

The Legal Identity of

the Married Woman

by clay latimer

(this is the first article of a series on this subject-ed.)

Women are becoming more and more concerned with their identities separate from the role-acting which has been imposed on them in the past. Married women in particular are becoming more cognizant of the diminution of their selves when they bind themselves in that contract provided by the state to sanction cohabitation. It has been pointed out that Mary Jones, a real, single, living individual person becomes, by contracting to marry John Doe according to the terms prescribed by Louisiana, Mrs. John Doe, a legal appendage of John Doe.

What many women do not realize is that marriage, ceremonious as it may be made to be, is only a contractual agreement with terms designated by the Civil Code of Louisiana, amended by various statutes and legislative acts of the state. Article 86 of the Civil Code states:

The law considers marriage in no other view than as a civil contract.

This means that it has terms to which each party must comply or suffer liability for breach of contract. More directly, it means that it confers certain obligations and responsibilities on the contracting parties; and most important, it means that it imposes specific restrictions and prohibitions on the party legally termed the "wife".

The Civil Code prescribes certain procedures and forms to be acknowledged in order for the contract to be valid by its making. These are pretty standard specifications as to how licenses may be obtained, who may solemnize the contract, what witnesses must be present, etc. It also prescribes how the marriage contract may be dissolved. Most specifically, however, we are concerned with the designation in the Code of "The legal effects and consequences of marriage." (Art. 87) As we will see, the brunt of these effects and consequences fall upon the wife. In Title IV (Of Husband and Wife), Chapter 5, "Of The Respective Rights and Duties of Married Persons," we begin to realize that the rights referred to are generally those of the husband and the duties are those of the wife. Notwithstanding Article 119 which states: "The husband and wife owe to each other mutually, fidelity, support, and assistance," the Code also states in the Article following (120):

"The wife is bound to live with her husband and to follow him wherever he chooses to reside; the husband is obliged to receive her and to furnish her with whatever is required for the convenience of life, in proportion to his means and condition."

This Article demands some explication. Primarily, I am struck by the subtle tone of discrimination as it is purported in the choice of words; i.e., the woman is bound whereas the man is less stringently obliged. Additionally, it infers that only the husband is capable of "providing" and even there his duty to do so is limited, not by his wife's wants and/or expectations, but by his own "means and condition." It is because of this fallacious concept of the husband as the provider that women, married and single, have been deprived of the educational and career opportunities many of them deserve. But here, I cannot fix the blame on male employers anymore than on those wives who have helped perpetrate the fallacy by allowing themselves to be provided for.

So, by the terms of the marriage contract as prescribed by the Civil Code of Louisiana, the husband has a duty to provide, and in reciprocity for this food and board he receives the privilege of selecting the place of boarding. Article 38 of the Civil Code states: "The domicile of each citizen is in the parish wherein he has his principle establishment . . ." but apparently citizenship is a more exclusive categorization than we suspected because Article 39 states: "A married woman has no other domicile than that of her husband. . . ." The contradiction here seems inexplicable. Certainly women are citizens, but perhaps, as in Orwell's philosophy, some people are more citizens than others.

The most recent court decision regarding this issue of domicile is Howell v. Kretz (1931) in which the court reiterated: "The wife is bound (that word again) to follow her husband wherever he chooses to reside." (131So.204)

An earlier decision (1884) which has

not been overruled and is even more disparaging is that in Gahn v. Darby: "The fact that the husband was poor, irascible, distant, and treated the wife harshly. . . was no ground for the wife's refusal to accompany the husband to the new abode. . ." (36La. Am. 70)

Article 120, designating the husband as the provider and restricting the wife's freedom of mobility, is only the first of many of the terms of the civil contract of marriage. Its effects are inconsequential in comparison to additional terms expressed in later Articles of the Civil Code. But, though this particular Article has not been repealed or amended, there are other areas in which relatively recent legislation has loosened some of the shackles fixed by the original Articles of the Civil Code. Married women have progressed somewhat in Louisiana, especially in their capacity to make contracts and to appear in court without their husbands' consents. There are now more available avenues by which they may, with extended effort and some legal implementation, establish their own individual identities.



Without meaning to
I turned 35
three marriages six children
too busy to look where I'm going.
Today I want
rainbows
cheeseberries
purple onion cookies.

Movement Two
by Sheila Hope Jurnok