

implementation in Geneva in ways that we could not possibly have imagined before.

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Covenant Marriage in Comparative Perspective

EDITED BY JOHN WITTE JR AND ELIZA ELLISON

Religion, Marriage, and Family Series, William B Eerdmans, Grand Rapids, MI, 2005, xiii + 342 pp (paperback \$34.00) ISBN: 978-0-8028-2993-1

This edited collection arises from the 'Sex, Marriage, Family, and the Religions of the Book' initiative sponsored by the Center for the Study of Law and Religion at Emory University. The collection presents the reader with a rigorous analysis of some of the re-emerging issues relating to (opposite-sex) covenant marriages and the nature of marriage, through the perspectives of religion and law. It poses a fundamental question as to whether or not the Law and the State should endorse and, indeed, promote legally enforceable covenant marriage.

Obviously, the spiritual dimensions of marriage have long been the concern of major religious groups but the use of the doctrine of covenant has re-emerged (particularly in America) as a way to facilitate mapping the spiritual dimensions of marriage and, as such, this collection is both opportune and topical. Legal covenant marriages were first introduced into America in 1999, in order to combat what was perceived by some religious groups as the problem of divorce and unilateral no-fault divorce in particular. Such marriages are currently only available in three American states: Louisiana, Arizona and Arkansas (Louisiana was the first state to pass laws recognising covenant marriage in 1997). In order to obtain a divorce, covenanting couples must provide a higher standard of evidence with regard to fault and commonly must demonstrate two years' separation.

The editors, John Witte and Eliza Ellison, outline the objective of the book as hoping 'to develop a thoughtful and accessible new literature for colleges, seminaries, churches, other religious institutions, and laypersons' (p viii). In this respect, they have achieved their stated outcome and provide an original exploration of the relationships between the individual, religious traditions and the state. All of the contributors provide challenging essays, from a varied and diverse range of scholarship. The collection consists of an introductory chapter, followed by eight chapters that examine the main religious marriage traditions of eastern orthodox Christianity, Islam, the Jewish faith, protestantism

and catholicism. The last three chapters examine the issues relating to the legal and sociological aspects of covenant marriage.

All of the contributors have written analyses of (some of the) varied aspects of family law. The themes highlighted by the editors in their opening chapter are developed throughout the rest of the collection. With eleven thought-provoking contributors, I genuinely found it difficult to do justice to all of them in a short space and have highlighted just a few of the chapters that particularly stood out. In particular, Spaht's paper, 'The modern American covenant marriage movement: its origin and its future', presented a strong argument that covenant legislation is the only way successfully to reform divorce. There is an inherent assumption in Spaht's paper that religion is desirable in public life, when she states that covenant marriage will invite 'religion back into public life' (p 253). What Spaht argues for, then, is a religious view of marriage which is endorsed by law. Such an approach seems an anomaly in a formally secular country such as America or, indeed, for other countries which might be considered secular, including the UK. Spaht suggests that, as no one is *forcing* individuals to choose covenant marriages, such marriages should be facilitated. However, what she does not address adequately is the argument that no one *forces* people to get divorced, so why not make it easy for them to do so.

Novak's paper, 'Jewish marriage: nature, covenant and contract', examines the institution of marriage with reference to Jewish marriage, using Maimonides (1135–1205), to explore the nature and generic character of Jewish marriage. Novak then examines the rabbinic tradition of Jewish marriage. His research stands up to scrutiny and his chapter provides a wide-ranging and accurate description of the rabbinic tradition. However, I would have liked to have seen more of an exploratory critique of those rabbinic traditions.

What is very clear is that discussion of covenant marriage is prominent within certain groups in America, although, since the initial flurry of interest, it does not appear to have grown in popularity among those seeking to get married. While this collection of essays provides extensive and thought-provoking analysis of this trend, all of them appear to speak from the unified assumption that it is desirable that religious values should influence secular law-making. I would have liked to have seen essays in this collection that started from the premise that there should be a separation between church and state. Such an absence makes for a somewhat unbalanced collection. Further, while I am not arguing for same-sex couples to be included in covenant marriages, the lack of attention paid to same-sex couples is lamentable. Stackhouse's chapter, 'Covenantal marriage: protestant views and contemporary life', displays an unnecessary concern for homosexuality in relation to marriage, referring to homosexuality as a 'threat to communities of faith' (p 174). He goes on to refer to other countries' legal recognition of same-sex unions as 'worrisome'.

Having to ‘prove’ fault in divorce results in increased costs, both emotionally and financially: all organisations, whether governmental or religious, should be moving away from fault in divorce. Retaining fault in divorce, particularly the standard demanded by covenant marriage, is likely to keep women in abusive relationships. This is especially so when one considers that, in covenant marriage, mental abuse is not recognised as abuse and therefore as capable of constituting a ground for divorce. It will also prolong children’s exposure to parental conflict. Although covenant marriages are clearly important to some of those who are religious, there is evidence to suggest that they do not appear to be important to the rest of the population. For example, according to a report published by the National Center for Policy Analysis in December 2001, fewer than 3 per cent of couples who married in Louisiana and Arizona had taken on the extra restrictions of covenant marriage. From the perspective of this reviewer, those who argue for covenant marriage are therefore trying to impose unwelcome and unwanted views on the rest of us. Instead of trying to impose a religious canonical law upon divorce, policy makers should look for ways of helping people to divorce better. This would include measures to minimise child poverty after relationship breakdown. If religious individuals wish to undergo a religious marriage, covenanted or not, then that should be a private matter for them, but the state and the law should not endorse in any way the imposition of those religious ideas on the rest of society.

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God vs. the Gavel: Religion and the Rule of Law

MARCI A HAMILTON

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Academic studies dealing with the nature and limits of religious accommodation in a democratic society are urgently needed. From Christian rings to Sikh bracelets to Hindu bulls, the question of when exemptions from generally applicable laws should be provided for religious groups and individuals presents challenges to academics, lawmakers and judges alike. Discussion tends to focus on two concerns: how to distinguish a legitimate exemption from an illegitimate one; and who should be responsible for making any such determination – the legislature or the courts? In *God vs. the Gavel*, Marci Hamilton, Professor of Law at Benjamin N Cardozo School of Law in New York, attempts to tackle these