

INTAMS Lecture in 2012

The Covenant of Marriage: Its Biblical Roots, Historical Influence, and Modern Uses

8 May 2012

Prof. Dr. John Witte, Jr.

Jonas Robitscher Professor of Law

Alonzo L. McDonald Family Distinguished Professor

Director of the Center for the Study of Law and Religion, Emory Law School, Atlanta, USA

Abstract of the Lecture

At the end of last century, some states in the USA put in place new covenant marriage laws, designed, in part, to counter the rise of privatized marriage and no-fault divorce.

Covenant marriage law allows prospective spouses to opt voluntarily for more stringent formation and dissolution rules and ties in with traditional legal teaching that marriage is more than a mere private contract.

This induces the author to explore the biblical concept of marriage as covenant in the Hebrew Bible and its New Testament echoes and elaborations.

The biblical term "covenant" is more than simply a contract or agreement. In a covenant, both sides yield a portion of their natural freedom to the other, and agree to limit and direct their actions thereafter in accordance with the terms of their covenant.

Both sides agree on the dire consequences to them and their descendants of non-compliance with the terms of their covenant.

The Hebrew prophets Hosea, Jeremiah, Ezekiel and Isaiah analogized the covenant relationship between God and Israel to the marital relationship between a husband and wife.

Malachi went one step further and flipped the covenant marital metaphor on its head, using it to offer moral instructions about human marriages.

Six major lessons can be drawn from the covenant metaphor of Malachi and the earlier prophets:

- (1) the covenant metaphor confirms the created form of marriage, as a monogamous union between one man and one woman;
- (2) the covenant metaphor confirms that God participates in each marriage;
- (3) the covenant metaphor confirms the created procreative function of marriage;
- (4) the covenant metaphor confirms the divine laws governing marriage formation – as set out in both the Mosaic law and in the natural law revealed before Moses;
- (5) the covenant metaphor elevates these Mosaic laws of marriage, both by adding new provisions and by exemplifying how to live by the spirit of the law;
- (6) the covenant metaphor makes clear that each individual marital covenant between husband and wife is part and product of a much larger covenantal relationship between God and humanity. -

The New Testament not only echoes and amplifies the covenantal lessons of marriage set out in the Hebrew Bible but also goes beyond it in pressing this ethic in more egalitarian terms.

While respecting the Catholic tradition's law and theology of sacramental marriage, the author is more drawn to the biblical image of marriage as a "covenant" for a number of reasons:

First, "covenant" is the preferred biblical language for marriage.

Second, the covenant metaphor is a better conceptual bridge builder in discussing marriage historically

and today.

Third, the covenant metaphor better recognizes the critical mutuality and consensuality of marriage.

Fourth, the covenant metaphor better shows that marriage is enduring but not necessarily indissoluble.

Fifth, the covenant metaphor captures better the reality that marriage is a multi-dimensional institution that interacts with and depends upon a variety of other social institutions and sectors of society to flourish.

These views have helped to shape the West's legal understandings that marriage is more than a mere contract. The recent US covenant marriage laws link up with a long tradition.

After discussing two Achilles heels of the modern covenant marriage movement, the author invites American religious communities to think more seriously about restoring and reforming their own bodies of religious law on marriage, divorce, and sexuality on the strength of biblical teaching of covenant, instead of simply acquiescing in state laws and culture, and expresses the hope that American society will slowly move its marriage law back "from contract to covenant".