

TO: Mrs. Clinton

FROM: MaryEllen McGuire

RE: Covenant Marriages

DATE: January 28, 2000

Covenant marriage, now legally available in Louisiana and Arizona, is a form of matrimony in which couples agree to undergo counseling before taking their marriage vows and must promise to see a law person or religious counselor instead of heading to divorce court, if marital troubles crop up. Covenant marriage laws do allow divorce under limited circumstances, including adultery, abuse or abandonment, and when a couple has lived apart for more than two years. The idea behind covenants is to "fortify" marriage by making divorce harder and less common.

While voices from the right applaud the availability of covenant marriages, many on the left argue that covenants will raise the human and economic cost of divorce and *not* lower the divorce rate. On the one hand, it can be argued that the legislation forces engaged couples to think harder about what it is they are getting into and perhaps prevent a number of ill fated unions from taking place. On the other hand, it can be argued that covenant marriages roll back the gains of no-fault divorce legislation, exacting a heavy toll on divorcing parents and their children. No fault divorce eliminated the need for blame-- making the whole divorce process more humane, simple and less expensive- something opponents argue covenant marriages could undo.

Covenant marriages have been in effect since 1997.

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August 17, 1998 Monday, ORLEANS

SECTION: NATIONAL; Pg. A1

LENGTH: 913 words

HEADLINE: COVENANT MARRIAGE: SOME DO, MORE DON'T;
IT'LL CATCH ON, BIG BACKER SAYS

BYLINE: By ED ANDERSON Capitol bureau

DATELINE: BATON ROUGE

BODY:

The Legislature said I do a year ago to a stricter but optional form of wedding vows known as a covenant marriage, but fewer than 500 couples have marched down the aisle to accept the more binding bonds.

State Rep. Tony Perkins, R-Baker, the driving force behind the legislation creating the nation's first covenant marriage law, said the response is not bad for such a new program.

It is brand, new, Perkins said. It is a matter of public awareness. It is a matter of public awareness. It is something we have to work on.

Under the covenant marriage law, a couple agrees to undergo counseling before taking vows and must promise to see a law person or religious counselor, instead of heading to divorce court, if marital troubles crop up. It allows a divorce under limited circumstances, including adultery, spousal or child abuse, imprisonment or abandonment. A couple also can get a divorce after living two years apart.

Official records on covenant marriages are hard to come by but a survey of clerks of court offices in the state, conducted by East Baton Rouge Parish Clerk of Court Doug Welborn's office, showed at least 440 - and as many as 478 - covenant marriage licenses have been included under the law. Another 600 have been issued to married couples who married under the law, including about 50 couples from out of state.

The state averages about 40,000 marriage licenses a year. Louisiana was the only state to have a covenant marriage law until a few weeks ago, when Arizona became the second, a spokesman for the National conference of State Legislatures said. Another 17 states tried a variation of the law but failed to pass one, the legislative research agency said.

The momentum is beginning to build, Perkins said. It is an issue that is taking time to build.

Perkins said he is encouraged that many married couples want to have their marriages renewed under the law. HE said he would like to modify the statute to make it easier for out-of-state couples to get remarried in a Louisiana covenant marriage.

Covenant Marriages

The Times-Picayune, August 17, 1998

Nevada is known as the divorce state, he said. I want Louisiana to be known as the marriage state.

Perkins said there have been a few glitches in the law that may have slowed its wider use. He said that in some churches earlier this year dozens of conversions marriage were held at one time. But when it came time to clerks offices, a church member could not file on behalf of all the couples, each couple had to come in individually.

He also said some were required to pay higher fees to get the new licenses, in some cases up to \$50. Perkins said tha discourage some who underwent the ceremonies bud did not officially file a record of it.

Welborn, whose home base of East Baton Rouge Parish has chalked up the most covenant marriages and remarriages - 89 and 410, respectively - said some people are just not comfortable with the idea of the more stringent optional standards to end a marriage.

They view it as something that an make your life more difficult, Welborn said. People are skeptical of things that can make life more difficult. IT was proposed by the government, and some people might be afraid of it on that asis alone.

As time goes by and the law is more fully explained, people, will feel more comfortable with it as the numbers should increase, Welborn said.

Perkins said he also plans to talk with Catholic bishops of the state to try to get them on board. He said he might propose the law be amended next year to take away the bishops major objection: the requirement that pre-marriage counseling including a discussion of the law's standards for divorce. The bishops said that could confuse or obscure the integrity of church teaching on the permanence of marriage.

They have not embraced it because of language that is unacceptable ont he divorce counseling, said Kirby Ducote a spokesman for the Louisiana Catholic Conference, an organization that represents the nine Catholic bishops of the state.

Episcopalians, Methodists and Presbyterians also have not endorsed the new law. Baptists and more conservative denominations have.

But some of thoes sclergymen admit they have not promoted the law enough or spent as much time as they should explaining it.

It is still a matter of word getting out about it, said the Rev. Buford Easley, pastor of Williams Boulevard Baptist Church in Kenner. Nobody knows what it is ... I am part of the problem. I am not used to it and have not talked it up. We are not used to it, either.

Apparently the word did get out to St. Tammany Parish newlyweds Brandon and Robin Bedford, married a few weeks ago and now preparing to enter the Air Force together.

If you do ever have trouble, Brandon Bedford said, this means you go to counseling before it is a divorce. This is for a lifetime. There was never any

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talk about us not getting the covenant marriage. We both totally wanted it.

Robin Bedford agreed: It is a safety net. If you are not thinking clearly and there is a problem and want to get a divorce this prevents it. This is a deeper commitment.

But Jeanne Parker Martin of River Ridge who recently married in the Catholic Church in Baton Rouge said she and her husband, J.C., opted against a covenant marriage because of the church's oppositon to divorce and divorce counseling under any conditions.

We asked our priest aboutit and he said the church was not behind it, she said. All marriages are covenant marriages. There is no chance of us breaking up.

GRAPHIC: #ART: WITH THE RING Convenant marriage licenss issued and traditional licenses converted to covenant marriages in the New Orleans area since the law took effect Aug. 15, 1997 (totals through July 31) CONVENANT CONVERTED PARISH MARRAIGES TO COVENANT -----
 Jefferson 25 10 Orleans 27 0 Plaquemines 0 1 St. Bernard 5 0 St. Charles 6 2 St. John 3 3 St. Tammany 21 1 AREA TOTALS 87 17 STATE TOTALS 471 686* *Includes 651 out of state marriages converted to covenant marriags in Louisiana Source: Poll of clerks by East Baton Rouge Parish Clerkof Court Doug Welborn, State Department of Health and Hospitals Office of Vital Records, staff research SOLEMN VOWS Highlights of theyar-old coenant marriage law for newlyweds and married couples who want to be remarried under it: Couples agree to 'live together as husband and wife forever.' Bride and groom have made full disclosure to one another on things that could adversely affects a marriage. Couple agrees to undergo premartial counseling. If marital problems arise, couple promises to seek counseling to resolve trouble. Marriage can be ended in divorce if counseling fails under limited circumstances adultery, spouse serving jail time for a felony, abandonment for one year, physical or sexual abuse of spouse or child, or if couple have lived apart for at least two years 2 STAFF GRAPHICS

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Insight on the News

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HEADLINE: Q: Would Louisiana's 'covenant marriage' be a good idea for America?;
No: It won't lower the divorce rate and will raise the human and economic cost
of divorce.

BYLINE: Ashton Applewhite; SPECIAL TO INSIGHT

BODY:

"Covenant marriage," now legally available in Louisiana and pending before numerous other state Legislatures, is the first step in a nationwide movement led by conservative Christians and "pro-family" activists to rewrite or repeal no-fault divorce laws. Under covenant marriage, divorce would be permitted only on narrow grounds such as adultery, abuse, abandonment, felony imprisonment or a mutually agreed-upon two-year separation. It seeks to "fortify" marriage by making divorce harder and thus less common. It won't work.

The prevalence of divorce in America is a result of sweeping social changes that cannot be wished away with a piece of sanctimonious and punitive legislation. Anticipating litigation, the covenant-marriage contract is really a postnuptial agreement, guaranteeing that those who make mistakes will suffer exceedingly in their undoing, hardly a Christian attitude. If anything, it should be harder to get married, not to end a union gone wrong.

There lies the sole benefit of this legislation: By forcing engaged couples to think a little harder about what they're getting into, covenant marriage should prevent a number of disastrous unions from occurring in the first place. Many more couples, however, pressured into feeling that "marriage lite" is a cop-out, will ignore their misgivings and live to regret it.

* Covenant marriage won't affect the divorce rate. Covenant marriage will not succeed in its primary objective because there never has been any correlation between the incidence of divorce and the laws on the books. The surge of divorces in the 1960s well preceded no-fault legislation, for example, and the American divorce rate has in fact declined slightly in recent years. As sociologist Andrew Cherlin of Johns Hopkins University in Baltimore, a noted scholar in the field, puts it, "The great misconception is that divorce laws change people's behavior. People's behavior changes divorce laws." That's why there is no indication that public attitudes support the current backlash.

Many conservatives maintain that if just one spouse can file for divorce, or if the legal hurdles are low, more couples will separate. It's a logical argument, but not an accurate one, because restrictive laws simply are not an effective deterrent. Just as capital punishment does not lower the crime rate

and restricting access to abortion only results in more back-alley operations, people who want out of their marriages will find a way - legally if they have the resources, illegally if not. The incidence of desertion and fraud, which does correlate with stricter divorce laws, would increase, as would marital homicides.

* Covenant marriage will raise the human and economic cost of divorce. Because responsibility no longer had to be assigned, no-fault divorce eliminated the need for one spouse to sue the other. This made the whole process more humane, simpler and much less expensive - and is precisely what covenant marriage legislation would undo. Assets would be spent on lawyers instead of building new lives or providing for children, a real irony given the pro-fault movement's "pro-family" stance. Energy would go into excruciating struggles about offspring and property, instead of into figuring out how to maintain decent relations with the person around whom life once centered, and to moving on.

Described in a New York Times article, aptly subtitled "Blame is Back," as "an emerging campaign to restore notions of guilt to divorce law," the repeal of no-fault would result in a tragic increase in the kind of hostilities that can turn divorce proceedings into scorched-earth campaigns. As anyone who has been through a "fault" divorce knows, coming up with grounds is the most demoralizing and wounding part of the process. Ruling out mediation or civil compromise, this bitter exercise mires the couple in accusations and repudiations, making it all the harder to heal and move forward. Blame only damages, but the notion of retribution has endless appeal for the self-righteous. Perhaps the blame lobby would find no-fault divorce more palatable if it were renamed "bi-fault."

* Covenant marriage will hurt children. Both sides in this debate can cite countless expert opinions as to the effect of divorce on children, whether devastating or benign. Clearly, divorce does not guarantee maladjustment any more than growing up in an intact home guarantees mental health. The real issue is how children of divorce who live in one, or two, calm and happy homes fare compared to those who grow up in intact homes filled with turmoil or icy silence.

One thing all the experts agree on, though, is that witnessing or being party to parental conflict is what harms children. By making their parents' divorce more difficult and more hostile, covenant marriage ensures the prolonged exposure of children to the most damaging possible circumstances: parents who fight. Too often their deliverance is left in the hands of strangers and overburdened courts. Fractured into warring camps, families often never fully recover. Significantly, even psychologist Judith Wallerstein, author of one of the most-cited studies about the negative effects of divorce on children, opposes legal efforts to make divorce harder.

* Covenant marriage raises hurdles that already are high enough. The current outcry that divorce has gotten "too easy" is a periodic complaint, recalling Horace Greeley's displeasure in the late 19th century that too many people were getting "unmarried at pleasure." This charge is cheap to make but impossible to substantiate. Everyone believes divorce is a bad thing, yet everyone knows individuals who divorced for good reasons. By the same token, many think divorce is "too easy," but would be hard put to name a single person for whom the process was anything but painful and arduous - as it should be. Fault or no-fault, divorce is not lightly undertaken.

Neither is matrimony, the Donald Trumps of the world notwithstanding. To act as though the Louisiana Legislature had just invented a way to make marriage binding and meaningful demeans the vows which have joined men and women for millennia.

* Covenant marriage is sexist. One of the principal rationales behind covenant marriage is that it will provide wives with legal recourse against errant husbands the way the old laws did. They linked property to "fault," forcing the divorcing wage-earner to continue to support his family and giving "innocent" wives considerable leverage in negotiating settlements. The loss of this bargaining power concerns women's-rights advocates as well, joining them in an unlikely alliance with "pro-family" forces.

But the automatic assumption that wives are victims does women no favors and is unfair to the many "innocent" husbands whose wives leave them. The underlying notion of innocence vs. guilt should be jettisoned. It reinforces the age-old link between goodness (innocence) and passivity, a big step backward for authentic women's rights. It also completely disregards the fact that divorce is twice as likely to be initiated by the wife as the husband, and that advancements in women's social and political status correlate with access to affordable divorce. Divorce indeed would become less accessible to women under covenant marriage because it would cost so much more.

* Covenant marriage ignores social reality. Profoundly reactionary, the covenant-marriage movement invokes a return to a way of life that was rooted in postwar prosperity, only available to a privileged minority and never all that golden. Of course it would be wonderful if everyone lived happily ever after and all children were raised by loving parents who made it home by 3 o'clock. But, like it or not, most parents must work outside the home. Like it or not, the American family is changing shape: 60 percent of families are headed by a single parent, more than half of whom have never been married. Like it or not, marriage is becoming less relevant: about 3.5 million unmarried opposite-sex couples now share living quarters, up from 2 million a decade ago; men and women now marry later, separate from one another more frequently and, once separated, are less likely to remarry.

Because of these and other wide-ranging cultural forces, divorce is here to stay. As sociologist Arlie Hochschild puts it, "Women have gone into the labor force, but ... we have not rewired the notion of manhood so that it makes sense to participate at home. Marriage then becomes the shock absorber of those strains." To cope, husbands and wives need help figuring out fairer ways to distribute responsibility and authority. Meanwhile, the question is not whether these changes are good or bad, but how Americans can adapt wisely and compassionately to a domestic landscape in profound transition.

Idealizing the traditional nuclear family excludes not just the divorced, but also widows and widowers, adopted and foster children and all those who love and are loved outside of a legal contract. It sanctions job discrimination against working parents who need all the help they can get. It ignores the fact that divorce often brings terrible problems to light (problems that continue to seethe privately and damagingly in many intact families) and that divorce very often is the right decision for both the adults and the children involved. It denies the reality that many divorced parents continue to cooperate successfully in raising healthy children. And it perpetuates the myth that divorced people do not honor or value marriage. It is time for our religious and political

leaders to stop looking back at outmoded models and reach ahead to innovative solutions.

* Covenant marriage is morally problematic. Who really believes that physical abuse or abandonment must take place to render a marriage intolerable? Certainly no victim of mental cruelty, verbal abuse, confinement, financial or sexual withholding, threats against children or dozens of other reprehensible behaviors against which covenant marriage will offer no recourse.

Even more troubling is the quality of married life implicitly sanctioned by this legislation. The threat of an ugly, protracted legal battle indeed will immobilize a number of deeply unhappy spouses. But the thought that someone would want to stay married against his or her partner's desires runs contrary to any humane notion of how people who once cared deeply about each other - and may still - should treat each other. What kind of marriage can it be when one spouse is present against his or her will? What kind of life can be lived in rooms full of rage and despair? Wedlock indeed, but no place for children, nor for responsible adults.

Applewhite is the New York City-based author of Cutting Loose: Why Women Who End Their Marriages Do So Well, and writes frequently on issues of marriage and divorce.

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HEADLINE: Divorce Reform Aids Families, Children

BYLINE: BY JONATHAN LIPPMAN; Jonathan Lippman is Chief Administrative Judge of the New York State Unified Court System.

BODY:

NEW YORK courts grant approximately 60,000 divorces annually. About three-quarters of these are uncontested, and are generally resolved quickly and without serious complication. In the remaining cases, the parties contest the grounds or terms of the breakup.

For a variety of complex reasons, ranging from warring, highly emotional spouses to the inherent inefficiencies of our outdated court structure, these cases can take too long and cost too much to resolve. When this happens, additional, unnecessary hardships are imposed on already vulnerable children and family members struggling to rebuild their lives.

Under Chief Judge Kaye's leadership, we have made much progress in reducing divorce delay since 1993, when new matrimonial rules and related measures were introduced to streamline court operations. These included specialized matrimonial court parts, early case management and appointment of an administrative judge to monitor matrimonial matters statewide.

As a result of these reforms, in New York City we have achieved a 57 percent reduction in the number of pending divorce cases. The average age of all pending cases -- an objective, telling indicator of caseload health -- has dropped by 49 percent, from 854 days to 433 days. These dramatic reductions have taken place even as annual case filings increased by 12 percent over the same time period. There has been progress outside New York City as well, where the number of pending divorce cases dropped by 12 percent as filings increased 20 percent.

Despite these improvements, however, there has been little discernible progress in ameliorating the adversarial culture of divorce. That is why, last month, we announced a new matrimonial reform program that brings a more humane, resolution-oriented approach to the treatment of matrimonial cases.

This program, which will be overseen by Justice Jacqueline W. Silbermann, Administrative Judge for Matrimonial Matters, is designed to protect families and children from the trauma of divorce. We reject the notion of a passive judicial process and are convinced that the courts can and should play an active role in reducing conflict and humanizing divorce, particularly where children are involved.

Reform Program

Someone in New York
may want to follow up
| on these initiatives |

A leading element of our program is parental education in cases involving custody and visitation issues. This will reinforce good parenting skills, educate and sensitize parents about the effects of divorce on children and help them to put aside hurt feelings and make joint decisions regarding their children's well-being. Parental education fosters the amicable resolution of post-divorce custody and visitation issues and reduces conflict and litigation. Cases involving domestic violence or abuse will be excluded.

Programs are being instituted now in New York City, sponsored by the New York County Lawyers Association, Hofstra University School of Law and the New York Society for the Prevention of Cruelty to Children. Our implementation efforts will borrow from successful programs already in existence, such as those in Rochester, Buffalo, Long Island and Westchester County. Finally, the judiciary this year will propose legislation to institutionalize divorce education and resolve the many important policy issues that surround it.

Child custody, visitation and relocation issues are among the most contentious we face in the courts. Early assisted resolution of these disputes benefits all participants, especially children, who otherwise suffer from protracted uncertainty over their status. In a proactive approach to achieving this end, the court system is hiring social workers with a background in child custody and visitation to serve as a permanent presence in the courts. They will assist the parties in reaching a negotiated settlement by conducting meetings, defining issues, defusing emotion and suggesting possible ways to resolve the dispute.

All complaints or motions involving these issues will be screened carefully by judges to ensure that they are appropriate for referral. No matter involving domestic violence, child abuse or sexual abuse will be referred. Litigants and their attorneys will be required to participate in good faith. If no settlement is reached, the matter will revert to the assigned judge together with a status report. Programs will begin operating shortly in the New York City metropolitan area.

Neutral Evaluation

Building on the successful matrimonial neutral evaluation programs in place in New York, Nassau and Orange Counties, the court system will expand neutral evaluation to other locations in the New York City metropolitan area. The object of neutral evaluation is to assess disputed issues with a view toward promoting settlement rather than litigation.

Volunteer attorneys with extensive expertise in matrimonial and family law review the pleadings and other relevant documents and meet with the litigants and their attorneys to raise questions and explore issues. The parties and their attorneys are then provided with an oral evaluation and advisory (to which the court is not privy).

The New York County program has successfully promoted settlements in more than half of referred cases. We are grateful to the many volunteer attorneys who have served as neutrals in these programs, and we look forward to continued collaboration with the matrimonial bar to ensure the success of future projects.

Upstate, we are instituting additional matrimonial screening parts to encourage early resolution of divorce cases. By scheduling early conferences

in all contested matrimonial cases, courts have been successful in encouraging and facilitating settlements of non-complex cases.

Stipulations worked out during these conferences bring these matters to an end officially, eliminating lengthy and costly motion practice. This initiative, which has been implemented with great success in Erie and Monroe Counties -- where settlement rates have exceeded 70 percent -- and recently in Ulster County, will be expanded into Steuben, Livingston, Yates, Ontario, Seneca, Cayuga and Wayne Counties early in 1999.

In New York City this year, we will implement two pilot Unified Family-Matrimonial Court Parts. Assigned judges will handle all aspects of divorce cases, including custody, support and family offenses. (Typically, the various matters involved in a divorce are parceled out to as many as three different courts -- Supreme, Family and courts of criminal jurisdiction -- due to the different jurisdictions of each.) This measure, an example of the streamlined court structure sought under the Unified Court System's current restructuring proposal, is modeled largely on an existing program in the Fourth Judicial District, which covers 11 counties in northeastern New York State.

The Appellate Division, First Department, will soon require that law guardians undergo a certification and training process in order to be eligible for court appointment. These professionals are appointed by courts every day to represent the best interests of children. In light of the critical role they play in dispositions affecting children, it is important that the courts give careful attention to their qualifications and training. Rules are now being drafted to implement this program in New York and Bronx Counties.

Also in the First Department this year, a similar certification and training process will be established for mental health professionals who serve as evaluators and fact-finders in matrimonial matters. In the Second Department, a committee of judges, mental health professionals and the law guardian director is in the process of being formed to establish application procedures and criteria for the certification and training of forensic experts.

Legislative Initiatives

Finally, to reduce delay, gamesmanship and legal fees, the court system will sponsor two key legislative initiatives in 1999. The first of these provides for mandatory disclosure of key documents, such as tax returns and bank statements, within 45 days of the start of the divorce action.

The second proposal requires plaintiffs in all matrimonial actions to serve upon the defendant, at the time of the service of the summons, a copy of an automatic court order that freezes the rights and obligations of the parties with regard to marital assets and other important issues such as the status of children. Together, these two measures will minimize the agony and expense of divorce by severely restricting the parties' ability to employ dilatory discovery tactics or take unilateral action with respect to marital assets and children.

Those of us charged with the administration of family justice in New York believe that the court system can play a vital, constructive role in reducing the destructive conflict and animosity associated with divorce. It is beyond dispute that the effects of divorce on children are pervasive and lasting.

It is therefore imperative that the well-being of children be the first priority of all concerned, even when parents are embroiled in an emotional legal battle. The new matrimonial program facilitates this goal by creating a humane, dignified court process that keeps the parties focused on cooperation and settlement, and by providing divorce courts with the necessary tools to protect families, promote the best interests of children and preserve family resources.

GRAPHIC: Photo, Judge Lippman

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Explaining the Higher Incidence
of Adjustment Pbs Among
Children of Divorce Compared
to Those in Intact Families