

# THE BIBLICAL VIEW OF MARRIAGE: COVENANT RELATIONSHIP

*Michele Brewer Brooks* \*

## I. INTRODUCTION

This work began as research during law school on another subject—no-fault divorce. I found myself frustrated by some of the characteristics of no-fault divorce: namely that it is unilateral and subjective and that it leaves unwilling participants and weaker parties (often children) suffering from the marital breakdown. One of the theories that initially intrigued me in this research was the concept of contractual damages in divorce proceedings.<sup>1</sup> This contractual premise would allow the issue of fault to return to the process.

What would happen if courts treated property and business contracts as we now treat the marriage contract? What if American law refused to enforce business contracts and indeed systematically favored the party that wished to withdraw, on the grounds that “fault” was messy and irrelevant and exposed judges and attorneys to unpleasant acrimony? What if property were viewed, as marriage increasingly is, as a strictly private matter, so that when disputes arose, thieves and owners would be left to work things out among themselves, because after all, one cannot legislate morality? If the corporation were required to operate on the same legal principles that govern our marriage laws, the economy would collapse. It is not surprising that under the same regimen, marriage is on the verge of doing just that.<sup>2</sup>

Eager to see marriage and the notion of fault upheld in any way, I embraced the concept of contractual damages.

However, it did not take long for me to reevaluate my position. I was deeply convicted that viewing marriage as a mere contract that could be broken at will and remedied with money somehow cheapened the institution. I knew in my heart that marriage is more than a con-

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\* J.D., Regent University; Admitted to the Virginia Bar, October 1997. Formerly staff attorney for Samaritan House, a shelter for battered women, representing victims of domestic violence in family law issues. I would like to thank my husband, Randy Brooks, Esq., for his support in writing this article, and my parents, Rev. Nick and Janet Brewer, for modeling such a wonderful marriage.

<sup>1</sup> See generally Lloyd Cohen, *Marriage, Divorce, and Quasi-Rents; or, "I Gave Him the Best Years of My Life"*, 16 J. LEGAL STUD. 267 (1987); Allen M. Parkman, *Reform of the Divorce Provisions of the Marriage Contract*, 8 BYU J. PUB. L. 91 (1993); Lynn D. Wardle, *No-Fault Divorce and the Divorce Conundrum*, 1991 BYU L. REV. 79 (1991).

<sup>2</sup> MAGGIE GALLAGHER, *THE ABOLITION OF MARRIAGE: HOW WE DESTROY LASTING LOVE* 149 (1996).

tract. Indeed, God ordained it, and He had a plan for it. As Christians ought to know, marriage is a solemn covenant, and marriage vows are forever. Every Christian has been told that "God hates divorce,"<sup>3</sup> but I wanted to know more about how God sees marriage.

Finally, this topic gained prominence in my thinking as I realized that it was simmering in the legal and public policy arenas. There was (and continues to be) a great deal being said about strengthening marriage laws through a concept named "Covenant Marriage." As I understand the current debate, proponents of Covenant Marriage are pushing for legislation to institute a new class of marriage, encouraging those who choose this option to take the step more seriously. The end result? Divorce would be harder to obtain, it is said, for those who are truly committed. The idea intrigued me and raised what should be the foremost question for any Christian: What does God think about these efforts? To answer that question, Part II of this article embarks on a journey of definitions. Part III explores the scriptures while part IV builds on scripture. It is here that I will discuss the nature of marriage in terms of social contract. Finally, in part V, I discuss the five historical views of marriage.

## II. CONTRACT AND COVENANT—A JOURNEY OF DEFINITIONS

As legal terms of art, I found the terms contract and covenant to be confusing. Naturally, I started with the lawyer's tool, *Black's Law Dictionary*, and found the following:

Contract. An agreement between two or more persons which creates an obligation to do or not to do a particular thing.<sup>4</sup>

Covenant. An agreement, convention, or promise of two or more parties, by deed in writing, signed, and delivered, by which either of the parties pledges himself to the other that something is either done, or shall be done, or shall not be done, or stipulates for the truth of certain facts. At common law, such agreements were required to be under seal. The term is currently used primarily with respect to promises in conveyances or other instruments relating to real estate.

In its broadest usage, means any agreement or contract.

The name of a common law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal.<sup>5</sup>

It did not take me long to see that I was not alone in my confusion. These definitions seemed to cloud the issue. At best, *covenant* appeared to mean an outdated kind of contract. The terms were basically synony-

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<sup>3</sup> *Malachi* 2:13-16 (Unless otherwise noted, all references are to the New International Version).

<sup>4</sup> BLACK'S LAW DICTIONARY 322 (6th ed. 1990).

<sup>5</sup> *Id.* at 363.

mous in their definitions. So I next looked to the Second Restatement of Contracts and an English dictionary:

"A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."<sup>6</sup>

"Contract: 1. a binding agreement between two or more persons or parties; one legally enforceable; 2. a business arrangement for the supply of goods or services at a fixed price; 3. the act of marriage or an agreement to marry."<sup>7</sup>

"Covenant: 1. a usually formal, solemn, and binding agreement; compact; 2. a written agreement or promise usually under seal between two or more parties, especially for the performance of some action; 3. the common law action to recover for breach of contract."<sup>8</sup>

To say the least, I was completely unimpressed by the definitions that I had found, especially the legal ones.<sup>9</sup> At Regent University's School of Law, I was introduced to a rich concept of common law and natural law. Unable to accept contemporary legal treatment, I branched out into different sources that yielded some interesting results:

Covenant means that two parties are bound to one another, not on the basis of a contract where the mal- or non-performance of obligations nullifies the relationship. Some marriages are contracts of this sort. But covenant implies a binding together within which there is a standing together 'in spite of . . . . The 'in spite of' element also implies that we are ambiguous creatures, mixtures of fulfillment and unfulfillment, hostility and love, desirability and undesirability. The covenant relationship is one in which we continue to be loyal and loving in spite of mutual inadequacies of mutual hurt and frustration.<sup>10</sup>

While covenant, in its operational sense, functions to insure the legitimacy of individual partners while binding them in relationship, it must be emphasized that the covenant is exclusive. The main characteristic of this relationship is that it excludes other possibilities. For example, in the marriage covenant, specific conditions are set limiting like relationships with others. To enter such a relationship outside those conditions of the covenant would mean that the covenant has

<sup>6</sup> RESTATEMENT (SECOND) OF CONTRACTS: CONTRACT DEFINED § 1 (1981).

<sup>7</sup> MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 251 (10th ed. 1994).

<sup>8</sup> *Id.* at 267.

<sup>9</sup> Toward the end of my research, I finally came upon a preliminary definition of covenant in a non-religious source. See *Encyclopedia Britannica Online* (visited Apr. 1, 1999) <<http://www.eb.com>>. Britannica defines a covenant as the following: "a binding promise of far-reaching importance in the relations between individuals, groups, and nations. It has social, legal, religious and other aspects. The discussion is concerned primarily with the term in its special religious sense and especially with its role in Judaism and Christianity." *Id.*

<sup>10</sup> STUART D. MCLEAN, *THE COVENANT AND PRE-MARITAL SEX* 5 (Workshop on Covenant and Politics Series 1981).

been breached. A series of negative consequences would then flow as a result of the breach.<sup>11</sup>

"[I]n English, contract is generally a matter of private usage, whereas covenant and compact reflect public usage. Contract is a phenomenon of private law; covenant and compact are phenomena of public law."<sup>12</sup>

"The concept of covenant, in its heart of hearts, refers to a situation where a moral force, traditionally God, is a party, usually a direct party to, or guarantor, of a particular relationship."<sup>13</sup>

While these definitions provided clues to a religious foundation, it was not until I understood the Biblical origins of covenant that I discerned a clear distinction, a clear definition, and a clear principle of the difference between contract and covenant. After analyzing scripture, my conclusions on covenant marriage quickly solidified.

### III. COVENANT AND THE HOLY BIBLE

One of the most significant terms in the Bible is the word "covenant." Despite its significance, it is often not clearly understood. As the story of mankind unfolds in scripture, covenants are found to comprise the foundation of many relationships. God made, among others, a covenant with Abraham<sup>14</sup> and later renewed that covenant at Sinai.<sup>15</sup> As examples of covenants between men, David made a covenant with Jonathan<sup>16</sup> and, later, with the elders of the tribes of Israel when he became king.<sup>17</sup> Jeremiah foretold the day when God would make a new covenant with the house of Israel.<sup>18</sup> Fulfilling that prophecy, Jesus was presented as mediator of the New Covenant: "This cup is the new covenant in my blood."<sup>19</sup>

These covenants signify a binding of partners into new or renewed relationships entailing mutual promises and pledges of reciprocity. On the one hand, God binds Himself to such men as Abraham with solemn promises. On the other, God binds Israel to Himself under solemn obligations—prophetic, from the Christian view, of the day when He will bind Himself to all humanity and humanity to Himself in Jesus Christ in

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<sup>11</sup> GORDON M. FREEMAN, *THE DARK SIDE OF COVENANT 1* (Workshop on Covenant and Politics Series 1981).

<sup>12</sup> DANIEL J. ELAZAR, *THE COVENANT IDEA AND POLITICS 3* (Workshop on Covenant and Politics Series 1981).

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> *See Genesis* 15, 17.

<sup>15</sup> *See Exodus* 6.

<sup>16</sup> *See ELAZAR, supra note 12; 1 Samuel* 18:1-4.

<sup>17</sup> *See ELAZAR, supra note 12; 2 Samuel* 5:3.

<sup>18</sup> *See ELAZAR, supra note 12; Jeremiah* 31:31-34.

<sup>19</sup> *See ELAZAR, supra note 12; 1 Corinthians* 11:25; *Hebrews* 12:24.

covenant love. Likewise, on a more earthly plane, the Bible speaks repeatedly of men, such as Joshua, Hezekiah, and Josiah, who bound themselves and the nation in loyalty to God in covenant.<sup>20</sup>

It is difficult for those of us in contemporary Western Civilization to truly understand the concept of blood covenant—an Eastern concept. Covenant is the strongest, most sacred, most enduring, binding agreement known to men.<sup>21</sup> Yet, the closest that many of us in our society have come to blood covenant is watching Indian chiefs on TV becoming blood brothers by pricking their fingers and rubbing the blood together.<sup>22</sup>

The Bible is set in an Eastern context, and it is in an Eastern context that covenant is best understood.<sup>23</sup> When two or more people made a covenant with each other, they made a commitment more valuable than their lives.<sup>24</sup> They made the basic commitment to each other that “all I have and all I am is yours. Your enemies are my enemies, and I am ready to give up even my life for you, if need be.”<sup>25</sup>

In Bible times, a covenant was virtually never broken.<sup>26</sup> “It was such a sacred commitment that a man would die before he would dishonor himself by breaking a covenant.”<sup>27</sup> In the East, a man’s word in a vow or covenant was literally more valuable than his life. It has been said that up to 100 years ago if a man ever broke a covenant in Africa, even his own relatives would help hunt him down to kill him.<sup>28</sup> In fact, the covenant breaker and his offspring could be hunted and killed for up to four generations for covenant breaking.<sup>29</sup> North American Indians have been reported to have hunted down and killed covenant breakers for up to seven generations.<sup>30</sup> This same type of mind-set permeated Biblical culture and still exists in oriental and Middle Eastern cultures today:

It is still such a serious matter in many countries for an Arab Muslim to become a Christian. In their way of thinking, the man is in

<sup>20</sup> See *Joshua* 24:25; *2 Chronicles* 29:10; 34:31.

<sup>21</sup> See CRAIG HILL, *MARRIAGE: COVENANT OR CONTRACT?* 3 (1994). I quote and cite this source heavily throughout this article, especially in this section. The reason I did so was because there are few sources that specifically discuss marriage as a covenant. Unlike most Christian books on marriage—that are based on practical ministry—the thesis of this book is that marriage is a covenant instituted before God. It is not to be broken for any reason. If divorce does occur, remarriage is not allowed.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> *Id.*

<sup>26</sup> See *id.*

<sup>27</sup> *Id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

covenant through Islam with God and his brothers. In becoming a Christian, according to eastern thinking, a man is breaking this covenant with God and his brothers and thus is worthy of death. In many cultures, his own mother is sworn to seek his death . . . . Covenant breaking in the east is virtually always punishable by death.<sup>31</sup>

This illustrates the seriousness of the covenant bond. Even the ceremony to form a covenant was also seriously undertaken. How a covenant was formed was just as important as enforcing remedies for breach. And no ceremony could invoke more serious consideration between covenantors than a blood covenant.

### A. The Blood Covenant

A covenant is simply one sealed with blood. In the Old Testament, two people would enter into a Blood Covenant like that and they would go through certain steps to be able to enforce that contract. One of the steps was that they would cut their palms or their wrists and rub their hands or wrists together. As the blood mingled, that contract would be sealed and could be enforced. It could never be broken or disannulled.<sup>32</sup>

The Old Testament Hebrew word for covenant or agreement is *berith*.<sup>33</sup> To form a covenant (*berith*) required one to *kurath* the covenant. This verb *kurath* means "to cut or divide," alluding to the sacrificial custom of dividing animals<sup>34</sup> involved in covenant-making.<sup>35</sup> Thus, the best way to describe the covenant-making process is to "cut" a covenant or to use a more familiar expression, "cut a deal."

The significance of the Old Testament blood covenant gives us a rich understanding of the depth of the covenant bond. It is a symbol of unity in which the mixing of blood connotes the act of the covenantors becoming one. In the same way, a covenant of marriage is a symbolic act of two becoming one. And, rather than being sealed in blood, it is sealed in consummation.

The final descriptive concept of Old Testament covenant is that it is an irrevocable and indissoluble commitment valid (at least) until the death of one of the covenanting parties. Moreover, a covenant is not bi-

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

<sup>32</sup> THEO WOMARANS, BLOOD COVENANT 3 (1984).

<sup>33</sup> *Vine's New Testament Word Search, Context Bible Verse Search* (visited Apr. 1, 1999) <<http://www.iclnet.org/clm/cgi-bin/vines,1242>>.

<sup>34</sup> O. PALMER ROBERTSON, THE CHRIST OF THE COVENANTS 7 (1980).

<sup>35</sup> There were other ways—no less valid—to make a covenant. See, e.g., *Genesis* 21:23-32; 31:53 (symbolic action); *Exodus* 6:8; 19:8; 24:3-7 (symbolic action); *Deuteronomy* 7:8; 29:13 (symbolic action); *Ezekiel* 16:8 (symbolic action); *Genesis* 31:44 (the setting up of a memorial); *Joshua* 24:27 (the setting up of a memorial); *Exodus* 24:8 (sprinkling of blood); *Psalms* 50:5 (offering a sacrifice); *Ezekiel* 20:37 (passing under the rod).

lateral in the sense that it does not depend upon the performance of either party. Rather, it is unilateral in the sense that it is a commitment made to another party in the presence of God. The obligations of one covenantor did not depend on the other's performance, though remedies—as in contract—could be sought for a breach.

### *B. Marriage: A Covenant Instituted by God*

When one seeks truth, one must look to the author of all truth, Jehovah God. He has given His word as a guidebook for our lives. Thus, the Bible is the first place to search for the true meaning of marriage: "In the beginning God created the heavens and the earth."<sup>36</sup> Marriage was not man's idea—it was God's. He created all things and designed them to perform a function within his creation.

At the inception of man's existence, God said, "Let us make man in our image, in our likeness; . . . So God created man in his own image, in the image of God he created him; male and female he created them . . . God saw all that he had made, and it was very good . . ." <sup>37</sup> This is perhaps mankind's<sup>38</sup> greatest claim to fame: we are created in God's image! We all bear His likeness, and He proclaims that to be good! Note what immediately follows man's creation:

The Lord God said, "It is not good for the man to be alone. I will make a helper suitable for him . . ." But for Adam no suitable helper was found. So the Lord God caused the man to fall into a deep sleep; and while he was sleeping, he took one of the man's ribs and closed up the place with flesh. The Lord God made a woman from the rib he had taken out of the man, and he brought her to the man.

The man said, "This is now bone of my bones and flesh of my flesh; she shall be called 'woman' for she was taken out of man."

For this reason a man will leave his father and mother and be united<sup>39</sup> to his wife, and they will become one flesh.<sup>40</sup>

This great insight into the marriage relationship reveals that first, woman is intended to be a helper for her husband. The scriptural implication is that man needed one. Therefore, woman was created to complement and fulfill his need.

<sup>36</sup> *Genesis* 1:1.

<sup>37</sup> *Genesis* 1:26-28, 31.

<sup>38</sup> The word "man" in this passage and the word "mankind" refer to both men and women.

<sup>39</sup> The familiar English word used here is *cleave*, whereas the Greek word used here is *kolloo* which means to "join fast together, glue, cement." See *Vine's New Testament Word Search*, *supra* note 33.

<sup>40</sup> *Genesis* 2:18, 20-24.

Second, God made Eve with a part of Adam's body, his rib. Why did He do that? He certainly didn't have to use anything but His own words for creation, but He chose this course. Consummate with His character, I find at least two major reasons that God chose to make Eve from Adam's rib. First, God's creation of Eve using Adam's rib provides an interesting paradox: the nature of Eve's role in the marital partnership has no bearing on the fact that both are completely equal before God.<sup>41</sup> Second, the very fact that Eve was made from Adam's body symbolizes the one flesh relationship that a husband and wife share. Certainly, in the sexual consummation of marriage, a husband and a wife become physically joined. The act allows them to again become one for a time. But scripture implicates so much more. Men and women, despite their physical separation, seek what they have lost: complete unity. It seems that once a man and woman are joined in the covenant of marriage, they achieve not just physical unity but also unity of spirit and flesh from that day forward.

### *C. Specific Citations of Marriage as a Covenant Relationship*

When I began this research, I did not know of any specific places in the Bible in which marriage was referred to specifically as a covenant. It took some digging, but I did find two places in which marriage is specifically described as a covenant. The first citation is found in the book of Malachi:

You flood the Lord's altar with tears. You weep and wail because he no longer pays attention to your offerings or accepts them with pleasure from your hands. You ask, "Why?" It is because the Lord is acting as the witness between you and the wife of your youth, because you have broken faith with her, though she is your partner, the wife of your *marriage covenant*.

Has not the Lord made them one? In flesh and spirit they are his. And why one? Because he was seeking Godly offspring. So guard yourself in your spirit, and do not break faith with the wife of your youth.

"I hate divorce," says the Lord God of Israel, "and I hate a man's covering himself with violence as well as with his garment," says the

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<sup>41</sup> See JOHN C. HOWELL, *EQUALITY AND SUBMISSION IN MARRIAGE* (1979). [T]he equality of personhood for man and woman is clearly described in the creation narratives. In spite of man's failure to fulfill God's will in the story of the Fall, the Old Testament sets forth a continual enhancement of the integrity of personhood. . . . Personhood rests upon the image of God in man by creation and upon the recreation of life in Christ through faith in God's revelation of love at the cross.

*Id.* at 33.

Lord Almighty. So guard yourself in your spirit and do not break faith.<sup>42</sup>

The second passage, which is equally explicit, is found in the book of Proverbs: "It [wisdom] will save you also from the adulteress, from the wayward wife with her seductive words, who has left the partner of her youth and ignored the *covenant* she made before God."<sup>43</sup>

#### *D. Marriage Covenant: A Figurative Usage as God's Union with His People*

Throughout the Bible, God often describes His relationship with His people in terms of a spiritual marriage. This sheds light on how important marriage is to God. Note how the symbol of marriage is used in the following passage:

"The time is coming," declares the Lord, "when I will make a new covenant with the house of Israel and with the house of Judah. It will not be like the covenant I made with their forefathers when I took them by the hand to lead them out of Egypt, because they broke my covenant, though I was a husband to them," declares the Lord.<sup>44</sup>

God is clearly upset and explains His anger—His distrust—in terms of being a husband. But this figurative use of marriage is not limited to a negative connotation, for "[a]s a bridegroom rejoices over his bride, so will your God rejoice over you."<sup>45</sup> One pastor has put it this way:

When you make Jesus your Savior and Lord, you are joined to Him as a bride is one with her husband. Self, the old husband, is dead. You no longer love that husband because you are now joined to another. Adultery is marital unfaithfulness. It is joining yourself to someone other than your husband, who must have all your allegiance and loyalty. Idolatry is spiritual adultery. It is comprised of joining yourself to anything that divides your loyalty, affections, and faithfulness from wholehearted love to Jesus. The demand of covenant is wholehearted love to the Lordship of Jesus over every area of your life. Whatever divides that love from pure devotion is an idol.<sup>46</sup>

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<sup>42</sup> *Malachi* 2:13-16 (emphasis added). It is interesting that the first part of this verse is often quoted, but one seldom hears the rest of it—that God hates violence as well.

<sup>43</sup> *Proverbs* 2:16-17 (emphasis added).

<sup>44</sup> *Jeremiah* 31:31-32.

<sup>45</sup> *Isaiah* 62:5.

<sup>46</sup> ROBERT PHILLIPS, *COVENANT: ITS BLESSINGS—ITS CURSES* 191 (1986).

#### IV. THE NATURE OF CHRISTIAN MARRIAGE

The key words that I have used so far to describe the nature of marriage (Christian and non-Christian) are contract, covenant, and commitment.<sup>47</sup>

##### *A. Social Contract*

Marriage is a social reality; it is one way that people build relationships within society.<sup>48</sup> It also becomes an outward sign of the relationship that has been established between two people before God. It has credibility in society and is to be respected. It also carries a great deal of responsibility.<sup>49</sup> In "ancient and contemporary law," marriage has contained legal responsibilities in the nature of contract as well as non-legal, non-contractual personal responsibilities.<sup>50</sup>

Social customs and laws also influence the way the marriage is established.<sup>51</sup> Couples usually meet, date, and get engaged within the bounds of societal expectations. Engagements and weddings are often traditional in terms of culture when there is nothing traditional about the couple or their lives. If nothing else, we tend to adhere to cultural expectations in the forming of a marriage. Religious rites and celebrations are no exception.

For instance, people who have not been to church in years often greatly desire to have a church wedding. How is this behavior best explained? Another pastor explained that "[r]eligious rites and celebrations have developed over the centuries which demonstrate the impact of society on the social reality of the family."<sup>52</sup> Despite the attitude that generations are "progressive," we tend to do important things as they have always been done.

But make no mistake about it: the joining of a man and a woman in matrimony is a supernatural event, founded upon a mutual exchange of holy pledges . . . . These pledges are the only true vows that most people will ever take. They may even be the only truly sacred words that will ever darken a couple's mouths. The saying of them requires about thirty seconds. But keeping them is the work of a lifetime.<sup>53</sup>

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<sup>47</sup> See HOWELL, *supra* note 41, at 14. Howell does a very good job at laying out a framework for marriage in this book. It is an excellent resource for pastors and marriage counselors—and lawyers—alike.

<sup>48</sup> *See id.*

<sup>49</sup> *See id.*

<sup>50</sup> *See id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See id.*

<sup>53</sup> MIKE MASON, *THE MYSTERY OF MARRIAGE: AS IRON SHARPENS IRON* 93 (1985).

### 1. Social Contract Between Families

The social contract is also established in and between families.<sup>54</sup> This was especially true in Old Testament culture in which the whole society revolved around the primary social institution—the family.<sup>55</sup> “An individual really did not exist as a separate person apart from his identification with the family unit.”<sup>56</sup> In this culture, the father was the true patriarch of his family; he held all final authority in the home.<sup>57</sup> When a son was to be married, the new wife became a part of the father’s household.

Since a son’s wife became a member of his father’s household, it was customary for the father to choose a wife for his son. Sometimes he entrusted this responsibility to a loyal servant who would commit himself to carrying out his master’s wishes. In either case, the marriage arrangements were established as a contract between the families of the bride and groom.<sup>58</sup>

This did not mean the bride’s family was left out. On the contrary, it was also very important that the bride’s family carefully enter into the contract for their daughter’s betrothal. She literally became a part of her husband’s family. Thus, the bride’s family took great care to make sure that she would be adequately provided for in her new home.

Though today’s culture is vastly different, there are immutable principles that we should glean from this situation. For example, autonomy from parents is essential to marriage. One should leave his father and mother and cleave to his wife, but that does not indicate that the parents are to be left behind completely. Ideally, each child’s spouse should become a member of the other’s family. Once people are married, they still need moral, spiritual, and emotional support from their families; roots and extended family ties are obviously important. Mutual family support is important for a successful marriage.<sup>59</sup>

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<sup>54</sup> See HOWELL, *supra* note 41, at 15.

<sup>55</sup> See *id.* See also Genesis 24:1-67 (illustrating this concept in the story of the betrothal and marriage of Isaac and Rebekah).

<sup>56</sup> HOWELL, *supra* note 41, at 15.

<sup>57</sup> See *id.*

<sup>58</sup> *Id.*

<sup>59</sup> This is one area that I feel has been overlooked in our effort to “leave and cleave.” As our society has become more mobile, we have misplaced a valuable asset—our families. This is not an excuse for children to remain in the nest. Rather, family provides resources that God intends to be used. Their wisdom, experience, and guidance can be a priceless treasure.

## 2. Social Contract With the World

Whether or not people realize it, marriage constitutes a type of contract with the society in which they live. Even though our culture has changed dramatically, marriage as an institution is still held in high regard. When people marry, they are in essence declaring to the world that they "hold themselves out" as a committed partnership and that they intend to stay together until death. Included in this "holding out" is the concept of marital monogamy—the only moral context for sexual expression. Marriage partners promise by marriage that sexuality is to be shared between them and them alone. This, in turn, provides the most stable environment in which to raise children.<sup>60</sup> One of the primary purposes of marriage is "to enable children to be born under the best possible conditions, so that they have the loving care of a father and a mother who will work together, and if necessary sacrifice, for their highest good."<sup>61</sup> Marriage, then, is a stabilizing force in society.

Another aspect of the family's contract with society embodies the Christian's primary responsibility—evangelism. Families should be ministering to the church and the world as a family.

Through its worship and its service, the Christian home bears witness to the faith to which it is dedicated. It does not set out deliberately to provide an example to others, for that would be to judge others and to imply that it was superior to them. Yet inevitably the Christian home *does* set an example. Insofar as it achieves the qualities of a truly Christian community, it is a little colony of the Kingdom of Heaven. It is a working unit which demonstrates what all community life would be like in a Christian world.

The Christian home is, in fact, by far the most powerful evangelizing agency in the world. Its evangelism, however, is not aggressive; it is persuasive. It proclaims its message, not by words, but by deeds. It does not tell others what they should be; it shows them what they could be. By their gracious influence, Christian homes win more converts than all the preachers put together. Give us enough of them, and the world would soon be a Christian world; for the world's life rises to higher levels only as its homes do so.<sup>62</sup>

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<sup>60</sup> See HOWELL, *supra* note 41, at 15.

<sup>61</sup> DAVID R. MACE, *WHOM GOD HATH JOINED* 20 (1923). This exceptional book is full of insights on the family that contemporary evolving society would not normally attribute to the 1920's. If Mr. Mace were alive today, he would fit well in a Promise Keeper's rally.

<sup>62</sup> *Id.* at 89. This is one of the most powerful passages about the family that I have ever read. It encompasses one of the underlying themes of family law—that the family, in its ideal function, is a tremendously powerful thing. That is the reason that Satan attacks it so viciously! By strengthening our families and living according to God's plan, we are doing spiritual warfare for the kingdom of God and fulfilling the Great Commission.

### B. The Spiritual Covenant

The marriage covenant, as established by God, is one of "love and response."<sup>63</sup> "The spiritual covenant is to be one's personal response to and acceptance of the mate in a relationship characterized by mutual love, expressed forgiveness, and a shared faith."<sup>64</sup>

God's word makes it clear that marriage ought to be between Christians: "Do not be yoked together with unbelievers. For what do righteousness and wickedness have in common? Or what fellowship can light have with darkness?"<sup>65</sup> Only then can the true nature of marriage be fulfilled—joined as one flesh in the eyes of God. "The person who has discovered a new selfhood in Jesus Christ gains courage to share himself with another person and is thus able to develop trust by being willing to love freely."<sup>66</sup> When this is true, the marriage vows are personal declarations of self-giving, not just ritualistic customs.<sup>67</sup>

### C. Personal Commitment: The Concept of Covenant

Although commitment is not a Biblical word itself, the concept of commitment is fundamental to the Christian faith and implicit in the very nature of covenant.<sup>68</sup> Steadfastness and loyalty are generally the words the Bible uses as expressions of commitment.<sup>69</sup> It is also a concept that almost seems strange to our modern, throwaway culture. But as Christians, we should understand the value of commitment because Christ displayed it so clearly to us by giving us eternal life through the ceremony of the most important blood covenant of all—His death and resurrection.

Of course, that marriage restricts each spouse to another for life is a commitment with advantages and not the opposite. For instance, loneliness, a complaint of many single people, no longer has to be a problem. Married people have someone to share their lives with—good times and bad.

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<sup>63</sup> HOWELL, *supra* note 41, at 21.

<sup>64</sup> *Id.*

<sup>65</sup> 2 *Corinthians* 6:14. While this literal text is a command for Christians of all denominations, the covenant of marriage between a Christian and a non-believer is still binding. See also 1 *Corinthians* 7:10-16. As to these marital vows, the apostle Paul affirms the strength and seriousness of covenant, but supports what I stated earlier that family is a ministry; "For how do you know, wife, whether you will save your husband? Or, how do you know husband, whether you will save your wife?" 1 *Corinthians* 7:16.

<sup>66</sup> HOWELL, *supra* note 41, at 22.

<sup>67</sup> See *id.*

<sup>68</sup> See *id.* at 24.

<sup>69</sup> See *id.*

Two are better than one, because they have a good return for their work: If one falls down, his friend can help him up. But pity the man who falls and has no one to help him up! Also, if two lie down together, they will keep warm. But how can one keep warm alone?

Though one may be overpowered, two can defend themselves. A cord of three strands is not quickly broken.<sup>70</sup>

Thus, a Christian marriage is "a blending of social contract, spiritual covenant, and personal commitment. It involves the family of origin and the family of faith. It requires love, commitment, and growth. . . . It is God's way for human fulfillment when his will is being done. Marriage is also the foundation of the family."<sup>71</sup>

#### *D. Divorce and Remarriage*

When I began law school, I was utterly convinced that I would never have anything to do with divorce. Since God hated it, He couldn't want me to have anything to do with it, right? But since my first family law class, thinking and praying about the practice of family law changed my opinion. I sincerely believe that the primary reason divorce has become so pervasive and the laws so liberal is that Christians have left the arena of family law. They have sought to find what the law requires of marriage, rather than what marriage requires of law.

As the body of Christ, it is the church's responsibility to take the lead in this matter. So far, I think we have failed. On the one hand, Christians often treat divorced people like lepers; and on the other, they do not discuss divorce because it is a difficult issue. For me to practice in this area of law, my answers to tough questions had to be settled not just in my own heart but also in scripture. The answers began from the central divorce scripture of the Old Testament:

If a man marries a woman who becomes displeasing to him because he finds something indecent about her, and he writes her a certificate of divorce, gives it to her and sends her from his house, and if after she leaves his house she becomes the wife of another man, and her second husband dislikes her and writes her a certificate of divorce, gives it to her and sends her from his house, or if he dies, then her first husband, who divorced her, is not allowed to marry her again after she has been

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<sup>70</sup> *Ecclesiastes* 4:9-12. Two can indeed defend themselves, especially in the context of spiritual warfare where the united prayer of husband and wife is a powerful force against the enemy. It is important to note the special significance that a "cord of three strands is not quickly broken." *Id.* at 12. The husband and wife, in their commitment to each other and God, become as strong as a braided cord—strong because they depend upon each other and God.

<sup>71</sup> HOWELL, *supra* note 41, at 27.

defiled. That would be detestable in the eyes of the Lord. Do not bring sin upon the land the Lord your God is giving you as an inheritance.<sup>72</sup>

On its surface it seems that implicit in the right to divorce was the right to remarry. Indeed, this was the Jewish custom.<sup>73</sup> “[T]he Mosaic writing of divorcement cut the marriage bond so completely that the woman was allowed to go and be another man’s wife.”<sup>74</sup>

The divorcee, with the dissolution bill in her hand, was at liberty to enter into a new marriage. The divorce-writing was her “letter of freedom”—“document of release”—that permitted remarriage. There no longer remained any matrimonial relation whatsoever between the two parties. It was the same as though they had never been married.<sup>75</sup>

The Jewish tradition, then, was the context in which Christ addressed the issue of divorce. The questions for our discussion become: Was Jesus espousing a new idea about divorce or was He merely explaining the old one? Did Jesus at any time suggest different classes of marriage?

Some Pharisees came to him to test him. They asked, “Is it lawful for a man to divorce his wife for any and every reason?”

“Haven’t you read,” he replied, “that at the beginning the Creator ‘made them male and female,’ and said, ‘For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh’? So they are no longer two, but one. Therefore what God has joined together, let man not separate.”

“Why then,” they asked, “did Moses command that a man give his wife a certificate of divorce and send her away?”

Jesus replied, “Moses permitted you to divorce your wives because your hearts were hard. But it was not this way from the beginning. I

<sup>72</sup> *Deuteronomy* 24:1-4. It is essential to understand the historical relevance of this passage. God was not condoning divorce and remarriage here. When it was written, most cultures considered women little more than chattel. This was a means for protection of women; their husbands could no longer divorce them without Old Testament “due process.”

<sup>73</sup> HILL, *supra* note 21, at 13.

<sup>74</sup> GUY DUTY, *DIVORCE & REMARRIAGE* 32 (1967).

<sup>75</sup> *Id.* at 32-33. Here is a sample bill of divorcement:

On \_\_\_\_ day of the week \_\_\_\_ day of the month \_\_\_\_ in the year \_\_\_\_ I who am also called son of \_\_\_\_ of the city of \_\_\_\_ by the river of \_\_\_\_ do hereby consent with my own will, being under no restraint, and I do hereby release, send away, and put aside thee, my wife \_\_\_\_ who is also called daughter of \_\_\_\_ who is this day in the city of \_\_\_\_ by the river of \_\_\_\_ who have been my wife for some time past! and thus do I release thee, and send thee away and put thee aside that thou mayest have permission and control over thyself to go to be married to any man that thou mayest desire; and that no man shall hinder thee from this day forward, and thou art permitted to any man, and this shall be unto thee from me a bill of dismissal, a document of release, and a letter of freedom, according to the law of Moses and Israel.

\_\_\_\_ the son of \_\_\_\_ Witness.  
 \_\_\_\_\_ the son of \_\_\_\_\_ Witness.

*Id.* at 34-35.

tell you that anyone who divorces his wife, except for marital unfaithfulness, and marries another woman commits adultery.”<sup>76</sup>

“Jesus recognized the provision for divorce in the law of Moses,”<sup>77</sup> authorizing “a divorce [in the case of] . . . fornication . . . .”<sup>78</sup> But what kind of divorce did He authorize? “By all the facts and circumstances of the case, there can be only one answer: Jesus, for the cause of fornication, approved the Jewish divorce.”<sup>79</sup> “Jesus did not introduce a *new kind* of divorce. He did not abolish *all* divorce. He corrected the abuse of the divorce privilege, but approved the right use of it.”<sup>80</sup>

Of course, divorce was not God’s plan for man at Creation. God granted divorce, Jesus said, because of the hardness of man’s<sup>81</sup> heart. “The entrance of sin into the world prompted God to act graciously toward sinful men, whose sinfulness was demonstrated by their ability to live with their wives.”<sup>82</sup> “Jesus proposed that by His grace, His followers would be able to do what they couldn’t do under the law—live together without the necessity of divorce.”<sup>83</sup> That is our ideal.

The Old Testament says that it is sinful for someone to have sexual relations with anyone not his or her spouse.<sup>84</sup> Jesus went further; the *desire* to have sex with anyone other than your spouse is sin: “You have heard that it was said, ‘Do not commit adultery.’ But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart.”<sup>85</sup> Faithfulness to one’s spouse is more than physical; it is an act of the will. “Sinful action is more dangerous than sinful desire, and that is why desires should not be acted out. Nevertheless, sinful desire is just as damaging to righteousness. Left unchecked, wrong desires will result in wrong actions and turn people away from God.”<sup>86</sup>

## V. FIVE HISTORICAL VIEWS OF MARRIAGE: DIVORCE & REMARRIAGE

### A. Patristic

The patristic view of marriage, the view of the early church fathers,

<sup>76</sup> *Matthew* 19:3-9; see also *Matthew* 5:31-32; *Mark* 10:10-12.

<sup>77</sup> ANDRÉ BUSTANOBY, BUT I DIDN’T WANT A DIVORCE 43 (1978).

<sup>78</sup> DUTY, *supra* note 74, at 35.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* The abuse of the divorce privilege is clear from the Pharisee’s question. Some rabbinical schools were teaching that divorce was acceptable for any cause.

<sup>81</sup> Of course, this is a generic term for mankind and refers to a woman’s heart as well.

<sup>82</sup> BUSTANOBY, *supra* note 77, at 43.

<sup>83</sup> *Id.*

<sup>84</sup> See *Exodus* 20:14.

<sup>85</sup> *Matthew* 5:27-28.

<sup>86</sup> *Explanatory Notes*, LIFE APPLICATION BIBLE 1654 (1991).

dominated the Christian world until the 16<sup>th</sup> Century.<sup>87</sup> Theologians have traced the writings of church leaders through the first five centuries after Christ to determine what doctrinal positions the early church held on certain issues.<sup>88</sup> With only one exception,<sup>89</sup> they were “unanimous in their opinion that Christ and Paul taught that if one were to suffer the misfortune of divorce, remarriage was not permitted, regardless of the cause.”<sup>90</sup>

### B. Erasmian

In the 16th Century, a theologian by the name of Desiderius Erasmus, a contemporary of Martin Luther, articulated a new position on divorce and remarriage.<sup>91</sup> This point of view on the divorce/remarriage issue is the most widely held among the Protestant churches today.<sup>92</sup> “It holds that Christ’s words in Matthew 19:9 allowed divorce in the case of adultery and, since in Jewish marriage contracts the granting of divorce always implied the right to remarry, he also was permitting the innocent party to remarry.”<sup>93</sup> The majority of those who hold this view also take the position that “Paul further expanded this concept by allowing divorce and remarriage in the case of the willing desertion on the part of the person’s partner.”<sup>94</sup> Some take this position further to include domestic violence.<sup>95</sup> The central theme to this position seems to be the right of remarriage of an innocent spouse.

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<sup>87</sup> See generally HILL, *supra* note 21, at 12.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.* The only exception was found to be Ambrosiaster, a fourth century Latin writer. *Id.*

<sup>90</sup> *Id.* The early fathers believed that Christ was revolutionary in His commentary recorded in Matthew 19 because He rejected the rabbinical schools of Hillel (divorce and remarriage allowed for any trivial reason) and Shammai (divorce and remarriage allowed in cases of adultery). *Id.*

<sup>91</sup> See generally *id.* at 13.

<sup>92</sup> See *id.* Note that the Westminster Confession of Faith, representative of many Protestant views, has adopted the Erasmian view:

In the case of adultery after marriage, it is lawful for the innocent party to sue out a divorce: and, after the divorce, to marry another, as if the offending part were dead. . . . [N]othing but adultery, or such wilful desertion as can no way be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage.

THE WESTMINSTER CONFESSION OF FAITH Ch. XXIV (1990).

<sup>93</sup> HILL, *supra* note 21, at 13.

<sup>94</sup> *Id.* I wonder if desertion, in this context, includes the case of an innocent party who is unwillingly sued for on a no-fault divorce basis.

<sup>95</sup> See *id.*

### C. Preterative

This point of view, which was promoted by St. Augustine, holds that Christ's answer to the Pharisees, "except for marital unfaithfulness,"<sup>96</sup> was actually a preterition (a passing over) which bypassed their question because they were trying to trick Him.<sup>97</sup>

Later, when alone with the disciples, Christ revealed the truth: "Whoever divorces his wife and marries another woman commits adultery against her."<sup>98</sup> If divorce does occur, this position does not allow the remarriage of either spouse.<sup>99</sup>

### D. Betrothal

This point of view claims that Christ's "exception clause" (adultery)<sup>100</sup> allowed for the breaking of an engagement in the case of a violation of the betrothal before the consummation of the marriage.<sup>101</sup>

The arguments in favor of this position have merit. When one understands the binding nature of betrothal in the time of Christ, and the clear recognition of the need for a "divorce" to break the engagement (as illustrated by Mary and Joseph in Matthew 1:10-20), one can readily see that such an interpretation is possible. Since engaged couples referred to their fiancées as "husband" and "wife," it is said that for Christ to not address Himself to this possibility would have opened the way to misunderstanding and shut the door on even the breaking of an engagement. The point is made that Christ carefully chose the word "fornication" (*porneia*) to stand in contrast to "adultery" (*moicheia*).<sup>102</sup>

Both words speak of sexual unfaithfulness, the former to premarital unfaithfulness and the second to marital unfaithfulness.<sup>103</sup> Since this situation refers only to a bill of divorce before marriage and consummation, both parties are free to marry.<sup>104</sup>

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<sup>96</sup> *Matthew* 19:9.

<sup>97</sup> See HILL, *supra* note 21, at 14.

<sup>98</sup> *Id.* at 15; see also *Mark* 10:11.

<sup>99</sup> *Id.*

<sup>100</sup> *Matthew* 19:9.

<sup>101</sup> See HILL, *supra* note 21, at 15.

<sup>102</sup> DUTY, *supra* note 74, at 56-57. It seems to be reaching too far, in my opinion, to use the distinction of these two words as a basis for an argument of this magnitude. Most Biblical scholars agree that the terms for adultery and fornication are basically synonymous in the Old and New Testaments. The chief distinction between the terms is found in classical Greek, not in classical Christianity.

<sup>103</sup> See HILL, *supra* note 21, at 15-16.

<sup>104</sup> See *id.* at 17.

### *E. Consanguinity*

This view is also known as the “unlawful marriage” doctrine.<sup>105</sup> This is a very rare situation in which divorce<sup>106</sup> is allowed if the two who are married are close relatives.<sup>107</sup> Some hold that this is the only situation in which divorce is allowed at all, referring to Christ’s use of *porneia*,<sup>108</sup> which includes this type of sexual immorality.<sup>109</sup>

The consanguinity view, though recognizing that divorce may have to be instituted in cases of unlawful marriages, considers remarriage of such persons contrary to both Christ’s and Paul’s teachings. It also holds that in the case of a lawful marriage, divorce is forbidden and the remarriage of a divorced person is never permitted.<sup>110</sup>

## VI. CONCLUSION

When I began this research, I was hoping to have some definite answers to some difficult questions: Is marriage itself a covenant? And if it is, what is the significance of viewing marriage against the backdrop of covenant? Is there scriptural support for creating another *type* of marriage vow? Should there be legislation creating a new gradation of marriage? These questions are implicitly before many state representatives and are founded on a well-intentioned concept.

However, Covenant Marriage, as a legal term is itself redundant. Marriage is, by definition, a covenant term. Man cannot make the covenantal bond any stronger or weaker by altering the one and only word that universally describes all unions as holy: marriage. It simply remains, as it always will, as the description of joining a man and a woman before God. Any contemporary phrase that attempts to change the absoluteness that is characteristic of all marriage falls short. By attempting to elevate a certain type of marriage, we cheapen all other “average” marriages. If such a precedent were enacted, it would pave the way for the creation of hyphenated alternatives to traditional notions of marriage.

What is most disturbing, perhaps, is the abrogation of God’s express commandments—his law word. Marriage is intended to bind all men and women at all times—not just the seriously committed. Since God is the Creator of all that may be termed covenant, this divinely ordained union

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<sup>105</sup> See *id.* at 16.

<sup>106</sup> The marriage could be held to be a non-marriage in certain denominations and under the law of many jurisdictions. If it were considered a non-marriage, it would be annulled, and remarriage would be possible.

<sup>107</sup> See HILL, *supra* note 21, at 16-17.

<sup>108</sup> See *Matthew* 19:9; see also *Leviticus* 18:6-18; *Acts* 15:20-29; *1 Corinthians* 5:1.

<sup>109</sup> See HILL, *supra* note 21, at 17.

<sup>110</sup> *Id.*

should not be subjected to any human tinkering; He, as the Creator of marriage, is the only authority capable of changing its nature. Rather than alter an institution that has existed since the creation of man and woman, let us endeavor to understand and honor the covenant that is denoted by the very word marriage.