

# **SYMPOSIUM: A CELEBRATION OF THE TWENTIETH ANNIVERSARY OF MULIERIS DIGNITATEM, PART II: ARTICLE: MULIERIS DIGNITATEM: THE VOCATION OF A WIFE AND MOTHER IN A LEGAL COVENANT MARRIAGE**

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## **Reporter**

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## **Text**

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**[\*365]**

### Introduction

The obligations and rights of a wife and mother in a Louisiana covenant marriage coincide with the description in Pope John Paul II's apostolic letter *Mulieris Dignitatem* of a woman's avocation of motherhood in marriage. <sup>1</sup> Part I of this Article outlines the distinguishing features unique to covenant marriage. Part II of this Article compares marriage understood as a covenant in the legislation described in Part I and marriage as presented in *Mulieris Dignitatem*. Part III of this Article discusses the results of a 2008 study showing that a wife and mother in a covenant marriage lives for the most part in accordance with the description of her vocation as wife and mother in *Mulieris Dignitatem*. This result is no accident. Covenant wives participating in the study overwhelmingly were religious and educated. <sup>2</sup> In most cases, the covenant couples also received **[\*366]** encouragement from their pastors and priests to choose the legal option of a covenant marriage. <sup>3</sup>

### I. Distinguishing Features of a Covenant Marriage

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<sup>1</sup> See generally Pope John Paul II, *Mulieris Dignitatem* [Apostolic Letter on the Dignity and Vocation of Women] (1988) PP 17-22 [hereinafter *Mulieris Dignitatem*]. Louisiana, rather than Arizona and Arkansas, which also have covenant marriage laws, is chosen to illustrate the compatibility of covenant marriage legislation with the description of woman as mother in *Mulieris Dignitatem* for three reasons: (1) the author is far more familiar with Louisiana's covenant marriage law; (2) Louisiana's covenant marriage law is far more developed than that of Arizona and Arkansas; and (3) data is now available from a five-year empirical study comparing Louisiana covenant couples with Louisiana couples in a standard marriage, the results of which appear in Steven L. Nock, Laura A. Sanchez & James D. Wright, *Covenant Marriage: The Movement to Reclaim Tradition in America* (2008).

<sup>2</sup> Nock, Sanchez & Wright, *supra* note 1, at 62-69, 117-19.

<sup>3</sup> *Id.* at 52-53.

In three states - Louisiana, Arizona, and Arkansas - a couple who chooses to marry may choose a covenant marriage, which consists of a legally enforceable agreement between the spouses to adopt a more binding form of marriage than available under typical "no-fault" divorce statutes.<sup>4</sup> The three distinguishing features of a covenant marriage when compared to a "standard" marriage are: (1) mandatory premarital counseling by a member of the clergy or a professional marriage counselor;<sup>5</sup> (2) an agreement to take reasonable steps to preserve the marriage if marital difficulties arise;<sup>6</sup> and (3) limited grounds for divorce, ordinarily consisting of proof of a spouse's fault or lengthened time periods of living separate and apart.<sup>7</sup> Obviously, to the extent that legal marriage represents a serious commitment and mutual faithfulness, albeit an imperfect human reflection of God's love and eternal faithfulness, a covenant marriage from the time of its confection is closer to the Christian conception of marriage than a "standard" marriage. The appropriation of the adjective "covenant" in covenant marriage is intended to convey this understanding.

## II. Legislative Content of a Louisiana Covenant Marriage

Less well-known than the three distinguishing features of a covenant marriage is a feature unique to Louisiana covenant marriages. Louisiana alone has legislative provisions defining legal obligations and rights particularly imposed upon covenant couples - the content of a covenant marriage.<sup>8</sup> All married couples in Louisiana owe to each other fidelity (faithfulness that includes no sexual [\*367] intercourse with another and submission to the reasonable sexual desires of the other), economic support, and assistance (help in any task that is required by virtue of a shared life in common, including personal care to an ill or infirm spouse).<sup>9</sup> Furthermore, all "spouses mutually assume the moral and material direction of the family, exercise parental authority, and assume the moral and material obligations resulting therefrom."<sup>10</sup>

In 2004, seven years after the initial passage of the covenant marriage legislation, the Louisiana legislature imposed additional obligations on covenant spouses, many of which are merely hortatory in nature.<sup>11</sup> Yet, if one purpose of the law, in addition to constraining or punishing, is to teach (law's so-called "expressive function"), hortatory provisions serve a useful purpose - to communicate to married couples who have chosen a more binding commitment than other couples the type of behavior that is expected of them.<sup>12</sup> Consider the following obligations explicitly imposed on covenant spouses but not on "standard" spouses.<sup>13</sup> First, "spouses are bound to live

<sup>4</sup> See [Ariz. Rev. Stat. Ann. §§25-901](#) to 26-906 (Lexis Nexis, LEXIS through 2009 Sess.); [Ark. Code Ann. §§9-11-801](#) to -811 (Lexis Nexis, LEXIS through 2009 Sess.); [La. Rev. Stat. Ann. §§9:307-309](#) (2008).

<sup>5</sup> See, e.g., [La. Rev. Stat. Ann. §§9:272-273.1](#).

<sup>6</sup> See, e.g., id. §§9:273(A)(1), 9:307(C).

<sup>7</sup> Compare id. § 9:307 (defining the divorce requirements for a covenant marriage), with La. Civ. Code Ann. art. 102-103.1 (Supp. 2010) (defining the standard divorce requirements).

<sup>8</sup> See [La. Rev. Stat. Ann. §§9:293-298](#).

<sup>9</sup> La. Civ. Code Ann. art. 98 & cmts. (b)-(c).

<sup>10</sup> Id. art. 99.

<sup>11</sup> See [La. Rev. Stat. Ann. §§9:293-298](#).

<sup>12</sup> Carl E. Schneider, The Channeling Function in Family Law, [20 Hofstra L. Rev. 495, 498 \(1992\)](#); see also Francis Cardinal George, O.M.I., Law and Culture, [1 Ave Maria L. Rev. 1, 17 \(2003\)](#) ("Alone, [law] cannot cure moral defects in a people. It can, however, change people's sense of their hierarchy of values ... . Law teaches more than it prevents.").

<sup>13</sup> The author has discussed these explicit obligations imposed on covenant spouses in detail. See Katherine Shaw Spaht, A Proposal: Legal Re-Regulation of the Content of Marriage, [18 Notre Dame J.L. Ethics & Pub. Pol'y 243 \(2004\)](#); Katherine Shaw Spaht, How Law Can Reinvigorate a Robust Vision of Marriage and Rival Its Post-Modern Competitor, [2 Geo. J.L. & Pub. Pol'y 449 \(2004\)](#).

together, unless there is good cause otherwise." <sup>14</sup> Second, spouses shall determine by mutual consent the family home "according to their requirements and those of the family." <sup>15</sup> Third, "spouses owe each other love and respect." <sup>16</sup> Fourth, spouses "commit to a community of living." <sup>17</sup> Fifth, "spouses should [reciprocally] attend to the satisfaction of the other's needs." <sup>18</sup> Finally, "the management of the household shall be the right and the duty of both spouses." <sup>19</sup> What do these obligations teach the spouses about marriage **[\*368]** consistent with the understanding of marriage explained in *Mulieris Dignitatem*? If marriage is the "first and, in a sense, the fundamental dimension of the call" of every human being "to interpersonal communion," to a "sincere gift of self," is this not reflected in the legal content of a covenant marriage? <sup>20</sup> If the mutual self-giving of husband and wife must not be distorted "either by the desire of the man to become the 'master' of his wife ... or by the woman remaining closed within her own instincts," do not the provisions above establish that principle? <sup>21</sup> If "marriage signifies the sincere gift of person," is not covenant marriage legislation its more perfect legal expression? <sup>22</sup>

Likewise, the law imposes familial obligations upon covenant spouses who become parents and the covenant wife who becomes a mother to a greater degree than it obligates "standard" married couples. All parents owe support, education, and maintenance to their children. <sup>23</sup> Covenant parents, however, are "bound to maintain, to teach, and to educate their children ... in accordance with [the children's] capacities, natural inclinations, and aspirations, and shall prepare them for their future." <sup>24</sup> In addition, covenant spouses "by mutual consent after collaboration shall make decisions relating to family life in the best interest of the family." <sup>25</sup> Motherhood, as "the fruit of the marriage union of a man and woman" resulting from "the union of the two in one flesh" and a special gift of self, finds a fuller expression in the law of covenant marriage. <sup>26</sup> The mother, as the first teacher with the support of the father, is directed in the most explicit terms to tailor her teaching to the individual child and his or her talents, aspirations, and inclinations. Spousal love "always involves a special readiness to be poured out" for the sake of others. <sup>27</sup> Yet, "in marriage this readiness, even though open to all, consists mainly in **[\*369]** the love that parents give to their children." <sup>28</sup> The focus of Christian marriage on the outpouring of self for one's children also finds expression in the responsibility of the covenant spouses to make decisions relating to family life in the best interest of the family. <sup>29</sup>

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<sup>14</sup> [La. Rev. Stat. Ann. § 9:295.](#)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* § 9:294.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § 9:296 (emphasis added).

<sup>20</sup> *Mulieris Dignitatem*, supra note 1, P 7 (internal quotation marks omitted) (quoting Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] P 24 (1965), reprinted in *The Sixteen Documents of Vatican II* 513, 536 (Nat'l Catholic Welfare Conference trans., 1967))

<sup>21</sup> *Id.* P 18

<sup>22</sup> *Id.* P 21 (emphasis omitted) (internal quotation marks omitted).

<sup>23</sup> La. Civ. Code Ann. art. 227 (Supp. 2010).

<sup>24</sup> [La. Rev. Stat. Ann. § 9:298.](#)

<sup>25</sup> *Id.* § 9:297.

<sup>26</sup> *Mulieris Dignitatem*, supra note 1, P 18 (internal quotation marks omitted); cf. Genesis 2:24.

<sup>27</sup> *Mulieris Dignitatem*, supra note 1, P 21.

<sup>28</sup> *Id.*

<sup>29</sup> [La. Rev. Stat. Ann. § 9:297-:298.](#)

The question nonetheless remains: Do covenant couples in Louisiana actually "live out" married life consistent with its legal content as reflected in the statutory provisions? A recent book, *Covenant Marriage: The Movement to Reclaim Tradition in America*, contains some answers.<sup>30</sup>

### III. Published Results of a Five-Year Study of Louisiana Covenant Couples

Steve Nock, lead researcher and coauthor of the book *Covenant Marriage*, along with his coauthors Laura Sanchez and James Wright, conducted the study of covenant marriages over an eight-year period, which included one year of planning, five years of data collection, and two years of analysis.<sup>31</sup> To assist in this project, they solicited seventy undergraduate students and ten graduate students and obtained financial grants from the National Science Foundation and the Smith Richardson Foundation.<sup>32</sup> Since Louisiana enacted its covenant marriage legislation in 1997, the coauthors indicate that only about two percent of new marriages are covenant marriages.<sup>33</sup> *Covenant Marriage* reports on various aspects of these marriages, including the characteristics and type of couple choosing covenant marriage;<sup>34</sup> the role of religion in covenant and standard marriages;<sup>35</sup> and divorce, religiosity, and counseling rates.<sup>36</sup> Although the study contains interesting findings of benefit to policymakers - such as the failure of bureaucrats and their staffs to adequately implement the law,<sup>37</sup> **[\*370]** the value of mandatory premarital counseling,<sup>38</sup> and the counterproductive effect of pre-divorce counseling<sup>39</sup> - this Article concentrates on the comparison of the quality of the ongoing marriages of covenant and standard couples.<sup>40</sup> The study found convincing evidence "that standard and covenant marriages develop differently over time."<sup>41</sup> During the most challenging years of marriage - the first few years and the year of the first child's birth - the researchers found that couples appeared to need a "guiding model of marriage" derived from one of two sources: religious faith or secular beliefs incorporating the traditional view of marriage.<sup>42</sup> Still, "religion appears consistently more important than

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<sup>30</sup> Nock, Sanchez & Wright, *supra* note 1.

<sup>31</sup> *Id.* at xii.

<sup>32</sup> *Id.* at xiv.

<sup>33</sup> *Id.* at 3. The legislation provides for the conversion of a "standard" marriage into a covenant marriage, see [La. Rev. Stat. Ann. § 9:275](#), but these conversions were not included within the study sample.

<sup>34</sup> Nock, Sanchez & Wright, *supra* note 1, at 62-71.

<sup>35</sup> *Id.* at 78-97.

<sup>36</sup> *Id.* at 116-40.

<sup>37</sup> See *id.* at 61. Not only did the Clerks of Court, responsible for the issuance of state marriage licenses, fail to properly implement the law, they often constituted an affirmative obstacle to the implementation. The researchers documented this through a "confederate" study in seventeen selected parishes where students posed as prospective spouses, all of which is documented in Nock, Sanchez & Wright, *supra* note 1, at 72-77.

<sup>38</sup> *Id.* at 119. In some subset of couples, their marriages were probably strengthened by the premarital counseling, if this counseling was formal and in multiple sessions. "In short, regardless of the wife's religiosity, couples appear to have much lower chances of divorce when they receive multiple sessions of premarital counseling." *Id.* "Given that premarital counseling reduces divorce rates, the covenant requirement for obtaining it appears to be one possible reason such couples have more intact marriages. There are, of course, enormous selection effects operating here, especially with regard to religiosity." *Id.* at 132.

<sup>39</sup> See *id.* at 122. Rather than discouraging divorce, the "couples who receive marital counseling (during marriage) are substantially more likely to divorce than couples who forego this option. All forms of marital counseling are associated with a two-to threefold increase in the likelihood of divorce." *Id.* "Marital counseling is associated with at least three-times-higher odds of separation and divorce." *Id.* at 123.

<sup>40</sup> See *id.* at 98-115.

<sup>41</sup> *Id.* at 114.

<sup>42</sup> *Id.*

almost any other factor considered." <sup>43</sup> Why? Because, according to the authors, religious faith includes "shared activities" bolstered "by the social support typically associated with congregational participation, or service attendance." <sup>44</sup>

Chapter six of the book is devoted to comparing the marital quality of ongoing covenant marriages with that of standard marriages. The authors examine four fundamental dimensions of marital quality: (1) "consensus, or the extent of agreement between partners on the essential aspects of married adult life"; (2) "the degree of satisfaction each partner has with various aspects of the marriage"; (3) "cohesion ... or the extent to which couples engage in activities as a pair"; and (4) "affection and the couple's sense of their agreement about it." <sup>45</sup> Additionally, the authors added a consideration of **[\*371]** "fairness (measured ... by the relative responsibilities each partner has for maintaining the household)." <sup>46</sup>

Not unexpectedly, covenant couples had fewer divorces by the end of the study: "Covenant couples have only a little over half the odds (.55) of divorce or separation that standard couples have." <sup>47</sup> Yet the disparity in the result was attributed by the researchers to the religiosity of the couple, particularly the wife, rather than the covenant marriage statute per se. <sup>48</sup> Further, "the results also show that a wife's higher (college) education significantly reduces the odds of divorce." <sup>49</sup> To summarize, the authors conclude:

This first analysis shows that (1) the beneficial effects of covenant marriage are tied largely to religiosity, and specifically the wife's religiosity; (2) part of the beneficial effects of religiosity is because of a more supportive family and peer community; and (3) the wife's education and the initial disadvantages couples bring to a marriage seem exceptionally important to marital success or failure, independent of previous divorce experience or the experience of childhood parental separation. <sup>50</sup>

Among the covenant and standard married couples who divorced, those couples in a "standard" marriage reported significantly more fighting than the covenant couples, and physical assault and **[\*372]** personal injury was twice as likely among "standard" married couples. <sup>51</sup>

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<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id. at 99.

<sup>46</sup> Id. at 99-100.

<sup>47</sup> Id. at 117.

<sup>48</sup> Id. at 117, 119. "In short, religiosity has such strong effects on deterring divorce because it is associated with more support by others [family and friends more likely to approve of the marriage], fewer premarital financial and personal disadvantages, and lower chances of having experienced childhood parental separation." Id. at 119. Furthermore, the authors emphasize:

We find that religiosity, and not the covenant marriage per se, is primarily responsible for the lower divorce rates of covenant couples. Because religious people are less prone to divorce, then, not surprisingly, covenant couples, who are singularly more religious than standard couples, are less likely to divorce. Moreover, these effects are largely a result of the wife's religiosity, not the husband's. Even after a wide range of additional factors (for example, income, age, education) are controlled, we still find that the wife's religiosity, and not the covenant status of their marriage, accounts for their lower divorce rates.

Id. at 117.

<sup>49</sup> Id.

<sup>50</sup> Id. at 119.

<sup>51</sup> See id. at 124-25. The authors "conducted interviews with twenty-four divorced covenants and sixty-four standards." Id. at 124. Even though fifty-four percent of the covenant couples seeking a divorce argued that the process was too long, "one in four report ... talking more carefully about the possibility of divorce because of their covenant marriage." Id. at 126.

In describing the selection effects surrounding covenant marriage, the authors explain, "Above all, the decision to attain a covenant marriage, and therefore, the counseling and all other requirements associated with it, was largely a choice made by a particular type of individual or couple... . Covenant couples were, on average, much more religious than their standard counterparts."<sup>52</sup> If covenant couples who choose covenant marriage are more religious than their "standard" counterparts and would view marriage as sacred and transcendental anyway, what purpose does the law serve?<sup>53</sup> "What [a couple has] done by choosing to marry under the covenant regime, and what they could not have done without it, is make their views about marriage public."<sup>54</sup> The choice of a covenant marriage that the State of Louisiana gives to couples permits these couples to evangelize others.<sup>55</sup> Simultaneously, as the authors of the study observe, "the prosaic elements of the law also have potentially **[\*373]** important effects."<sup>56</sup> The mandatory premarital counseling probably led more couples to obtain it than would have otherwise, and the "evidence implies that the consequences were better."<sup>57</sup> So, how can we interpret the success or failure of Louisiana's covenant marriage statute? If Louisiana took "the first large step in the marriage movement" by its enactment, what now?<sup>58</sup>

## Conclusion

Tony Perkins, the author of the covenant marriage legislation and now President of the Family Research Council in Washington, D.C., envisioned covenant marriage as an opportunity for segments of our society to serve as models of effective families. He hoped this would stem the tide of broken families.<sup>59</sup> That goal has been largely realized, but "the problem ... is that the group of individuals who did choose covenant marriage was so small that any signal

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<sup>52</sup> Id. at 143. In speaking of religious beliefs of a married couple, the authors state:

Their religious beliefs, we found, were particularly strong in matters of marriage. They saw marriage as sacred, a part of God's plan, and they tended to view themselves as part of that plan. Accordingly, the legal requirements embodied in the covenant marriage law complemented these strong personal views... . [Controlling for religiosity] means that it was the religiosity, and not the choice of marriage type, that typically mattered most.

Id. (emphasis added). Still, in the case of Jack and Amy, a fragile covenant couple whose story is recounted by the authors in the text, the legal effects of covenant marriage made a difference by requiring more of the spouse who wants to leave the marriage and pragmatically favoring the other spouse in custody and child support decisions. See id. at 133-39.

<sup>53</sup> The minor tragedy of the resistance, unsuccessful implementation, and inadequate advertisement of the covenant marriage law is that some of the standard couples, had they known about the covenant marriage law, would have wanted that option. See id. at 146. The authors state:

About one in seven (14 percent) wives in standard marriages reported they wished they had covenant marriages, and about one in ten (8 percent) of their husbands felt likewise. Only about one-half (48 percent) of the wives who entered standard marriages but wished they had entered covenant marriages received marriage counseling ... ."

Id. at 143.

<sup>54</sup> Id. at 144.

<sup>55</sup> See id. at 146.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id. at 148. The authors suggest:

A better way to think about what has happened in Louisiana and the rest of the country is that we are now beginning to have a national conversation about marriage. These conversations are rare... . This, however, is often how changes in society [and the broader culture] are managed and understood, and this is how to make sense of the marriage movement.

Id. at 151-52.

<sup>59</sup> See id. at 146-47.

they might send was weakened by the overwhelming noise of the doubters, obstructionists, and the simply unaware."<sup>60</sup>

Nonetheless, the small number of Louisiana covenant couples made the 2004 amendment of the statute possible, thereby amplifying the vision and the content of covenantal marriage.<sup>61</sup> In addition, educating members of the critical legislative committees from 1997 to 2004 that "the best arrangement for children is with two loving, married, parents" paid enormous dividends.<sup>62</sup> In 2006, the Louisiana legislature amended the divorce law that applies to "standard" couples, extending the waiting period of living separate required for a [\*374] "no-fault" divorce from 180 days to 365 days when there are minor children of the marriage.<sup>63</sup>

Louisiana's Commission on Marriage and Family had its first official meeting on February 5, 2009. Louisiana's young governor, Bobby Jindal, is himself in a covenant marriage, as is the chair of the Commission, Sharon Weston Broome, President Pro Tempore of the Senate.<sup>64</sup> It is possible that in the future, implementation of the legislation may improve significantly, and as a consequence, so will the impact of covenant couples' evangelization effort.<sup>65</sup> In the meantime, covenant marriage serves as a sanctuary for religious married couples from the coarseness and fragility of marriage secularly conceived and as a remnant - imperfect without a doubt - of the Christian conception of marriage described in *Mulieris Dignitatem*. And according to St. Paul, God always leaves a faithful remnant.<sup>66</sup>

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<sup>60</sup> Id. at 147.

<sup>61</sup> See supra text accompanying notes 11-19.

<sup>62</sup> Nock, Sanchez & Wright, supra note 1, at 149; cf. David Popenoe, *The American Family, 1988-2028: Looking Back and Looking Forward* (Ctr. for Marriage and Families, Inst. for Am. Values, Research Brief No. 13, 2008), <http://center.americanvalues.org/?p=77> (arguing that the weakening of the family in recent decades has hurt children, created substantial social costs, and has failed to produce adult happiness, and predicting that the trend will continue).

<sup>63</sup> See La. Civ. Code Ann. art. 103.1(2) (Supp. 2010); see also id. arts. 102-103.

<sup>64</sup> The author of this Article is a personal friend of Governor Jindal and Senator Broome, and knows that each is in a covenant marriage.

<sup>65</sup> The authors of *Covenant Marriage* conclude:

Even had covenant marriage been fully implemented, and even had every engaged couple known its full details, it is still unlikely that more than the 8 to 14 percent would have elected it. Of course, if this many couples had chosen covenant marriage, everyone involved would regard the experiment as an unqualified success on this score - the take-up rate - at least.

Nock, Sanchez & Wright, supra note 1, at 143-44.

<sup>66</sup> See Romans 11:2-5.