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Matrimonial Regime Reform - A Constitutional Necessity

Nancy Clark Tyler

determining when reasonable expectations exist and in explaining the plain view doctrine, the dimensions of permissible search and seizure in Louisiana after *Katz* remain somewhat undefined. The "right to privacy" enshrined in article I, section 5 of the 1974 Louisiana Constitution[43] and cited, but not discussed, by the court as a basis for its decision,[44] is yet another factor to be considered in structuring the protection to be given Louisiana citizens against unreasonable searches and seizures.

Susan Ann Swanner

MATRIMONIAL REGIME REFORM—A CONSTITUTIONAL NECESSITY

Incarcerated as a result of state criminal charges brought against him by his wife, and in need of security for his debt incurred in order to pay attorney's fees, a husband executed a mortgage on the family home, a community asset with title in the name of both spouses. Learning of the mortgage only upon institution of foreclosure proceedings following default, the wife claimed that the Louisiana provision allowing a husband to mortgage the family home without the wife's consent was unconstitutional as a violation of the equal protection clause and a denial of due process. The federal district court *held* that due to the contractual nature of Louisiana's matrimonial regime system, there was no violation of the United States Constitution. *Kirchberg v. Feenstra*, 430 F. Supp. 642 (E.D. La. 1977).

Within the last few years, statutory provisions outlining different standards for males and females have been subjected to careful consideration by the United States Supreme Court to determine whether they deny the Constitution's guarantee of equal protection.[1] Although the Court has not yet directed its attention to the management provisions of any state's community property system, Louisiana's designation of the husband as the head and master, or manager and controller, of the community of gains,[2] could become a prime candidate for equal protection analysis.

43. See note 1, *supra*.
44. 345 So. 2d at 469.

1. U.S. CONST. amend. XIV, § 3 provides: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws . . . ."
2. LA. CIV. CODE art. 2404: "The husband is the head and master of the

Generally, the equal protection clause does not demand absolute equality,[3] but allows legislatures to employ reasonable classifications. This requirement is intended to ensure that differential treatment bears a "fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."[4] In examining statutes involving challenged classifications, the modern Supreme Court has employed at least two different review standards.[5] Active review or strict scrutiny is invoked if the classification at issue involves "suspect" criteria[6] or if the legislation impinges upon "fundamental" interests.[7] To withstand such strict scrutiny, the Court requires a showing that the classification is a necessary means to achieve a legitimate state objective.[8] In contrast, under a restrained review, the statute will be upheld if it bears any "rational relationship" to a legitimate state purpose. Until quite recently, the level of scrutiny employed has been determinative of results; if minimum rationality was chosen as the appropriate test, the statute would withstand equal protection challenge.[9] Conversely, if strict scrutiny was used, the statute would be rejected as unconstitutional almost without exception.[10]

There has been some question as to which test is the appropriate one to use when examining a state statute based on gender classification. Within the last decade, however, the Court has developed a test falling somewhere between the two extremes: the Court carefully examines the method used by a state to achieve the goal outlined by its statutory provision, questioning whether the means used are a *truly* reasonable method of achieving the purported goal of the statute.[11]

Reed v. Reed[12] marked the departure point from the Court's passive

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partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife."

3. San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 24, *rehearing denied*, 411 U.S. 959 (1973).

4. F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

5. For a thorough discussion of the two standards of review, *see Developments in the Law, Equal Protection*, 82 HARV. L. REV. 1065, 1076-132 (1969).

6. Loving v. Virginia, 388 U.S. 1 (1967) (miscegenation statutes).

7. Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel).

8. *See Developments in the Law, supra* note 5, at 1101.

9. *See* Goesart v. Cleary, 335 U.S. 464 (1948).

10. *See* Gunther, *The Supreme Court 1971 Term, Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 19 (1972).

11. *See id.* at 20-24.

12. 404 U.S. 71 (1971).

review stance in sex discrimination cases. *Reed* concerned an Idaho law preferring males over females in the appointment of estate administrators. Although the argument that the legislative preference furthered the purpose of administrative convenience would have satisfied minimal rationality standards, the Court determined that such dissimilar treatment for men and women violated the equal protection clause.[13]

At one point after *Reed* several members of the Court attempted to apply a strict scrutiny standard to sex classifications,[14] but this proposal never gained majority acceptance.[15] Recently in *Craig v. Boren*[16] the

13. The Court in *Reed* stated, "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" *Id.* at 76, *citing* F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). See text at note 3, *supra*. Although the words were the same, the attitude of the Court was different. In *Reed*, the Court genuinely considered whether a gender difference in competing estate administrator applicants bore a rational relationship to the purported state objective of administrative convenience.

14. In *Frontiero v. Richardson*, 411 U.S. 677 (1973), Justice Brennan (joined by Justices Douglas, White and Marshall) concluded that statutory classifications based on sex are inherently suspect. In separate opinions Justice Stewart and Justice Powell (Powell joined by the Chief Justice and Justice Blackmun) found the statutes to be unconstitutional based on the *Reed* analysis, feeling that it was unnecessary to decide that sex was a suspect classification.

15. Some lower court decisions have relied on the strengthened rational-basis approach used in *Reed*. *See* United States v. Reiser, 532 F.2d 673 (9th Cir. 1976) (induction into the service of males but not females); Crawford v. Cushman, 531 F.2d 1114 (2d Cir. 1976) (Marine Corps requirement of discharge from the service if a servicewoman becomes pregnant); Ritacco v. Norwin School Dist., 361 F. Supp. 930 (W.D. Pa. 1973) (requirement of separate girl's and boy's teams for interscholastic non-contact sports). Other lower courts have followed *Frontiero*'s strict scrutiny standard, thus considering sex as a suspect classification. *See* Duncan v. General Motors Corp., 499 F.2d 835 (10th Cir. 1974) (loss of consortium; language concerning strict scrutiny may be considered dictum here); Johnston v. Hodges, 372 F. Supp. 1015 (E.D. Ky. 1974) (requirement that minor's driver's license be signed by father); Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971) (employment of women bartenders; this case relied on strict scrutiny although it was decided before *Frontiero*). However, subsequent Supreme Court decisions have retreated from the strict scrutiny position either by distinguishing *Frontiero*, as in *Kahn v. Shevin*, 416 U.S. 351 (1974) (property tax exemption allowed for widows but not for widowers), or by finding it unnecessary to decide whether sex is a suspect classification, holding the statute unconstitutional by a less strict standard as the Court did in *Stanton v. Stanton*, 421 U.S. 7 (1975) (statute designating a girl as a major at age 18, but a boy a major at age 21). The Court has also decided some cases without invoking the term "suspect classification" at all. *See* Weinberger v. Wiesenfield, 420 U.S. 636 (1975) (social security benefits payable to widow but not to widower); Schlesinger v. Ballard, 419 U.S. 498 (1975)

Court attempted to clarify the standards to be applied when considering sex-based classifications when it struck down a statute which prohibited the sale of 3.2% beer to males between eighteen and twenty, but allowed such sales to females of the same age group. The Court purported to base its holding on *Reed*, but articulated an intermediate test[17] requiring "classifications by gender [to] serve *important* governmental objectives and [to] be *substantially* related to the achievement of those objectives."[18] For the present, the majority seems content to apply this intermediate test when dealing with a sex classification.

Since the head and master provision is an explicit sex classification, *Craig* seems to dictate that this statute be tested under the intermediate standard. In the instant case the question of constitutionality was presented, but after a discussion of the standard that a gender-based classification must meet, the federal district court declined to test Louisiana's community of acquets under the new intermediate test.[19]

Kirchberg concerned the constitutionality of a Louisiana law in effect in 1974 which allowed the husband to mortgage the family home without the wife's consent unless the wife had filed a declaration stipulat-

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(mandatory service discharges for lack of promotion more stringent for males than for females).

In a 1976 case concerning a denial of Social Security benefits to illegitimates, the Court in dictum discussed race and sex in a manner implying that both classifications demand extraordinary scrutiny, stating that "this discrimination against illegitimates has never approached the severity or pervasiveness of the historical legal and political discrimination against women and Negroes." Matthews v. Lucas, 427 U.S. 495, 506 (1976).

16. 429 U.S. 190, *rehearing denied*, 429 U.S. 1124 (1977).

17. Justice Rehnquist in his dissent pointed out that the majority did not base the development of this new standard on any cited authority. 429 U.S. at 217. The Court has subsequently cited *Craig v. Boren* as authority for the use of a stricter standard. *See* Califano v. Webster, 430 U.S. 313 (1977); Califano v. Goldfarb, 430 U.S. 199 (1977).

18. 429 U.S. at 197 (emphasis added). *Craig*, however, is somewhat unusual in that the discrimination was against males, rather than against females, and the classification was not designed to remedy past discrimination against females by giving some type of advantage over males. Such classifications are termed "benign" and some have been upheld by the Court, but since the classification involved in *Craig*, although involving a discrimination against males, was not "benign," the test announced in *Craig* is not weakened by any possible remedial element involved in the classification.

19. Although the *Kirchberg* case was decided before *Craig*, the court did recognize that an intermediate approach would be the correct test when dealing with a sex-based statute.

ing the requirement of her authority and consent for the transaction.[20] Expanding its discussion beyond the codal mortgage authorization and addressing also the head and master provision of the Civil Code,[21] the district court determined that the contractual nature of these provisions rendered application of the intermediate equal protection test inappropriate.

The court found support for its decision in two propositions articulated by Justice Black in his decision in *Labine v. Vincent*,[22] a case concerning inheritance rights of illegitimates. The first feature of *Labine* relied upon was its notable reluctance to subject statutes concerning family matters even to a test of mere rationality. Justice Black refused to question the constitutionality of a Louisiana succession statute which prevented acknowledged illegitimates from receiving the same inheritance rights as legitimates. This failure to scrutinize the statute appeared to accord the states great discretion in regulating family matters.

However, the propriety of this extremely deferential posture has been severely eroded by *Trimble v. Gordon*,[23] a Supreme Court decision decided five days after *Kirchberg*. Although *Trimble* also concerned a statute denying inheritance rights to illegitimates, the Court displayed little reluctance to enter the area and to declare a denial of equal protection. While distinguishing rather than overruling *Labine*, the Court insisted that there is a point beyond which such deference cannot justify discrimination.[24]

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20. Prior to January 1, 1977, LA. CIV. CODE art. 2334 provided, in pertinent part:

> Where the title to immovable property stands in the names of both the husband and wife, it may not be leased, mortgaged or sold by the husband without the wife's written authority or consent where she has made a declaration by authentic act that her authority and consent are required for such lease, sale or mortgage and has filed such declaration in the mortgage and conveyance records of the parish in which the property is situated.

1976 La. Acts, No. 679, § 1 amended this part of article 2334 to provide:

> Where the title to immovable property stands in the names of both the husband and wife, it may not be leased, mortgaged or sold by the husband without the wife's written authority or consent.
>
> Where the title to community immovable property declared to be the family home stands in the name of the husband alone it may not be leased, mortgaged or sold without the wife's written authority or consent.

Thus the factual situation on which the case is based is now moot, but the underlying question considered by the court, whether or not article 2404 is contractual, is still important.

21. See note 2, *supra*.

22. 401 U.S. 532 (1971).

23. 430 U.S. 762 (1977).

24. *Id.* at 767 n.12.

The court in the instant case also relied upon *Labine* for the contention that a statutory scheme which does not create an insurmountable barrier for the alleged discriminatee, but instead allows an alternative arrangement, should withstand a constitutional attack. The insurmountable barrier touchstone, however, has not survived *Trimble*: in reference to the deceased's ability to secure inheritance rights for his illegitimate children through a will, the *Trimble* Court stated that "the focus on the presence or absence of an insurmountable barrier is somewhat of an analytical anomaly."[25] If a statutory differentiation cannot be justified as promoting a legitimate state objective, the availability of an alternative and the absence of an insurmountable barrier will not save it.[26]

Although the *Trimble* decision greatly undermined *Labine*, *Trimble* can be distinguished from *Kirchberg* in that the *Trimble* barrier could only be lifted by another individual by means of a testament, whereas the *Kirchberg* barrier could be removed by the woman herself by filing a declaration, or, with reference to the matrimonial regime provisions as a whole, by contracting a different regime prior to marriage. Nevertheless, what is involved here is the constitutional right to be free from discrimination. The woman could waive this right, but the Supreme Court has held that waivers of fundamental rights generally cannot be presumed from inaction,[27] a valid waiver being limited to "an intentional relinquishment or abandonment of a known right or privilege."[28]

Assuming *arguendo* that the *Kirchberg* barrier is thus distinguishable from *Trimble*, the contractual and thus voluntary nature of the matrimonial regime as outlined in *Kirchberg* must be established to insulate the scheme from an equal protection attack. However, the question of the matrimonial regime system's contractual nature may not be as settled as the *Kirchberg* court indicated. The community of gains, with the husband legally designated as the head and master, forms the basis for the management of assets and liabilities acquired during every marriage contracted in Louisiana unless a contrary regime is expressly stipulated.[29] The Digest of 1808 required that the community of gains be a necessary consequence of marriage,[30] but with the addition of the phrase "if there be no stipulation

25. *Id.* at 773.
26. *Id.* at 774.
27. Barker v. Wingo, 407 U.S. 514, 525 (1972).
28. Johnson v. Zerbst, 304 U.S. 458, 464 (1938).
29. LA. CIV. CODE art. 2399.
30. La. Digest of 1808, Book III, tit. 5, art. 63: "Every marriage contracted within this territory, superinduces of right, partnership or community of acquets or gains. This community or partnership of gains takes place whether there be a

to the contrary"[31] in 1825, Louisiana marriage partners were able to alter the community of gains in any manner not contrary to law or good morals.[32] This apparent capacity to alter the community regime does not mean that the property management system with the husband as head and master is a product of a voluntary selection of both spouses.[33] The contractual character of the matrimonial regime articles as a whole is less than clear because the marriage contract envisioned by the Civil Code differs in three important respects from other contracts.[34]

In the first place, the most important difference between the marriage contract and other contracts is the perpetual nature of the marriage contract. It cannot be dissolved by mutual consent, but instead exists until there is a dissolution of the marriage[35] or a judgment of separation from bed and board,[36] or until the wife proves the husband's "mismanagement" or "disorder" in a suit for separation of property.[37] In addition, with minor exceptions, marriage partners can change their matrimonial agreement before marriage, but not afterwards.[38]

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marriage contract between the parties or not, and although in case there be one, said contract be entirely silent on this partnership or community." *Id.* art. 10: "The partnership or community of acquets or gains, is a necessary consequence of marriage, within this territory and needs not be stipulated in the marriage contract in order to take effect."

31. La. Civ. Code of 1825, art. 2369.

32. LA. CIV. CODE arts. 11, 2325. Additionally, marriage partners are not allowed to "alter the order of descents." *Id.* art. 2326.

33. *But see* LA. R.S. 9:264 (Supp. 1975). This act refers to "the conclusive presumption of law that spouses who have not entered into a marriage contract before marriage did contract tacitly the community of gains." This statement has been interpreted by one commentator as evidence of the contractual character of Louisiana's matrimonial regime laws. *See The Work of the Louisiana Appellate Courts for the 1975-1976 Term—Matrimonial Regimes*, 37 LA. L. REV. 358 (1977).

34. As early as 1851 the Louisiana Supreme Court stated, "Marriage is a civil contract, to be sure; but it is a contract which the interest of society requires should be regulated in its consequences, and especially in its effects upon property, by the general and existing laws of the State." Deshautels v. Fontenot, 6 La. Ann. 689 (1851).

35. Obviously the death of either marriage partner dissolves the community of gains. In addition, a judgment of divorce dissolves the community retroactively to the date on which the original petition was filed. LA. CIV. CODE art. 159.

36. *Id.* art. 155.

37. *Id.* art. 2425 provides: "The wife may, during the marriage, petition against the husband for a separation of property, whenever her dowry is in danger, owing to the mismanagement of her husband, or otherwise, or when the disorder of his affairs induces her to believe that his estate may not be sufficient to meet her rights and claims."

38. *Id.* art. 2329.

Second, the choices available to the spouses are circumscribed by the Code. A husband and wife may modify the community of gains or even eliminate it, but the husband must be the head of any community of gains which the parties contract. A couple's desire to make the wife the head and master would be prevented by the Civil Code which states that the husband and wife cannot "derogate by their matrimonial agreement from the rights resulting from the power of the husband over the person of his wife and children, or which belong to the husband as the head of the family."[39] To eliminate the head and master provision, a separation of property would have to be contracted, thus indicating that this feature is not essentially contractual in the same sense as provisions of ordinary contracts. Spouses may either stipulate by contract that there will be no community between them,[40] or they may modify the community by providing for unequal portions or by apportioning fruits of specific property,[41] so long as they do not reduce the husband's power as head and master over the community.

Finally, the choice involved in selecting a regime may not be truly knowing or voluntary. Traditionally most Louisiana couples have not drafted marriage contracts replacing the Code's regime,[42] but today marriage contracts are becoming more popular. However, usually those who do make such contracts are entering their second marriage.[43]

One explanation for the small number of alternative marriage contracts in first marriages is the failure of young people to appreciate their opportunity to derogate from the regime. One attempt to remedy this problem was a recent enactment[44] which requires all marriage license issuing officers to give each prospective spouse a written summary of current matrimonial regime laws. Although an effort toward reform, this disclosure provision hardly ensures that the woman's choice is truly knowing and voluntary. When the summary is delivered, the prospective spouse, who most often has a limited understanding of Louisiana law, may have little time to absorb and understand her options and the consequences of her choice. To make the choice an intelligent, "knowing" choice may require the services of an attorney to advise the spouses on selecting the regime most appropriate for their needs. Also, a notary's services are required to authenticate the act.[45] Consequently, choosing a regime differ-

39. *Id.* art. 2327.
40. *Id.* art. 2392.
41. *Id.* art. 2424.
42. H. DAGGETT, COMMUNITY PROPERTY SYSTEM OF LOUISIANA 115 (1945).
43. R. PASCAL, LOUISIANA FAMILY LAW COURSE 75 (1973).
44. LA. R.S. 9:264 (Supp. 1975).
45. LA. CIV. CODE art. 2328.

ent from that provided by the Code involves certain expenses which not all couples can easily afford.[46] In addition, the legislative scheme does not promote an atmosphere conducive to completely voluntary choice. For the prospective bride to request a regime differing from that provided by the Code might imply a lack of trust and confidence in her intended spouse. A certain inhibition is necessarily present.

The unusual characteristics of the matrimonial regime system, and particularly the head and master provision, suggest that a waiver-type argument will not obviate the need to test the gender-based classification under the intermediate scrutiny test articulated in *Craig*. To determine whether the gender-based classification advances any important objectives, the legislative purpose in designating the husband as the head and master of the community must first be considered. The usual justification rests on "economic, cultural and biological grounds."[47] The state could contend that the husband's designation as head and master promotes the important objective of an efficient management of community resources, claiming that the husband is more likely to be employed and familiar with business transactions than his wife and thus is generally the more capable spouse.[48] However, this overly broad assumption is not sustainable after the recent decision of *Califano v. Goldfarb*.[49] In that case the Court indicated that gender-based differentiations "supported by no more substantial justification than 'archaic and overbroad' generalizations, . . . or 'old notions,' . . . such as 'assumptions as to dependency' . . . that are more consistent with 'the role-typing society has long imposed' than with contemporary reality" are forbidden by the Constitution.[50] The government offered impressive statistical evidence concerning the greater inci-

46. The state might be required to provide free drafting services to help prospective spouses draw up alternative contracts. *See* Bilbe, *Constitutionality of Sex-Based Differentiations in the Louisiana Community Property Regime*, 19 LOY. L. REV. 373 (1973).

47. Bartke, *Community Property Law Reform in the United States and in Canada—A Comparison and Critique*, 50 TUL. L. REV. 214, 224 (1976).

48. Even if this assertion could be upheld, there is information indicating that the stereotypic categorization of the male as the only wage-earning spouse is archaic. In 1974 out of a total of 55,053,000 families in the United States, there were 21,922,000 in which both spouses worked. Out of the white families in this group, the wife's earnings made up 24.9% of the average family income, and in the black families the wife's earnings comprised 32.4% of the average family income. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 411 (97th annual ed. 1976); DEP'T OF COMMERCE, BUREAU OF THE CENSUS, THE U.S. FACT BOOK 39 (97th annual ed. 1976).

49. 430 U.S. 199 (1977).

50. *Id.* at 207.

dence of dependent wives in defense of survivor's benefits automatically payable to a widow but allowed to a widower only if he was dependent on his wife for half of his support.[51] In spite of the general correlation between sex and dependency, the Supreme Court found the presumption involved to be based on archaic and intolerably overbroad generalizations. Similarly, broad assumptions by the Louisiana legislature equating sex with capacity to administer would not withstand careful scrutiny. Even assuming that placing only one spouse in control might be a legitimate objective when considering the necessity for orderly, secure property transactions, the basis for the choice should be capability, not sex.

Another plausible rationale supporting the legislative designation is that the tacit selection of the husband as head of the community mirrors the actual intent of the parties. This presumed intent argument was presented in *Trimble* when the state sought to justify intestate succession provisions as being "statutory wills" based on the "presumed intent" of the citizens of the state.[52] Although disposing of the argument by finding that the statute involved was not enacted for this purpose, the Court in dictum questioned whether mirroring the supposed intent of the people could be a constitutionally permissible state objective.[53] Intestate succession laws and matrimonial regime laws such as Louisiana has are acts of states, not acts of individuals themselves. The Court was well aware of the alternative prescribed by state law when it stated, "With respect to any individual, the argument of knowledge and approval of the state law is sheer fiction."[54] Even though an individual could disinherit his illegitimate children or draft his own matrimonial regime, the Court questioned where the burden of inertia in such cases should fall. The Court indicated that the state will not be permitted to utilize the concept of "implied consent" to place the burden of inaction upon a disadvantaged class which has been a frequent target of discrimination.

In light of the dubious constitutionality of Louisiana's matrimonial regime provisions there is a need for revision by the state legislature. The seven other states which employ a community of gains concept have already changed their provisions concerning the manager of the community.[55] Six states have incorporated some form of "equal management"

51. *Id.* at 238 n.7.
52. 430 U.S. at 774.
53. *Id.* at 775 n.16.
54. *Id.*
55. These seven states are Texas, Arizona, California, Idaho, Nevada, New Mexico and Washington. *See* Bartke, *supra* note 47, *esp.* 216 n.16.

whereby either spouse alone may manage the community movable property, but both parties must participate in matters involving immovable property.[56] Texas's newly adopted system differs by allowing each spouse to manage individually those things which he would have owned if single. If community property subject to the management of one spouse is combined with community property under the sole control of the other spouse, this "mixed community property" must then be jointly controlled.[57]

Recent attempts have been made to change Louisiana's matrimonial regime laws with special attention given to the management provisions. During the 1977 regular session of the legislature, several proposals for reform were submitted,[58] two of which provided for an equal management system similar to those adopted by most of the other community property states.[59] Although none of the matrimonial regime revision bills passed, the legislature did adopt a resolution[60] creating a joint subcommittee to study a revision of matrimonial regime law. Any bill drafted and proposed by this subcommittee must include a provision giving "each spouse . . . the right to manage, control and dispose of community property except where specifically provided otherwise . . . ."[61] The joint subcommittee is required by the resolution to submit its proposals in writing to the legislature at least two months before the 1978 regular session.

56. ARIZ. REV. STAT. ANN. § 25-214 (1976); CAL. CIV. CODE §§ 5125, 5127 (Deering 1977); IDAHO CODE § 32-912 (Supp. 1976); NEV. REV. STAT. § 123.230 (1975); N.M. STAT. ANN. § 57-4A-7, 8 (Supp. 1975); WASH. REV. CODE. ANN. § 26.16.030 (Supp. 1976).

57. TEX. FAM. CODE ANN. tit. 5, § 22 (1975).

58. A proposal introduced by the Louisiana State Law Institute stipulated that each spouse would have control over those things produced by his own effort, while things produced by a joint effort could be managed by either spouse. However, community immovables, registered corporeal movables, and registered incorporeal movables would be controlled by the spouse with title to the property. The management of unregistered movables would be determined by possession. La. H.B. 783, 40th Reg. Sess. (1977).

59. La. H.B. 247, 1278, 40th Reg. Sess. (1977).

60. La. S. Con. Res. 54, 40th Reg. Sess. (1977).

61. *Id.* The joint subcommittee will be composed of five senators and five representatives selected by the respective chairmen of the Senate Committee on Judiciary, section "A" and the House Committee on Civil Law and Procedure. An advisory committee consisting of six members was also created and will include one man and one woman to be appointed by the president of the Louisiana State Bar Association. Additionally, the dean of each law school in the state will submit the names of one man and one woman. From this list the Speaker of the House of Representatives and the President of the Senate will each select one man and one woman to be on the advisory committee.

Inevitably, some changes will be made in Louisiana's matrimonial regime laws. It is hoped that action will be taken by the legislature to prevent the present scheme for designating management control from reaching the Supreme Court where it most assuredly will fail the test outlined in *Craig*. A gender-based discrimination such as this, supported by objectives that cannot withstand a constitutional attack, should not be a part of the Louisiana Civil Code, and it is time for Louisiana to follow the example set by her sister community property states and to modernize her matrimonial regime provisions.

Nancy Clark Tyler

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