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NOTE

"I DO" OR "I DON'T"?
COVENANT MARRIAGE AFTER SIX YEARS

KRISTINA E. ZURCHER*

INTRODUCTION

A marital emergency. A culture of divorce. Commentators describe the current state of marriage in America as a crisis, and rightfully so, where an estimated forty percent of first marriages and even more second marriages end in divorce.

This crisis balloons as one considers that the ramifications of divorce extend far beyond the two parties to the marriage. Children from divorced homes are 12.4 times more likely to be incarcerated than children from two-parent married homes. Mothers and children from divorced families are more likely to be living at or near the poverty level. The government spends much money each year facilitating divorces and providing programs for

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women and children.\textsuperscript{7} Furthermore, the whole community suffers from broken marriages, as its collective stability lessens.

Various political and religious organizations, state legislatures, and Congress have tried to implement solutions to the marriage crisis in America. One example of legislation is covenant marriage, which has been implemented in Louisiana, Arizona, and Arkansas. Under this legislation, when applying for a marriage license, a couple must choose between entering into a "regular" marriage and a covenant marriage. A covenant marriage requires a signed intent agreement, premarital counseling, counseling for a couple considering divorce, and a waiting period before a divorce is granted. Also, the conditions to dissolve a covenant marriage hearken back to the old fault-based divorce law regime, unless the parties meet certain separation requirements.\textsuperscript{8}

Other groups have proposed non-legal solutions to the marriage crisis. In Community Marriage Policies, the religious leaders in a city agree only to marry couples who engage in premarital counseling, a waiting period, and, often, post-marital counseling with mentor couples.\textsuperscript{9} Other groups, notably the Roman Catholic Church, require a waiting period and certain classes or counseling requirements before granting a marriage in the Church. Solutions by most of these groups are privately based and only apply to couples who marry in a religious setting. Secular options include marital skills classes, promoted by groups such as Smart Marriages, and traditional marital counseling.

The institution of marriage has both legal and religious bases. Couples gain a different legal status upon marriage, and they become partners in God's eyes. Covenant marriage attempts to bridge law and religion by legally giving the marriage the greater permanency it has always had from a religious viewpoint. However, after six years, the covenant marriage laws statis-

\textsuperscript{7} See generally id. at 2080–81.


tically have not accomplished their purposes to strengthen marriage and prevent divorce. Furthermore, although the covenant marriage laws are religiously influenced, they do not truly fit a Christian perspective on marriage. Private religious initiatives, such as Community Marriage Policies, present a better solution by addressing the religious part of marriage within the legal institution.

Part I of this Note gives a brief overview of marriage and its history as a background for exploring covenant marriage. In Part II, the Note explains covenant marriage and its roots. Part III discusses the implementation problems of covenant marriage. Part IV examines various criticisms of covenant marriage. Part V explains why Community Marriage Policies may be a better way to address the marriage crisis.

I. A Brief Overview of Theoretical Debate on Marriage

Although marriage is an agreement between two individuals, in Western society it has always been considered to be more. In a simple contract, two parties legally agree on parameters binding them in a certain relationship. If either party crosses these parameters, that party must pay certain legal consequences, and the contract ends. However, marriage by its nature involves more than the two parties making the contract. Marriage involves the future spouses, the government (through changed legal status), God (from a religious viewpoint), and the families of the married couple. As a result, the marriage contract cannot be as easily terminated as an ordinary contract in allowing the parties to go their separate ways.

In an early illustration, St. Augustine described marriage as *fides, proles, et sacramentum*. *Fides* means faith, trust, and love; *proles* refers to creating children to perpetuate life and fill the Church; and *sacramentum* indicates that marriage is a symbolic expression of Christ's love.\(^\text{10}\) St. Augustine recognized that marriage affects the husband and wife by creating a relationship of trust and love; that it affects children from the marriage by making them dependent upon the parents for physical and spiritual welfare; and that it affects the Church by creating a union instilled with grace that in essence replicates the relationship between Christ and the Church.\(^\text{11}\)


11. See Revelation 19:7. Christ is the bridegroom, and the Church is the bride. Christ will never turn his back on the Church, and the Church has faithfully accepted Christ and his teachings. The marriage relationship is imbued
Because marriage is much different from a simple contract, marriage is rightfully described as a covenant: an agreement that involves the three parties of the husband, the wife, and God. An agreement made before God takes on permanency, gravity, and holiness. Up until the last hundred years, Western nations understood marriage from a religious perspective, and many even had separate ecclesiastical courts to decide marital issues. As John Witte, a scholar of marital history, notes, "The laws born of the Catholic and Protestant models of marriage are not the artifacts of an ancient culture to be studied by antiquarians and archivists alone. Until the twentieth century, this was our law in much of the West, notably in England and America." 

Witte identifies four religious models of marriage: the Catholic sacramental model, the Lutheran social model, the Calvinist covenantal model, and the Anglican commonwealth model. Each of these models emphasizes a different part of the marital agreement, but all still uphold the essential religious nature of marriage. The Catholic sacramental model views marriage as a “visible sign of the invisible union of Christ with His church. . . . Like Christ’s bond to His church, the husband’s bond to his wife was indissoluble and eternally binding.” In keeping with the view of marriage as a permanent sacrament, the Catholic perspective is incompatible with divorce and only allows annulment (nullification of the marriage) in clearly defined cases. The Catholic canon law view of marriage dominated the West until the Protestant Reformation. In contrast, the Lutheran social model sees marriage as God’s gift to society, a solution to sinful impulses—but not a sacrament. Thus, it places marriage within the civil realm, an estate subject to the law of the magistrate, not of the priest. The Calvinist covenantal model draws parallels between the great covenants in the Bible and the covenant

from a Christian perspective with this permanency and faithfulness straight from the Bible and religious teaching.


13. WITTE, supra note 10, at 194.
14. Id. at 26.
15. See id. at 43.
16. See id. at 49–51.
17. Id. at 70.
18. Two Biblical covenants can be described as the covenant of works and the covenant of grace. In the covenant of works, God promised the Israeli people, through Moses and Abraham, “eternal salvation and blessing” for obeying
between the husband and wife and God. "Just as God draws the elect believer into a covenant with him ... so God draws husband and wife into a covenant relationship with each other." Calvin introduced certain requirements for marriage that represent the different dimensions of God's involvement in marriage: the involvement of parents (God's guides to the couple), peers (witnesses to the marriage), minister (God's power to bless the union) and magistrate (legal recognition of the marriage). Finally, the Anglican commonwealth model view is a "via media" between overly religious and civil concerns, "a gracious symbol of the divine, a solemn covenant with one's spouse, and a social unit alongside church and state." Overall, though, it symbolizes "the commonwealth—that is the common good—of the couple, the children, the church, and the state." Marriage under the Anglican view delineated rights and duties in the home that reflected the best order of the English Commonwealth.

Generally under the religious models, marriage held a position of great importance in both the private and public spheres. The consequences of its formation (and sometimes dissolution) implicated not just the two parties, but also God, the family, and the community. Today, the religious view is not in place legally as it was prior to the nineteenth century. Although modern marriage has lost much of its old religious focus, most people still view marriage as at least rooted in religion, as can be seen by the 78% of people who choose to be married by a religious official.

Only after the Enlightenment did marriage come to be seen as primarily contractual. The Enlightenment view theorized that law should be the product of a rational process, not a cousin to religion. Following this rational emphasis, the "essence of marriage was the voluntary bargain struck between the two parties." The Enlightenment contractual view spawned two transformations of marriage law. The first, beginning in the 1830s,
underscored the equality of the two people entering into the marriage and tried to legally protect that equality while protecting traditional values. The second, however, beginning in the 1960s, stressed freedom of contract to the point of breaking traditional family roles and values.27

In America, some major results of this first transformation include the recognition of a woman’s independent personhood and her validity as an economic actor. Instead of being legally under the shadow of her husband,28 a woman gained the right to act in a legal capacity in her own name. Courts became more willing to give the mother custodial rights of minor children upon divorce,29 and a wife did not have to move with her husband against her will.30

However, the second transformation introduced no-fault divorce and the rising rate of broken homes and troubled children. In the fault-based divorce system, a divorce could only be granted upon proof of grounds for divorce. It was difficult to get a divorce if the innocent spouse did not want one. Then in 1969, California introduced no-fault divorce, which allowed divorce upon proof of irreconcilable differences.31 California’s lead was followed by every other state, and divorce rates skyrocketed. From 1970 to 1996, the number of divorced Americans more than tripled from 4.3 million to 18 million.32 The increase has spawned many problems. First, the standard of living for women and children after divorce generally decreases.33 Second, about half of the children from divorced families experience various developmental or confidence problems.34 While no-fault divorce did have positive aspects, such as the cessation of judicial embar-

27. Id. at 202.
28. A woman could not sue or be sued in her own name; rather, her husband was the target of any suit against her and the instigator of any suit for her. Also, a woman’s property transferred to her husband’s control upon marriage. See Hendrik Hartog, Man and Wife in America: A History 93–135 (2000).
29. Id. at 212.
30. Id. at 262–63.
33. See Kay, supra note 6, at 2066–68.
34. Difonzo, supra note 31, at 925 (citing Judith S. Wallerstein & Sandra Blakeslee, Second Chances: Men, Women, and Children a Decade After Divorce 299 (1989)). Note that the Wallerstein study has been criticized for its reliability. Id. at 926.
rassment from prying into a couple’s private life and a quicker exit from harmful marriages, it facilitated divorce more than the fault-based system did.

We can learn from previous Western models of marriage and modern developments to construct a new outlook on marriage that incorporates the best of all those models. Witte wrote that “both Catholic and Protestant traditions have seen that marriage is at once a natural, religious, social, and contractual unit; that in order to survive and flourish [it] must be governed both externally by legal authorities and internally by moral authorities. . . . [T]he family is an inherently communal enterprise . . . .” If we can recognize and value the different components of marriage, we can develop a better legal model than the marital models we presently have. Covenant marriage demonstrates one effort to improve upon the past while retaining the progress that has been made.

II. THE DEVELOPMENT OF COVENANT MARRIAGE

A covenant involves three parties: the two parties and God. Covenant marriage is not a new idea. Christians have always believed that marriage entails a far greater commitment than any ordinary agreement; Roman Catholics believe furthermore that marriage is a sacrament, a means of receiving God’s grace. However, the use of the term “covenant” has been simplified in much of modern usage. In fact, in today’s society “covenant” means only “a formal agreement or promise, usually in a contract.”

Non-compete covenants, covenants running with the land, and covenant marriage are just a few ways in which the original meaning of the term “covenant” has been lost.

Covenant marriage is a self-acknowledged attempt to address the cultural problems that have developed since the spread of no-fault divorce and its effects. This legal change, instituted by Louisiana in 1997, Arizona in 1998, and Arkansas in 2001, has been described as a “return to the fault regime of the past,” but it is not as simple as a backward look. Covenant marriage imposes requirements on the couple both before marriage and upon consideration of divorce in an effort to induce the

35. Witte, supra note 10, at 217.
36. BLACK’S LAW DICTIONARY 369 (7th ed. 1999).
38. ARIZ. REV. STAT. ANN. §§ 25-901 to -904 (West 2000).
40. Hager, supra note 2, at 574.
couples' deep thought about marriage. The requirements and very name of covenant marriage resonate with Christian views on marriage, a point which has garnered much debate. The use of the word "covenant" in particular invokes the very essence of Christian theology. This use can both add to a greater understanding and appreciation of covenant marriage as a solid life-long commitment and, for some, detract from its viability, as a law that may link church and state.

Four main elements comprise the covenant marriage proposals. First, couples wishing to marry must undergo some form of premarital counseling. The laws in all three states leave the premarital counseling requirement wide open, allowing any form of religious guide or private counselor to provide the counseling. Second, couples agree to take all reasonable steps to save the marriage before instituting divorce proceedings, a requirement read to include pre-divorce counseling. Third, couples may only divorce upon specified grounds, including adultery, conviction of felony (usually only a felony accompanied by sentencing to hard labor, death, or imprisonment), abandonment (not in Louisiana), and abuse. Arizona allows divorce upon a finding of habitual drug or alcohol abuse or if both spouses agree. Also, a two-year separation period or a one-year separation after a judicial decree of separation in some states may suffice as a ground for divorce, though in Arkansas, the couple must wait two years after a judicial decree of separation.


42. In Louisiana, the "couple agrees to take all reasonable steps to preserve their marriage if marital difficulties arise, including marriage counseling." LA. REV. STAT. ANN. § 9:237(C) (West Supp. 2003). In Arizona and Arkansas, the couple signs a statement declaring that upon marital difficulties, "we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling." ARIZ. REV. STAT. ANN. § 25-901(B)(1) (West 2000); ARK. CODE ANN. § 9-11-804(a)(1) (Michie 2002).


44. ARIZ. REV. STAT. ANN. § 25-903(7), (8) (West 2000).

information relevant to making a marital decision to the other before marrying.\textsuperscript{46}

Besides these requirements, all three states require the couple to sign a declaration of intent that confirms their desire to enter a covenant marriage. Notably, each state's declaration contains the language, "we understand that a covenant marriage is for life."\textsuperscript{47} This language further reinforces the couple's commitment to each other and their commitment to use all reasonable efforts to avoid divorce.

Covenant marriage tries to strengthen marriage by providing a legal mechanism that supports marital permanency. The influence of Witte's five marital models can be seen in covenant marriage. The greater permanency of covenant marriage compares to the Catholic sacramental view of marriage; the focus on civil regulation of a religious-based institution follows the Lutheran social view; the involvement of third parties explicitly in marriage counseling and implicitly in greater standards for divorce coincides with the Calvinist covenantal view; the realization that the marital unit affects society matches the Anglican commonwealth view; and the freedom to add provisions to marriage hearkens to the Enlightenment contractual view.

One could view covenant marriage as trying to combine the best parts of each of the important marital theories of the past. As a family lawyer wrote, "Marriage needs reinforcement from every aspect of society in order to survive."\textsuperscript{48} Covenant marriage does involve a more public commitment to marital stability than does "regular" marriage because it requires more effort to avoid divorce and makes getting a divorce harder. In fact, one husband stated that he converted his marriage to a covenant marriage\textsuperscript{49} because he wanted to "demonstrate to my children my

\begin{itemize}
\item \textsuperscript{46} \textit{La. Rev. Stat. Ann.} § 9:273.1(A) (West 2000) ("We have . . . disclosed to one another everything which could adversely affect the decision to enter this marriage."); \textit{Ark. Code Ann.} § 9-11-804(a)(1) (Michie 2002).
\item \textsuperscript{48} Muller Davis, \textit{Fault or No Fault?}, \textit{The Christian Century}, June 5, 2002, at 30. Note that this writer doubts the effectiveness of covenant marriage, although he supports other legislative provisions such as premarital counseling.
\item \textsuperscript{49} All three states with covenant marriage provide that already married couples can convert their marriage to a covenant marriage by filing a declaration of intent. Louisiana and Arkansas require such couples to undergo counseling before converting to a covenant marriage, although Arizona does not require the couple to have discussed their intent with a counselor. \textit{See Ariz. Rev. Stat. Ann.} § 25-902 (West 2000); \textit{Ark. Code Ann.} § 9-11-807 (Michie 2002); \textit{La. Rev. Stat. Ann.} § 9:275 (West 2000).
\end{itemize}
commitment to their mother and to my wife that I would not, because I felt like changing partners or because I wanted to do something differently, that I would not leave them."50 Another husband said, "People today take marriage so lightly . . . [covenant marriage] symbolizes that we take this seriously."51 Their statements show that much of covenant marriage’s attraction is couples’ ability to influence others’ views about the importance of a lasting marriage, as well as reinforcing their commitment to each other.

The word “covenant” resonates with these motivations. One writer explored the meanings of covenant and found that a covenant in ancient usage was 1) an agreement made before a deity; 2) witnessed by persons present; 3) an exchange of something of great value; and 4) penalized for breach by death. In other words, “each party makes an irrevocable vow,” its seriousness underscored by the witness, exchange, penalty, and the involvement of God.52 Likewise, in covenant marriage, the marital commitment takes on increased seriousness through the statement of intent, the witnessing (both by the counselor and at the marriage ceremony), and the greater hurdles to divorce.

The “covenant” in covenant marriage is particularly rich with meaning from its Biblical roots. The four major Biblical covenants involved Noah, Abraham, Moses, and all Christians. First, after the flood God promised Noah that he would never send such a disaster again; the rainbow is the sign of “the everlasting covenant between God and all living creatures of every kind on the earth.”53 Second, God promised Abraham, “I will make nations of you, and kings will come from you. I will establish my covenant as an everlasting covenant between me and you and your descendants after you . . . to be your God . . . . The whole land of Canaan . . . I will give as an everlasting posses-

51. Demillo, supra note 3 (quoting Bill Williams, who participated in a church ceremony for already-married couples who wanted to convert their marriages to covenant marriages).
53. Genesis 9:16 (NIV Study Bible). This is an unconditional covenant between God and Noah and all his descendants, interpreted as all people.
sion to you . . . .” 54 In turn Abraham and his descendants had to be circumcised to symbolize the covenant. 55 Third, God promised Moses, “Now if you obey me fully and keep my covenant, then out of all nations you will be my treasured possession.” 56 The people had to keep the Ten Commandments and other rules involving daily living, ceremony, and worship. 57 Finally, Jesus promised all believers, before the apostles, at the Last Supper, “This is my blood of the covenant, which is poured out for many for the forgiveness of sins.” 58

Each of these four covenants adds something to the meaning of “covenant” in covenant marriage. Noah’s covenant is unconditional and everlasting, emphasizing God’s promise to Noah and all creation never to send another flood. For covenant marriage, this meaning of covenant stresses the permanency of the marital promise. Abraham’s covenant involves a symbolic exchange: circumcision, a sign of his descendants’ devotion, for God’s blessing through support and fruitfulness. Likewise, the marital promise also contemplates the spouses’ support of each other. Moses’ covenant shows two parts key to covenant marriage: rules and chosen-ness. In a covenant marriage, more rules accrue, stressing the specially thought-out decision of the parties that they and their spouses to-be will keep those rules. Finally, the promise to all believers is unconditional, requiring no action by the people except for faith in Jesus. This promise shows the one-sidedness of covenant: despite one spouse’s actions, the other spouse remains committed to making the marriage work.

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54. Genesis 17:6–8 (NIV Study Bible). This is a conditional covenant between God and Abraham and all his descendants. It really has two parts: the covenant of fruitfulness in issue and the covenant of security, symbolized by the land grant. Since it is a conditional covenant, one party can refuse to perform its duties if the other party does not perform its duties. This is similar to the “escape holes” in covenant marriage statutes.

55. Genesis 17:10 (NIV Study Bible).

56. Exodus 19:5 (NIV Study Bible). The “treasured possession” status greatly relates to covenant marriage as it invokes the image of Christ as the bridegroom and the Church as the bride. In a covenant marriage, all these theological images relate to the underlying religious purpose of the union of man and woman for mutual support and procreation. The statutes further support this union (although unstated, and maybe unintended) by extending separation times when minor children are involved and allowing the union to end upon abuse.

57. Exodus 20–24 (NIV Study Bible). This is another conditional covenant.

58. Matthew 26:28 (NIV Study Bible). This final covenant, the most important covenant in Christian theology, is generally viewed as unconditional, although to partake of the covenant, one must believe in Jesus Christ.
So a covenant marriage connotes permanency, mutual promise, chosen-ness, and commitment through its Biblical heritage.

In addition to the religious sources of covenant, covenant marriage also reflects sources in U.S. history. Some historians link American constitutionalism with covenant theory in Protestantism.\(^5^9\) Church and civil covenants between the people and their religious or political leaders were common in the seventeenth and eighteenth centuries and likely influenced the formative documents of our nation.\(^6^0\) Many believed that the New World had been given by God to the Christian faithful; "Americans have believed that they are a special people selected by God for a divine commission."\(^6^1\) At the beginning of America, the Mayflower Compact illustrates this covenant theology that centers around consent by the people, appeal to a higher law, and use of formal written documents.\(^6^2\) The men signed a formal document, showing their consent to the formation of a colony "undertaken for the glory of God."\(^6^3\) After the Compact, Americans used many other similar documents to rule themselves, but all showed the same characteristics of formal consent and religious meaning. The United States Constitution drew upon this tradition because "[t]he ideas of an indissoluble constitution binding the people of the Union together, of reliance on a written instrument to effect that Union, of instituting the new Constitution by the consent of the people themselves, and of attaching a bill of rights" come from the covenant tradition.\(^6^4\)

Covenant marriage carries weight by virtue of its name alone, invoking centuries of religious tradition and American constitutionalism. Both government and religion join in defining covenant for Americans today: the significance of history and Christianity, if not uppermost in covenanting couples' minds, at least infuse the term "covenant marriage" with serious meaning.


60. Id.


62. Id. at 13.

63. Id. at 10. These other documents included founding church documents that church members drafted, signed, and agreed to follow, founding state documents likewise formed and signed by the consenting people and their representatives, and other various writings throughout the seventeenth through nineteenth centuries on political theory. See generally id.

64. Id. at 64.
III. CURRENT STATE OF COVENANT MARRIAGE

Despite the significance of a covenant marriage policy, the current state of covenant marriage belies this inherent importance. Only one state, Louisiana, has released any sort of statistics on covenant marriage, and, so far, they hold little promise that covenant marriage rates will increase and inversely affect divorce rates. A study done on covenant marriage in Louisiana further shows the lack of interest in, or perhaps lack of knowledge of, covenant marriage. Finally, although outside the states of Arizona, Arkansas, and Louisiana, many other states have considered covenant marriage, none have obtained enough votes to legislate it.

The only year so far for which official covenant marriage statistics are available is 1998 in Louisiana. In 1998, 39,544 marriages took place in Louisiana—only 609 of these marriages, or 1.5%, were covenant marriages, according to official statistics. Although other sources claim that 5% or less of Louisiana marriages are covenant marriages, these sources listed no reference for their numbers.

These low numbers could be partially explained by the public’s lack of knowledge about covenant marriage. In a 1998 Gallup phone survey of Louisiana residents, only 44.1% had ever heard of covenant marriage, 36% remembered passage of the law, 2% knew newlyweds who chose a covenant marriage, and 1.5% knew married couples who had converted to a covenant marriage. These numbers seem oddly low when compared with Louisianans’ beliefs about covenant marriage: 50% to 60% believed that covenant marriage would strengthen family life, positively impact children, and last longer.

However, Louisiana residents and the people who are supposed to be informing them about covenant marriage just do not fully understand what covenant marriage is. The same group


68. Id. at 199. The answers of the people surveyed ranged from “Strongly Disagree” to “Strongly Agree.” The cited figure combines the “Agree” and “Strongly Agree” categories.
that did the phone survey sent researchers disguised as engaged couples to seventeen of the sixty-four Louisiana parishes to apply for a marriage license from the fall of 1999 to the summer of 2000. Although the clerks must check a box indicating whether the marriage is a covenant marriage, only a third asked whether the couple wanted a covenant marriage. Most clerks simply checked the box "no" without asking the couple’s wishes. Furthermore, when the disguised researchers questioned the clerks about covenant marriage, only 12% gave accurate information. Fifty-three percent gave inaccurate or misleading information, and 35% gave false information.

These statistics imply that couples will only hear about covenant marriage outside the government application process, probably from a religious source. But that puts non-religious couples at a disadvantage to choose this legal option. Thus, covenant marriages might become more popular, hopefully creating more stable families, if legal providers would give sufficient and accurate information about covenant marriage.

Another survey compared attitudes about covenant marriage in three states, Louisiana, Arizona, and Minnesota, in a random phone survey. In all three states, about 80% believed counseling before marriage was very important in contributing to a successful marriage. Ninety percent believed that engaged couples who agree in advance to seek counseling for marital problems would have a more successful marriage. About 66% thought that long waiting periods for divorce would help couples work out their problems better. Considering that pre-marital counseling, counseling upon marital problems, and longer waiting periods are features of covenant marriage, these people’s beliefs seem to support covenant marriage. However, only 39% of the respondents said they supported covenant marriage; 47% felt “mixed” about covenant marriage.

These statistics indicate that people do not fully understand what is involved in a covenant marriage. They overwhelmingly

69. Id. at 203.
70. Id. at 204.
71. Id. at 205.
72. Louisiana and Arizona have implemented covenant marriage; Minnesota considered but did not enact covenant marriage legislation. Hawkins, supra note 4, at 170.
73. Id. at 199 tbl.1. The survey included 413 respondents from Arizona, 527 respondents from Louisiana, and 384 respondents from Minnesota, a total of 1,324 respondents.
74. Id.
75. Id.
support the separate features of covenant marriage but not the whole package. Again, if better education was available about covenant marriage, either through the government or through widely-known private sources, many people might think of covenant marriage more favorably.

This lack of knowledge about covenant marriage could explain why so many states have considered but rejected covenant marriage legislation. In 2003 alone, five states—Indiana, Texas, Utah, Virginia, and West Virginia—considered covenant marriage bills, but none passed them into law. In Indiana S.B. 200 was referred to the Judiciary Committee on January 9, 2003, and H.B. 1321 was referred to the Committee on Human Affairs on January 13, 2003.76 Texas withdrew H.B. 1795 from the schedule on May 1, 2003.77 In Utah, although the House passed H.B. 213, the Senate rejected it on March 3, 2003.78 In Virginia, H.B. 2793 passed the House but failed in the Senate on February 12, 2003.79 Finally, West Virginia sent S.B. 541 to the Judiciary Committee on February 14, 2003.80 As a practical matter, if constituents do not care about the issues, the bills may not be enacted or even considered by the legislature.

Although lack of knowledge in the public and lack of support by government workers do act as barriers to the spread of covenant marriage, these are mere implementation problems that could be fixed. Both private organizations supporting covenant marriage and the government can spread awareness. Private organizations could sponsor information sessions, hand out pamphlets, and use the media to let more people know about covenant marriage. The government could require courthouse clerks to attend a training seminar on covenant marriage and to hand out literature or tapes on covenant marriage. Also, the gov-

ernment could mandate that clerks who give out inaccurate information, or do not inform couples of the covenant marriage option, be fined. Those who staunchly oppose covenant marriage could be transferred to different positions in the same office. Implementation problems, however widespread they may be, do not justify criticism of covenant marriage itself.

Despite the lack of success in covenant marriage legislation, some states have successfully implemented certain parts of the covenant marriage package or similar reforms. For example, Florida requires a three-day waiting period for marriage licenses if couples undertake no premarital education. Florida also requires marriage education in high schools, parallel to driver’s education. Arizona, Florida, Maryland, Minnesota, and Oklahoma subsidize premarital education programs. Finally, one Michigan court has implemented mandatory premarital education programs for any couples who want to marry within its jurisdiction.

Overall, covenant marriage as a whole has not proved as popular as supporters have hoped. Some studies indicate that the low use of the covenant marriage option in states that offer it and the failure of covenant marriage legislation to pass in many states could be due to the public’s lack of knowledge. If covenant marriage proponents want to increase the covenant marriage rate and spur legislative enactment, they need to focus on creating awareness of covenant marriage, its components, and its benefits. Once legislation is enacted, the government needs to ensure its proper administration.

IV. A CRITIQUE OF COVENANT MARRIAGE

Although covenant marriage potentially could help those who choose it, covenant marriage may not be the best option for strengthening marriage. Some religious leaders support it for its strengthening possibilities, while other religious leaders oppose it for creating “levels” of marriage. Finally, the question must be asked whether covenant marriage should be a state institution rather than a religious one.

An analogy to Odysseus’ voyage past the Island of the Sirens in Homer’s *Odyssey* summarizes the potency of covenant marriage—and implies how to create that same potency through other means:

82. *Id.*
83. *Id.* The court sits in Adrian County, Michigan.
There's an island called the Island of the Sirens, and the sirens sing incredibly beautiful music. It is so beautiful that people who hear it head straight for the island and they crash up on the rocks and get killed. Odysseus knows all about the dangers, but still he wants to hear the music. So what he does is he plugs the ears of all his men with wax. He doesn't have wax in his ears, but he has his men tie him to the mast. So they sailed by the island. And Odysseus goes ape. This music is so beautiful he wants to get at it, but he's tied there to the mast. It was key that he was tied to the mast. He made sure that he bound himself in such a way that he wouldn't change his mind and countermand his earlier order. In a way, it's a bit like—for those of us who think that indissoluble marriage is a good thing—binding ourselves ahead of time in a way that makes marriage last. If divorce is readily available, when people have difficulties, they won't have the need to work through them and will end the marriage prematurely.84

So covenant marriage can be compared to Odysseus' binding himself to the pole: a legal binding as a figurative binding. Odysseus heard the beautiful temptresses sing and was terribly tempted to go to them, but could not go because he had physically bound himself. But Odysseus' men never even heard the Sirens—they knew temptation was around the corner and prevented themselves from it. They were never even tempted.

Is there a better way besides covenant marriage to so bind spouses to one another? This analogy to Greek mythology captures why covenant marriage can work for couples who choose it—and also why a better means of addressing the marital crisis should be sought. The effect of both Odysseus' physical binding, like legal binding through covenant marriage, and his men's preventive measures, like spiritual binding through choices, was the same: neither fell to the Sirens. Yet who was more faithful, Odysseus or his men? His men were, because they had prevented temptation rather than allowing temptation in and then not chasing it due to an external measure.

Some of the problems identified with covenant marriage include comparisons with private contracting within the marital relationship, a two-tiered marriage system that could dilute the

meaning of the institution of marriage, and various religious objections.

A. Private Contracting

Prenuptial contracts, like covenant marriage, "fix [a couple's] legal rights and obligations vis-à-vis each other and the state . . . [they] sound the drumbeat of marriage privatization."\(^{85}\) Although the contracting of parties for their rights and duties during marriage may seem a private matter, it poses two dangers: first, it devalues marriage to a simple contract, and second, it may in relation spur the "continuous ebbing away of culturally shared values."\(^{86}\) If marriage begins to be viewed as a contract, the legal ramifications of contract may cause parties to evaluate the pros and cons of their arrangement—and to exit when, in their view, the cons outweigh the pros. Like a contract, some penalty for breach of the privately-contracted marriage agreement, most likely monetary damages, would be awarded to make the parties whole again.

This contract view of marriage detracts from the Witte models previously discussed in this paper.\(^{87}\) Societies have always thought of marriage as entailing more than a simple weighing of benefits and detriments. Although covenant marriage does try to create a more restrictive agreement in order to strengthen marriage, it still brings a strong element of contract into marriage, legally delineating what the parties can and cannot do. In our society, marriage is a legally-recognized status, and certain duties do accrue to it. But private contracting within that marriage rarely was permitted until relatively recently because marriage was viewed as a private sphere from which the law withdrew after the marriage ceremony.\(^{88}\) The state did not enforce other agreements within the marriage. With the passage of covenant marriage legislation, “[f]or the first time in American history, the nature of the marriage contract has been rendered variable by direct state action.”\(^{89}\) Private contracting seems to limit the extent to which the parties give themselves to the marriage and to each other, an argument many religious persons make. Rather than the unlimited joinder of the parties that resulted from marriage in the past, private contracting limits the extent of the parties’ joinder.

\(^{85}\) Difonzo, \textit{supra} note 31, at 934–35.  
\(^{86}\) \textit{Id.} at 940.  
\(^{87}\) See \textit{supra} notes 13–23 and accompanying text.  
\(^{88}\) \textit{Id.} at 935, 938; Hartog, \textit{supra} note 28, at 206–08.  
\(^{89}\) Difonzo, \textit{supra} note 31, at 954.
It could be argued that private contracting in marriage should be permitted as long as it does not affect the substance of marriage. Currently, marriage means a union between a man and a woman, presumably permanent, with privileged legal status. Covenant marriage does not change the sex of the parties involved, does not make marriage impermanent, and does not affect the legal status of the parties. So under this argument, covenant marriage would be a viable legal alternative.

However, this argument has at least two criticisms. First, dividing the marital relationship into legal building blocks for purposes of analysis sets it on the same level as any other legal relationship. For example, a contract relationship requires two parties, consideration, and an exchange. But embellishments may be added to the contract blocks as long as the original blocks remain: for example, options, timeframes for the parties, and modifications of the exchange. So it might follow from a pure contract view of marriage that the marital relationship could be embellished: for example, proscribing certain behaviors and requiring separation upon certain events. Marriage, however, is not a legal relationship like a contract; it is a status as well. A status is a state of being, something greater than the sum of its parts. The government attaches certain rights and obligations, such as tax liability and medical responsibility, to certain statuses, making conformity with the status something desired. Covenant marriage is one such embellishment to marriage that aids, albeit unintentionally, in the transformation of marriage from status to contract. Lack of uniformity among marriages de-sanctifies the integral status aspect of the marital state.

Second, the argument that private contracting should be allowed as long as it does not change the substance of marriage ignores the effect of private contracting on marriage in the public mind. The law is not neutral: its didactic function shapes our concepts of what is acceptable behavior (at least at a minimum). Therefore the law's depiction of marriage, as a legally recognized status, sets a standard of behavior for society, and any change the law makes to marriage affects this standard. So "marriage is a public, legal commitment, not merely a private, impas-

91. Brian H. Bix, Choice of Law and Marriage: A Proposal, 36 FAM. L.Q. 255, 266-67 (2002). Note that Bix supports private contracting in marriage law despite his characterization of marriage as a status involving both the parties and the state.
sioned lover’s vow.”

If marriage is a status existing both within the law and above the law, as a relationship existing for something more than the mutual benefit of the two parties, it cannot be subject to traditional contract rules which downplay the uniqueness of the relationship. If the parties could change marriage as easily as they could a contract, the marital commitment would suffer, as a contract party would breach whenever a more profitable opportunity than the one to which he was bound arose. Although covenant marriage is a state-sponsored modification of marriage, it is a modification elected by the parties—arguably a step on the way to private contracting of marital aspects.

Although covenant marriage does not by its goals seek to devalue marriage, the implications of a choice in marital status could be far-reaching. Private contracting could damage the uniformity of the marital status to which certain rights and obligations attach, and it could weaken the uniqueness of marriage in the public mind.

B. A Tiered System of Marriages

Another criticism of covenant marriage is its creation of two levels of marriage. The first level, “normal” marriage, is marriage as it currently exists in most states. The second level, covenant marriage, attaches more requirements before marriage and upon consideration of divorce. A lighthearted story from Louisiana shows the problem with two levels of marriage:

It’s a starry night at Brennan’s in the French Quarter. A 10-carat diamond has been nestled in the Bananas Foster by a handsome swain under the influence of one too many romantic comedies. As his lovely maiden scoops up the ring, he asks, “Will you marry me?” Her face lights up with joy. But a moment later a slight frown crosses her pretty brow. Looking deep into his eyes, she inquires, “Do you mean really, really marry you?”

The “lesser” marriage correspondingly takes on less importance. By dividing up marriage into a greater and lesser level of commitment, marriage as an institution is devalued because it lacks uniformity in the public mind. Through these tiers, marriage becomes something changeable. Such a potential devaluation could lead to other tiers of marriage, for example, legally permitting homosexual marriage or “trial marriage,” where the

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94. Margaret Carlson, Till Depositions Do Us Part, TIME, July 7, 1997, at 21, quoted in Hager, supra note 2, at 574.
parties test their compatibility for a short time and may leave with no strings attached.

In fact, such "lite" marriage status exists already in some areas. California allows a straight couple to choose the status of "domestic partners" if both partners are sixty-two or older. Each partner retains his or her prior rights as widowed or divorced in this arrangement. Hawaii offers the status of "reciprocal beneficiaries" to gay couples, a status with inheritance rights and partner insurance coverage for state employees, among other benefits. Vermont permits "civil unions" for gay couples, who have the right to partner insurance coverage under any employer and who further have the same legal benefits and responsibilities as spouses. Although none of these statuses are identified by the word "marriage," they do approach marriage in their legal recognition and benefits. Covenant marriage may try to strengthen the institution of marriage, but if its price is opening the door to the expansion of that institution, it is too high to pay.

Several responses can be made to this "slippery slope" argument that one incident of marital contracting will lead to others that will eventually weaken marriage. First, the "narrative" the government tells through covenant marriage is that marriage should be stronger, more lasting, and about more than romantic love. This narrative does not on the surface lend itself to the hypothesis that covenant marriage will open up the field to different kinds of marriages. However, the law behind government narratives can be extended to disparate situations. For example, when our Founders decided to protect freedom of religion, their narrative almost certainly did not include a ban on depicting the Ten Commandments in a public park. The purpose behind covenant marriage will not protect the institution of marriage from extensions that may weaken it.

Another response to the "slippery slope" argument is that marriage will always be different from other relationships because of its link to procreation and child-rearing. If marriage will always stand apart from other relationships, the worry that tiers of marriage might develop should end. Even though artificial means of reproduction exist, "[o]nly the sexual relation-

96. Id.
97. Duncan, supra note 90, at 122–23.
98. Id.
100. Duncan, supra note 90, at 127.
ship of a man and a woman can lead to the conception of a child.”

No other sexual relationship can conceive a child through physical union. Although technically this statement is true, it does not seem to matter much in our world where artificial insemination, adoption, surrogate mothers, and sperm banks exist to provide couples non-natural ways of welcoming a child. Two unmarried people may artificially conceive and raise, or adopt, a child, and be just as attached to the child as two married people would be. Marriage's traditional procreative link has been weakened by scientific advances, so identification with family alone does not save marriage from being divided into tiers.

The reasoning behind the states' adoption of covenant marriage may not support a tiered system, but that does not mean a tiered system potentially leading toward private contracting of marriage cannot result. Covenant marriage, despite its goals of strengthening commitment and family, could be a crucial step on the way to making marriage nothing more than a personal contract. Both the lack of uniformity in the definition of marital status and the "slippery slope" problem of tiered marriages bring the state of marriage toward nothing more than a private contract.

C. Religious Criticism

Religious leaders are divided in their views on covenant marriage. While covenant marriage by itself may indicate a greater commitment to the marital relationship, certain aspects of covenant marriage may implicate marital dissolution. The religious split depends upon how much weight religious leaders give to mention of divorce on the one hand and to greater commitment on the other hand.

Religious leaders of all denominations oppose covenant marriage for various reasons. Roman Catholic bishops in Louisiana refuse to support the covenant marriage laws because, although on the surface they provide stability, they openly provide for an exit by divorce, and the Church rejects divorce. The bishops question the requirement that counselors who offer pre-marital counseling to couples explain the higher standards for divorce in a covenant marriage. The Church rejects divorce. The bishops question the requirement that counselors who offer pre-marital counseling to couples explain the higher standards for divorce in a covenant marriage. The bishops question the requirement that counselors who offer pre-marital counseling to couples explain the higher standards for divorce in a covenant marriage. Roman Catholic counselors will not explore divorce in marriage preparation because it confuses church teaching on the integrity of marriage. Some Protestant leaders oppose covenant marriage because it confuses state and church teachings. One leader said that the covenant mar-

101. Id.
102. Hager, supra note 2, at 579.
riage license "impl[ies] that persons will be more faithful to their vows if the state so requires than if their religious faith so requires." Other leaders oppose it due to the de-sanctification of marriage through a two-tiered system, as discussed above.

Not all religious leaders oppose covenant marriage: in fact, many perform group covenant marriage ceremonies to allow already-married couples to convert their marriages to covenant marriages. The Rev. Fred Luter of New Orleans' Franklin Avenue Baptist Church performed a "re-marriage" for more than sixty couples in a group ceremony on November 3, 2002. Similar ceremonies have taken place in Arkansas. In fact, one Arkansas official said, "Frankly, we know that the success of [covenant marriage] is only if the clergy grasp [sic] a hold of this." Other churches require application for a covenant marriage license before they allow a couple to marry in their church.

Religious objections to and support for covenant marriage add to a better understanding of the reasons behind the debate. They also explain why people may take such strong positions either for or against covenant marriage. The tiered system problem, divorce, the degree of obedience to church and state, and commitment all figure in the religious discussion of covenant marriage.

While covenant marriage "ensconces in the law the ideal that marriage is to be life-long and permits couples to choose a more binding commitment to their union . . . and throughout the duration of their marriage," such an ideal cannot stand up to the criticisms it stimulates. The real possibilities of a tiered marriage system, private contracting within marriage, and the consequential devaluation of marriage cannot support covenant marriage despite the covenant marriage motivation of solidifying marriage.

V. OTHER POSSIBILITIES TO STRENGTHEN MARRIAGE

Both religious and secular alternatives to covenant marriage have grown since the recognition that marriage is "increasingly viewed by modern individuals as a means to personal fulfillment."

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103. Michael J. McManus, Divorce is Difficult in 'Covenant Marriage,' FRESNO BEE, Nov. 29, 1997, at A13, quoted in Hager, supra note 2, at 579.
104. Id.
105. Nolan, supra note 66.
106. See Demillo, supra note 3.
107. Id. (quoting Chris Pyle, Director of Family Policy for Arkansas Governor Mike Huckabee).
rather than as a lifetime commitment."110 These alternatives can accomplish the same goal as covenant marriage—increasing marital commitment—without encountering the criticism that a legal solution garners.

As previously mentioned in Part IV, many religious leaders are turning to a church-sponsored solution to the marital crisis. Rather than legally require couples to engage in more serious marital preparation, these leaders jointly agree not to marry couples in any of their churches unless those couples complete certain church requirements.111 Pastors can tailor these "Community Marriage Policies" to their community, but the core requirements generally include: (1) at least four months of marriage preparation; (2) a premarital inventory; (3) mentor couples in solid marriages who undergo training to help other couples; (4) retreats to strengthen existing marriages; (5) courses to reconcile separated couples; and (6) support groups for stepfamilies.112 The people who began the Community Marriage Policy movement, Mike and Harriet McManus, have noted that Roman Catholic churches require at least six months of marriage preparation and also sponsor retreats for married couples, such as Marriage Encounter, but that many Protestant churches provide no services like these.113

These components of Community Marriage Policies seem more capable of addressing the high divorce rate than do covenant marriage laws. Since three-quarters of marriages occur in a religious setting, indicating that couples are receptive to a voluntary religious program, Community Marriage Policies could be

110. Elizabeth S. Scott, Divorce, Children's Welfare, and the Culture Wars, 9 VA. J. SOC. POL’Y & L. 95, 101 (2001). Scott proposes that the state should give couples the option of a voluntary, legally enforceable commitment term when entering marriage and a waiting period before divorce. She differentiates her approach from covenant marriage by eliminating covenant marriage’s stricter divorce requirements, which have been criticized for hearkening back to the days when divorce was only allowed on fault grounds. Id. at 105. The criticism of covenant marriage for its provisions similar to the fault system of divorce, while interesting, are outside the scope of this paper. See generally Marie Summerlin Hamm, Opportuning Virtue: The Binding Ties of Covenant Marriage Examined, 12 REGENT U. L. REV. 73 (1999).

111. It Takes a Village to Fight Divorce, supra note 1.


113. Id.
better received than a box on a marriage application form checked at the court clerk's office. The premarital inventory and mentoring program includes discussion of issues such as, "I value 'keeping peace' at any price" and also exercises ranging from improving communication and conflict resolution skills to making a budget.\footnote{114} Having a mentor couple as a model provides guidance for engaged couples who may not have had such a model in their own home life. Furthermore, the availability and encouragement of marriage retreats and further counseling from mentor couples throughout a couple's marriage goes far beyond the requirement to "make all reasonable efforts" to avoid divorce. The Community Marriage Policies seem more proactive than the covenant marriage laws, providing the tools for a healthy marriage, both at the beginning and throughout the marriage, rather than just the safety net of counseling before marriage and if divorce is considered.

As of October 2002, 178 communities in forty states have organized Community Marriage Policies.\footnote{115} These plans tend to be more successful than other attempts to combat divorce and build healthy marriages. In 1986, pastors in Modesto, California signed the first Community Marriage Policy in America. After fifteen years, the divorce rate was cut in half. As another example, in Kansas City, Kansas, divorce has plunged thirty-five percent. Perhaps the best indicator of success is El Paso, Texas, where the divorce rate dropped even more drastically—by sixty-three percent since implementation of a Community Marriage Policy.\footnote{116}

Generally, Community Marriage Policies are twofold: the first part sets forth beliefs about marriage and the second part lists requirements and recommendations for marriage. A sample Community Marriage Policy, taken from Tallahassee, Florida, is below.\footnote{117}

\begin{itemize}
\item \footnote{114} Id.
\item \footnote{115} 178 Cities with Community Marriage Policies/Covenants, at http://www.marriagesavers.org/public/cities.htm (last visited Nov. 1, 2003) (on file with the Notre Dame Journal of Law, Ethics & Public Policy). Cities that have adopted Community Marriage Policies include major cities such as Montgomery, Alabama; Hot Springs, Arkansas; Denver, Colorado; Louisville, Kentucky; Albany, New York; Cleveland, Ohio; Nashville, Tennessee; Austin and Dallas, Texas; Jacksonville, Florida; Baton Rouge, Louisiana; Minneapolis-St. Paul, Minnesota; Jackson, Mississippi; and Madison, Wisconsin. In addition, a number of smaller cities also have implemented Covenant Marriage Policies. Id.
\item \footnote{116} It Takes a Village to Fight Divorce, supra note 2.; see also Diana Washington Valdez, Program Gets Credit for Falling Divorce Rate, EL PASO TIMES, Nov. 2, 2002 at 3B.
\item \footnote{117} The Tallahassee Community Marriage Policy states:
Community Marriage Policies contrast with covenant marriage laws in several ways. First, they are sponsored and organized by private parties, not the government, thus avoiding any conflicts between church and state.\textsuperscript{1} Second, they involve more extensive counseling than does covenant marriage, and they require a waiting period before marriage. Third, they are not contracts, so they do not alter the laws of divorce or separation for the couple. Fourth, they offer couples further support throughout their marriage in the form of counseling. Fifth, and perhaps most importantly, Community Marriage Policies try to create a mindset of faithfulness and devotion in their communities. Furthermore, they are committed to preventing many other societal problems such as teen pregnancy. Given these differ-

\begin{quote}
We Believe:
\begin{enumerate}
\item That God has established in scripture the sanctity and companionship of marriage;
\item That God intends the marriage bond between husband and wife to last a lifetime;
\item That as church leaders we have a responsibility to provide premarital preparation to every engaged couple. This will improve their understanding of marriage and deepen their mutual commitment;
\item That as clergy we have a responsibility to provide ongoing support to strengthen and nourish existing marriages.
\end{enumerate}

Therefore We Will:
\begin{enumerate}
\item Encourage a courtship of at least one year;
\item Expect a minimum of five counseling sessions for engaged couples, preferably over a 3-4 month period, with one session devoted to taking a premarital test or inventory (FOCCUS, Prepare); one devoted to insuring a biblical understanding of morality, marriage, and divorce; and one devoted to a postmarriage follow-up;
\item Train mature married couples to serve as mentors to those who are engaged, newly married, experiencing marriage difficulties, or remarried;
\item Encourage retreats, classes, and marriage enrichment opportunities designed to build and strengthen marriages;
\item Develop and implement programs for troubled marriages using counseling, retreats, and mentoring by couples (including those whose own marriages were once in trouble);
\item Promote sexual abstinence outside of marriage;
\item Promote faithful marital relationships;
\item Set an example as pastors by attending couples' retreats and being involved in other relationship enrichment activities.
\end{enumerate}


\textsuperscript{118} Covenant marriage has been challenged for mixing church and state in violation of the Constitution.
ences, Community Marriage Policies have the potential to address a wider range of problems more effectively than can the covenant marriage laws. Rather than Odysseus' exposure of himself to temptation, these policies foster his crew's willingness to anticipate and avoid temptation.

Some jurisdictions are beginning to realize the value of Community Marriage Policies. Gov. Mike Huckabee of Arkansas supports both Arkansas' covenant marriage laws and Community Marriage Policies. In one of his radio addresses, he linked covenant marriage and Community Marriage Policies as ways in which his state, with one of the highest divorce rates in the country, could address its marital crisis.119 Perhaps other areas could extend the Governor's link to address their own problems.

Besides the religious focus of Community Marriage Policies, a secular solution exists in Smart Marriages: The Coalition for Marriage, Family, and Couples Education. This group founded by Diane Sollee is comprised of counselors, researchers, educators, and policy makers.120 Whereas traditional marital counseling tried to be "neutral" toward marriage and focused on the needs of each individual spouse in the marital relationship, Smart Marriages focuses on strengthening the relationship itself. It teaches "skills and strategies for disarming emotional grenades... [that] provide a framework for the sort of empathetic conversations most couples have had."121 Smart Marriages offers classes ranging from four hours to four months, for couples in all stages of relationships.

The theory behind Smart Marriages is that good marriages are based in certain skills. Since research has found that successful couples have as many disagreements about the same things that unsuccessful couples do, Smart Marriages believes that the difference lies in how they handle their disputes. Essentially, Smart Marriages teaches marital skills to couples: empathizing, working around disagreements, and basic conflict management.122 Couples can have their choice of styles of programs, as the Smart Marriages website lists a myriad of programs of all kinds throughout the United States. Some of the programs are

120. Carey, supra note 99, at 124.
121. Id. at 139–40.
religious-based, and others are secular, but all subscribe to the same basic idea that learned marital skills make marriages work.

While the Coalition for Marriage, Family, and Couples Education differs from Community Marriage Policies because it is not a specifically religious solution and does not necessarily require action at the beginning of the marital relationship, it is an effective tool for keeping marriages together. Both programs stress the importance of preserving the marriage through commitment. However, Community Marriage Policies provide a better means of strengthening marriage because of their focus on religion. First, the couple has a ready, easily accessible structure in which to resolve any major marital disputes: they have skills from premarital counseling, they can seek advice from mentor couples, and they are centered in a community that values marital joy and stability. Second, because these policies take place within the context of a faith community, they underscore the importance of marriage to building a stable society. Smart Marriages teaches the skills of a good marriage, but it lacks the tie-in to a broader community. It focuses on the individual marital unit, while the faith-based program of Community Marriage Policies both emphasizes the individual partners' needs and underscores the importance of marriage as a building block of the community.

Although private solutions such as Smart Marriages and Community Marriage Policies co-exist with covenant marriage presently, the private solutions do not suffer from the same problems as covenant marriage. Because private solutions do not implicate legal standards, they pose no threat of devaluing the institution of marriage in the public mind, whether by implicating marital tiers or by making marriage a pure contract. The private solutions distill the good from covenant marriage while leaving the harm behind.

**Conclusion**

While covenant marriage is a product of concern for marital stability, other, more preferable means exist to foster that same stability. Covenant marriage is rich with meaning by its very name, but its premarital counseling and stricter divorce provi-

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123. See Carey, *supra* note 99, at 140. In a Denver study, 8% of couples who took the PREP (Prevention and Relationship Enhancement Program) course advocated by the Coalition for Marriage, Family, and Couples Education separated or ended the marriage, in contrast to 16% of couples who had no counseling. A German study found the figures of 4% and 24%, respectively. *Id.*
sions simply do not live up to the promise of the shell that encompasses them.

Community Marriage Policies, which could better capture their own aims with the name “Community Marriage Covenants,” recapture the seriousness of marriage for our society. Each marriage touches not just the two parties involved in making the commitment, but also their children, families, and friends. More indirectly, but still definitively, each marriage contributes to the community's view of love and commitment. A Community Marriage Policy recognizes this and gathers together all the resources of a community to reinforce each couple’s view of marriage as a gift—a gift that requires love, dedication, faith, and work. A covenant marriage, on the other hand, does not draw together the community in such a way.

Husband, wife, and God—these are the three essential components of any successful marriage under a Community Marriage Policy and under any religious marriage. Covenant marriage unintentionally replaces one of these strands with the law, and in doing so fails to truly be a covenant and may not strengthen marriage overall. But in a true covenant, a solemn marital promise between a husband, wife, and God, it is true that “a cord of three strands is not quickly broken.”

124. Ecclesiastes 4:12 (NIV Study Bible).