamous from the beginning, was largely both a natural and religious act, with legal and social effects on the parties. The two concurrent normative systems (i.e., Christian and Roman) were parallel, though they affected each other. Roman law extended the range of valid monogamy to include the quasi-marital relationship of concubinage, as Roman law forbade marriage between persons of widely different ranks (e.g., a member of a senatorial family with a freedman or woman). The only possible union in these cases was concubinage. Emperor Constantius Chlorus, for instance, was joined in concubinage to Saint Helena, as she came from a family of low rank from Nicomedia in Asia Minor.

In an imperial edict in 258 CE (*Justinian's Code* 9.9.18), Emperor Valerian and Gallienus criminalized polygamy for the first time. After the Christianization of the Roman Empire in the 4th and 5th centuries, Christian emperors extended existing prohibitions against polygamy. By the 6th century, Christian emperors and Christian Germanic kings made polygamy an infamous crime, like adultery or incest. Church laws of the first millennium expanded these state laws by prohibiting quasi-polygamous conduct (e.g., having both a concubine and wife, or two fiancées at the same time, or a spouse and fiancée, etc.).

In Chapter Four, on the medieval case against polygamy, Witte explains how theologians and canon lawyers of the 12th and 13th centuries first systematized monogamous marriage. Medieval theologians and canonists treated marriage as a natural and sacramental union formed by the free and voluntary consent of the parties (i.e., contract). The sacrament of marriage elevated the natural goods of procreation and loyalty into a divine act, as a vital example of the love of Christ and his Church. This sacramental approach strengthened the medieval case against polygamy. Witte also focuses on the regulation of so-called clerical bigamy (i.e., when a candidate to priesthood had married a woman who was not a virgin, or had properly married a second time after the

death of his first wife or annulment of his first marriage). Clerical «bigamy» was not a crime, but it made one ineligible for priestly ordination.

In Chapter Five, Witte explains how in the first generation of the Protestant reformation, the traditional theology and canon law of polygamy were under attack. Political leaders like Henry III and Philipp of Hesse considered polygamy an optional way to guarantee heirs for the throne as well as satisfy lust. Theological leaders like Luther and Melanchthon considered polygamy a potential solution to resolving hard marital cases. Some Anabaptists defended polygamy as a spiritual path in emulation of the patriarchs of the Old Testament and in anticipation of the return of the Lord.

In Chapter Six, Witte analyzes the theology of monogamous marriage that was developed by Protestant leaders John Calvin and his successor, Theodore Beza. In their writings, both leaders condemned polygamy based on a biblical covenantal idea of marriage. Additionally, both leaders prosecuted and punished polygamy in Geneva. Witte offers an interesting case study: Geneva after its conversion to Protestantism in 1536.

In Chapter Seven, Witte focuses on the English case against polygamy. English theologians condemned it as unbiblical and unnatural, and English writers treated the monogamous family as essential for the political commonwealth to flourish. Parliament eventually took control over English marriage to promote and protect it, and in 1604 enacted the Polygamy Act, which made polygamy a serious crime, punishable by the secular courts.

Chapter Eight addresses the early modern liberal case in support of polygamy. Witte analyzes the writings of John Milton, Gilbert Burnet, Johann Leyser, Martin Madan, and others who argued that the Bible allowed for polygamy alongside monogamy. Their opinions reopened the debate on polygamy, especially the utilitarian argument that polygamy can protect women and children where they would otherwise be exploited. Political and social establishments, however, failed to accept these arguments on the believed Biblical and utilitarian values of polygamy.

Chapter Nine addresses the liberal Enlightenment case against polygamy. Most of the writers of that time based their arguments against polygamy on non-biblical grounds. They defended traditional family values by rational appeals to human anthropology and evolutionary science. The core naturalist argument was that monogamy is the best way to ensure equal dignity and respect between men and women. According to Enlightenment sensibilities, polygyny fractures marital trust, harms wives and children, and foments patriarchal attitudes, adultery, and sexual slavery, while polyandry creates paternal uncertainty and male rivalry.

In the last chapter, Witte addresses the American case against polygamy. The United States provided an important laboratory to test the Western case in favor of monogamy over polygamy. Americans strengthened antipolygamy laws relative to Europeans since Americans consider monogamy a cornerstone of Western civilization and social growth. Only monogamy, they thought, could produce the habits and virtues required for economic, political, and social development. Early Americans did not tolerate ancient Native American polygamists or that of new faiths like Mormonism. While they repeated classical, Christian, and Enlightenment arguments, they also added a new argument: in the development of the human race, monogamy led to democracy, while polygamy led to despotism and barbarism. The health and natural order of the household lead to the stability of the nation-state.

Witte's concluding reflections are interesting, as they're presented from the perspective of both a legal historian and a legal thinker. Historical sources condemn polygamy on a number of grounds, which Witte groups into four categories: (a) biblical, (b) nature-based or natural, (c) harm-based, and (d) symbolic. The first two types of argument, biblical and natural, highlight distinctions between the questions of polygamy and same-sex marriage. The other two arguments, harm-based and symbolic, refer more specifically to polygamy. Insofar as it's biblically informed, the Western view on polygamy is different from that on same-sex relations; the Mosaic law firmly excluded same-sex relations, but not polygamy. It was the Church, not the state, that led the first campaigns against same-sex relations; while it was the state, not the Church, that led the campaign against polygamy in the West (pgs. 448-49). Witte also argues that there are striking differences between the traditional arguments against same-sex marriage and those against polygamy. The natural arguments against same-sex relations (e.g., based on its being non-procreative by nature or nonexistent among nonhuman animals, or based on the natural constitution of the male and female bodies) cannot be applied to polygamy, which is by definition more procreative and also predominant in the animal kingdom. Thus, the social erosion of the natural argument against same-sex relations doesn't affect the natural argument against polygamy. The latter is based on the idea that polygamy violates natural liberties and rights, especially of women and children. Polygamy does not sufficiently protect the values of fidelity, honesty, and respect, based on reason.

The harm-based argument is that polygamy is too often the cause of harm, especially to the most vulnerable populations. This claim continues to resonate today. Polygamous communities suffer from increased levels of sex-

ual and physical abuse against women, lower levels of equality for women, higher levels of discrimination against women, increased rates of female genital mutilation, and increased rates of female sex-trafficking. The symbolic argument is based on the teaching function of the political government. For centuries, the monogamous family was considered the private pillar of public life, the little commonwealth, the first society. Thus, it was argued, political societies should encourage relationships that promote public health, safety, and welfare.

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In order to offer solid research, Witte addresses three important methodological issues. The first issue is that polygamy is a confusing term—even an interpretative term, in Dworkin's sense: People who use the concept do not agree about what it means exactly. For example, Emperor Charlemagne married five successive spouses and had at least five concubines. He was the father of 20 children: 13 were born to three of his wives (he had no children with Desiderata or Luitgard), and 7 were born to his concubines. Charlemagne was never legally married to two different women at the same time, though. Therefore, according to Witte, Charlemagne was not a real polygamist, even though his sexual behavior was not in accordance with Christian sexual moral norms (pg. 125).

Witte resolves the problem of the shifting and slippery terminology by distinguishing four different categories of polygamy (see pgs. 27-33): (a) real polygamy, (b) constructive polygamy, (c) successive polygamy, and (d) clerical polygamy or bigamy. In real polygamy, a man or woman has two or more spouses at the same time. By this standard, Charlemagne was not a real polygamist. Constructive polygamy, or quasi-polygamy, is a form of plural union that emulates real polygamy. In constructive polygamy, a man or woman has two or more fiancées; a man has two or more concubines; or a man or woman takes both a spiritual vow and a marital vow. Based on this definition, Charlemagne was a quasi-polygamist. In successive polygamy, a man or woman improperly is married to two or more spouses in a row, rather than at the same time. According to this definition, Charlemagne was not a successive polygamist. Neither Roman law nor Jewish law recognized these sexual unions as forms of polygamy before the advent of Christianity. The last category, clerical polygamy or bigamy, does not fit the definition of polygamy according to ordinary standards. Witte chose to focus on it, however, since early Christianity discussed it separately and together with other forms of polygamy.

Another solution to this methodological issue might have been to restrict the treatment of polygamy to real polygamy, as this is the live issue for modern society. Western culture has been monogamous, but it has been also de facto quasi-polygamous. As a good historian, however, Witte prefers to analyze the evolution of the confusing terminology in order to offer an evaluative historical picture instead of a static one. I agree with this methodological solution, although it may sometimes be confusing for the reader. For example, France's legislation favors monogamy and politicians are fighting against immigrant polygamy; however, France recently had a quasi-polygamist president. This was evident in the photograph taken at the former President Francois Mitterrand's funeral in 1996, which featured his wife and longtime mistress side by side with their respective children. Similar situations have occurred with other famous Western politicians and dignitaries. In American culture, the long romance between Franklin D. Roosevelt and Lucy Mercer is paradigmatic. As is well-known, Mercer was in Warm Springs, Georgia, the day that Franklin died (while FDR's legal wife, the human rights titan Eleanor Roosevelt, was conspicuously absent). Examples abound.

Once adultery is no longer criminalized, such as in European countries, society is no longer monogamous in the strictest sense, but rather quasi-polygamous. The United States is one of the few industrialized countries with laws that criminalize adultery. In this sense, the United States is more monogamous than European countries. In saying this, I am not defending the criminalization of adultery. I am saying that the distinction between real polygamy and constructive or quasi-polygamy should also apply to monogamy. There is a real monogamy (which includes the criminalization of adultery) and quasi-monogamy (which excludes the criminalization of adultery and opens the door to quasi-polygamy). Witte does not fully address this connection between monogamy and adultery in the book.

The second methodological issue is the integration of both religious and legal sources from antiquity. Witte separates the treatment of polygamy by the Fathers of the Church (see Chapter 2) from polygamy in the laws of both the state and the Church in the first millennium (see Chapter 3). On the other hand, he treats the important text of the New Testament on marriage in the chapter on the Fathers of the Church. He also carefully analyzes the canons of Basil the Great (329-379), one of the Capadocian Fathers, outside the chapter on the Fathers of the Church, in the chapter on polygamy in the first millennium. In my opinion, the borders are not clear in this part of the book. A better and more coherent distribution would have been the following: a

chapter on Judaism, a chapter on everything from the New Testament to the *Corpus Iuris Civilis* of Emperor Justinian (6th century), and a chapter spanning from Emperor Justinian to *Decretum Gratiani* (12th century). This distribution would have allowed for better integration of the information provided by all historical sources (e.g., religious, legal, and philosophical).

The third methodological issue is a matter of balance. Nobody is an expert in all periods of human history, and Witte, despite his impressive scholarship, is no exception. Readers will note that Witte is most comfortable working on the last part of the book, starting with the Reformation and ending with the American case, and least at home in the first part. This is reasonable, considering Witte's background. Without being an expert in antiquity, however, Witte does a good job in this less-familiar field. His efforts in reconstructing and interpreting ancient historical sources, many of which are outside his intellectual zone of comfort, are remarkable and praiseworthy. On the other hand, Witte states that he cannot offer a perfect picture of the history of polygamy. Every author has the right to be selective. A more comprehensive picture of the history of polygamy would have to have been elaborated on by many authors with expertise in different periods of human history. But that type of book would not have provided the freshness and discernment that Witte's final picture does. Witte knew his limitations, and dealt with them with humility and devotion, as an honest scholar would. That is why the final product is excellent and well balanced. However, it left the door open to a new book on the same topic written by a scholar with a different background.

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In summary, Witte's monumental book is an original and brilliant synthesis of the Western history of polygamy and an invaluable resource for new historical research and political arguments on this controversial topic. It is a work of great intellectual power and profound religious sensitivity. Erudition, clarity, argumentation, and literary beauty shine from every page of this stimulating volume. Witte's research fulfills all the canons and expectations of a book of legal history. He offers to the public a well-balanced, enlightening and extremely timely product on a challenging topic that is at the heart of Western culture and will soon be at the heart of social debate. Witte's book will remain the authoritative treatment.

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