

# The Covenant Quandary

*Fault or no-fault? Marriage legislation takes on divorce.*

**By Mark Fitzgerald**

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Three decades ago California passed a no-fault divorce law that sent a ripple throughout the country and prompted every state to follow suit. The idea had good intentions: it allowed couples who weren't happy to call it quits without having to prove culpability. At a time when the nation was clamoring for a more tolerant social fabric, this sounded like a trumpet for freedom. But as it turned out, a lot more people were finding cause to dissolve their marriages than legislators had anticipated. The consequences of the subsequent divorce boom posed vast social and monetary difficulties to governments and families alike.

These problems haven't gone away. But, then again, neither has the institution of marriage. In fact, states such as Louisiana and Arizona have reason to believe that a new marriage law, known as covenant marriage, has started a small ripple of its own. Designed to strengthen the commitment and solidarity of matrimony, covenant marriage bills are popping up in legislatures throughout the country. Since Louisiana chartered the law back in August of 1997, 24 other states have proposed similar laws.

According to Louisiana's law, couples married under the covenant system are required to wait 18-months before they can divorce, during which time they must seek counseling. The new law makes an exception, for criminal activity, adultery, abandonment, and abuse, which are immediate grounds for terminating a covenant. Couples must also sign an affidavit, which states "that they have discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, or any clergyman of any religious sect or a qualified mental health provider."

In addition, there is a premarital counseling requirement—intended to advise couples "on the nature, purposes, and responsibilities of marriage" and to make them more aware of its demands and potential difficulties. Many of the churches in Louisiana require long meetings with pastors, seminars on marriage, and compatibility questionnaires. Regardless of religious sect, couples are required to discuss the seriousness of covenant marriages, the obligation to seek further counseling during marital difficulties, and, of course, the exclusive terms for legally terminating a covenant marriage through divorce.

But the issue of whether or not counseling—during the period of time a couple is required to wait for a divorce—can help save marriages has been an ongoing cause for debate. Feminist organizations believe that counseling is no substitute for freedom and that a woman in a harmful relationship should have the right to get out of it as quickly as

possible. Others, like Louisiana State Rep. Tony Perkins, think that counseling is helpful when the divorce process is slowed down, especially for couples who feel they have gradually drifted apart. “Studies have shown, that counseling at the right time can save marriages,” says Perkins, who authored Louisiana’s bill, which passed in the Senate with only one dissenting vote.

Perhaps what has helped Louisiana’s new law the most is that it doesn’t interfere with the right to choose—couples can still get married under the no-fault system. Only now there is another class of marriages, and the stakes are higher. “Some couples may have their first and last argument over which type of marriage they choose,” Perkins adds. During one weekend last year, 300 churches throughout Louisiana hosted covenant marriage events, and state officials estimate between 3,000 and 4,000 couples decided to convert their commitments. Although most of the couples entering into covenants are from older generations and have been married for years (so far, only a few hundred covenant marriages in Louisiana have been for newlyweds), their participation may cause younger couples to think more about the covenant option.

Tony Perkins believes that younger couples will catch on after they see more older folks renewing their vows. “Parents who renew their vows after having been married for 30 to 40 years are making a cultural statement to their children.” They’re also precipitating a movement that could influence bills in other states. Perkins says he has spoken to legislators from across the country who are interested in the influence of the new law. “Covenant marriages are filling a need that exists in society, and they’re a wonderful investment for the government,” adds Perkins.

For Arizona, the second and only other state to pass a covenant marriage bill—which last summer barely made it through the Senate (16-13)—it hasn’t been easy. Originally drafted with the same provisions as Louisiana’s, the bill was later amended to include an additional condition for divorce: an “ill treatment” clause that can be exercised by one spouse when living together becomes “insupportable.”

But without exclusion of the no-fault grounds for divorce, the law seems to compromise much of its principal design. Since it was enacted last August, less than twenty couples have chosen covenants, and ten of these occurred on the first day the law went into effect. Senator David Petersen, who sponsored the bill, says he doesn’t think enough people or churches in Arizona are aware of the new law. “The machinery of the government doesn’t know how to handle it yet,” says Petersen, who recently pushed for a Supreme Court order that procured \$10,000 for covenant marriage booklets to be printed and distributed to churches throughout the state.

In Arizona, opponents of covenant marriage have questioned the law’s impact on behavior. “This balks very closely to feel good legislation, where we think we’ve done something when actually we haven’t,” says State Rep. Andy Nichols, who voted against the bill. While covenant marriages may make divorce more difficult than under no-fault laws, it seems clear that they alone cannot prevent marital collapse. Nichols also points

out that some laws are designed better than others to change behavior. “I believe laws which regulate seatbelt use and smoking can change the way people think and act, but I think covenant marriages have missed the mark.”

There has been opposition and reservation about the prospect of covenant marriages from influential groups on both sides of the fence. The American Civil Liberties Union (ACLU) feels that covenant marriages are using the government to enforce a particular religious doctrine and that women and children might be trapped in hostile environments. Feminist groups, who have attacked the rigid divorce clause, say it will keep women in abusive relationships longer than they have to be. Marital undertakers and attorneys who make a living handling divorce suits contend that the new law is a step back to the fault-based days when one spouse bore the burden of proving that another spouse had broken the marriage agreement. And although the Catholic Church believes in the virtue of stronger marriages, it has reservations about the law’s requirement, which stipulates that couples discuss the new provision of divorce before marriage. Opening up a dialogue for divorce, the Church holds, goes against traditional Catholic teaching and might weaken the foundation of the sacred vows.

Conversely, covenant marriages have been welcomed by the Southern Baptists and a considerable number of other conservative Protestant groups. “The idea of strengthening marriages is at the heart of who the Southern Baptists are,” says Dr. Anthony Jordan, Executive Director Treasurer of the Southern Baptists in Oklahoma, where a bill with 53 co-authors was recently pushed through the House. In a state that has the second highest divorce rate in the country, this has generated a great deal of enthusiasm. State Rep. Jim Reece, who began drafting the bill shortly after he heard about Louisiana’s success, is optimistic. “Our divorce rates are high,” says Reece, “but we’ve decided to take a perfect positive approach to the problem, rather than an easy negative one.”

In California, where a similar bill only received two votes in the Senate, opponents have argued that covenant marriages are echoes of the days of fault-based divorce. Under the current system, it only takes one person to break up a marriage or a family. Without finding fault, issues such as alimony payments, child custody, and property allocation become very confusing. In covenant marriage legislation, one of the most pressing questions is whether or not it is important to establish boundaries for fault in a marital relationship.

Katherine Spaht, a professor of law at Louisiana State University who helped draft Louisiana’s bill, believes that “fault” should be a critical component of marriages. “Guilt and shame often control human behavior,” she says. One of Spaht’s main contentions is that covenant marriages are great for children. She claims that restoring more rigid grounds for divorce “in the nature of objective fault” can have a considerable impact in child custody proceedings, where the best interest of the child is more adequately represented than under the no-fault system.

Not long ago, a committee in Tennessee considered the impact Covenant Marriages might have on the rising problems associated with child support, child custody, and divorce. After listening to what legislators from Louisiana had to say about their law, members of the committee said they were convinced that covenant marriages were good for families. There was even talk about pushing similar legislation in Tennessee. But after the press found out, the ACLU started an uproar and spurred a debate over the connotations of “covenant.” Soon support drifted away and so did the future of the bill—a victim, ironically, of its own publicity.

For states like Missouri and New York, who have hedged their adoption of no-fault by requiring couples to live apart for a significant period of time before a no-fault dissolution is granted, incentives for covenant marriage legislation are less discernible. Indeed, New York’s current system (one of the most restrictive of no-fault laws in the nation), which requires a legal separation justified on fault grounds, is not that different from the fundamental intention of covenant marriages. Both covenant marriages and hedged no-fault systems are opposed to the unilateral divorce—where all fault grounds have been eliminated—allowed by pure no-fault systems. Fifteen states (including Arizona) currently have pure no-fault laws.

The struggles for a better marriage system have been going on for a long time. Even before Louisiana broke the mold, 22 states have tried to pass bills that could stand up to the no-fault laws. All of them have been disappointed. Florida was the first state to try a bill similar to Louisiana’s. Indiana, Illinois, and Washington also proposed bills that were promptly rejected. “Social reform is not easy,” says Micah Clark, associate director of the Indiana Family Institute, which works with 38 states on issues relating to marriage and divorce. “Issues like marriage and family are of such a sensitive and private nature. It’s not surprising that covenant legislation has been so difficult and time consuming.”

Yet, at the heart of the matter is the belief that improving the condition of marriage can adequately affect social stability. Since no-fault divorce laws spread through the country in the 1970s, the divorce rate has increased by 35 percent. Each year state governments spend millions on social programs intended to curb problems such as drug use, child poverty, juvenile delinquency, and teen pregnancy. Is it fair to say that the source of these social ills can be traced to broken homes? To divorce?

Covenant marriage legislation may not have all the answers, but at least it’s asking the right questions. At a time in this nation when one in every two new marriages will likely end in divorce or permanent separation, the possibility of keeping couples and families united has evoked a tremendous amount of debate—bringing diverse groups and interests to the table. Yet it is unlikely that the ball that began rolling in Louisiana will carry enough speed and weight to convince other states to cling as deeply to the fabric of commitment.

Even so, sometimes it takes only a small gesture to get enough people to speak out. State governments can no longer afford to steer clear of the covenant question. They must now also come to the table and say what it is about marriage and covenants and even divorce that they have for such a long time found so hard to say. They must take a stand.