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WOMEN IN CATHOLIC SOCIAL THOUGHT: THE CREATION OF A NEW SOCIAL REALITY

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INTRODUCTION

The question of the role of woman in the family and in the workplace has most typically been approached through a secular lens. The law derives its perspective on women, individually and collectively, from socially and culturally constructed images of women, which are inherently flawed.¹ Even if we fit none of these descriptions, the law perceives us as all of them, due to their pervasiveness in modern American society.²

Many people, including Catholics, believe that gender bias exists in the Catholic Church (“the Church”), based upon the Church’s positions on contemporary women’s issues, such as its refusal to ordain women priests.³ However, examination of the Church’s teaching reveals that Catholic social thought (“CST”)—

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¹ See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 44 (1995). Fineman states:

Women are portrayed as mothers, selflessly devoting themselves to their children; as career women, selfishly denying their children adequate mothering; as wives, ecstatic over the newly waxed floor or anxiously awaiting their husband’s return from work; as sex objects in pornography, from the soft-core versions found in advertising and fashion magazines to the more hard-core images in male-fantasy magazines; as dumb blondes; and as little girls in the current fashion craze.

Id.

² See HELEN BENEDICT, *VIRGIN OR VAMP* (1992) (demonstrating the false and contradictory representations of women that culturally constructed images produce).

³ See, e.g., Cheryl Y. Haskins, *Gender Bias in the Roman Catholic Church: Why Can’t Women be Priests?*, 3 *MARGINS* 99 (2003) (disputing the Catholic Church’s claim that its refusal to allow women to be ordained priests is a decision based on centuries of tradition).

from ancient biblical sources through modern encyclical teachings, and especially developments during the papacy of John Paul II—has as its foundation an overarching concern with the dignity of women.⁴ Therefore, if feminist legal theory is reconciled with and informed by the principles of CST, it will be possible to create a “new social reality” for women.⁵

I. AMERICAN FEMINIST LEGAL THEORY ON WOMEN IN THE FAMILY AND IN THE WORKPLACE

During the past century, our nation has witnessed a remarkable increase in opportunities for women and official recognition of their equality with men.⁶ Numerous Supreme Court decisions over the past thirty years have recognized that women’s societal status has reached a level equal to that of men. Cases following the Supreme Court’s landmark decision in *Reed v. Reed*,⁷ in which the Court held for the first time that the Constitution prohibits discrimination against women,⁸ have addressed the following issues within the employment context: (1) challenges to income and benefit programs that treat men and women differently; (2) barriers to employment, including gender-related exclusions from employment opportunities, promotions, and professional schools; (3) pregnancy and other issues related to motherhood that disadvantage women in the workplace; and (4) issues pertaining to work environment, such as sexual harassment.⁹ Outside of the employment context, there have

⁴ See generally Ruth A. Wallace, *Catholic Women and the Creation of a New Social Reality*, 2 GENDER & SOC’Y 24 (1988) (discussing future prospects for a new social reality for women, based on the evolving role of women in the Catholic Church and in society over the past twenty years).

⁵ See *id.*

⁶ See Lucia A. Silecchia, Assoc. Professor of Law, Catholic Univ. of America, Columbus Sch. of Law, Remarks at the Dedication Celebration for the Seattle University School of Law: Reflections on the Future of Social Justice (Oct. 18, 1999), in 23 SEATTLE U. L. REV. 1121, 1130 (2000) (stating that in the twentieth century, women have enjoyed a great increase in opportunities and society’s recognition of their equality with men).

⁷ 404 U.S. 71 (1971).

⁸ *Id.* at 76 (invalidating a state law under the Fourteenth Amendment Equal Protection Clause that gave men preferential treatment as administrators to an estate when several people, both male and female, were entitled to become administrators).

⁹ See Vicki Lens, *Supreme Court Narratives on Equality and Gender Discrimination in Employment: 1971–2002*, 10 CARDOZO WOMEN’S L.J. 501, 523 (2004) (noting that between 1971 and 2002, the Supreme Court decided forty-four

also been Equal Protection decisions involving gender discrimination that protect maternal and family functions.¹⁰

Five dominant themes have pervaded the body of feminist legal jurisprudence during this century, as outlined by Katherine T. Bartlett:¹¹

First is "formal equality," which requires that the law treat women and men the same and disapproves of any gender-related distinctions.¹² For instance, when confronted with rules that distinguish between men and women on the basis of sex characteristics, such as pregnancy and childrearing, formal equality advocates prefer to view pregnancy as similar to disabilities that men also experience, and would treat women no better and no worse than men on those conditions.¹³ Most Supreme Court cases striking down gender-based classifications and distinctions, as well as most federal anti-discrimination statutes, have been grounded in a formal equality framework.¹⁴

issues related to gender discrimination in employment, which fall into these four categories).

¹⁰ See, e.g., *Heckler v. Mathews*, 465 U.S. 728, 729–30 (1984) (upholding a temporary, gender-based pension offset exception to Social Security survivor benefits); *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 152 (1980) (striking down a Missouri workers' compensation law that required widower, but not widow, to show incapacity or dependency in order to receive death benefits); *Fiallo v. Bell*, 430 U.S. 787, 791–92 (1977) (justifying a provision of the immigration laws that afforded a more privileged status to mothers and their illegitimate children than to fathers and their illegitimate children); *Califano v. Webster*, 430 U.S. 313, 317–21 (1977) (preserving a provision that gave women an advantage in calculating social security benefits upon retirement because it redressed society's historical disparate treatment of women); *Kahn v. Shevin*, 416 U.S. 351, 352 (1974) (upholding property tax exemption for widows that was unavailable to widowers).

¹¹ See Katharine T. Bartlett, *Gender Law*, 1 DUKE J. GENDER L. & POL'Y 1 (1994) (providing an overview of the theoretical perspectives on gender and the law).

¹² See *id.* at 2–3.

¹³ See *id.* at 3.

¹⁴ See, e.g., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (2000) (granting equal educational opportunity); The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2000) (granting equal pay for equal work); Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a (2000) (granting equal access to public accommodations); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2000) (granting equal employment opportunity); *Kirchberg v. Feenstra*, 450 U.S. 455, 456 (1981) (invalidating a statute that gave husbands control and management powers over marital property); *Orr v. Orr*, 440 U.S. 268, 270–71 (1979) (rejecting a statute that allowed only women to receive alimony); *Craig v. Boren*, 429 U.S. 190, 191–92 (1976) (abolishing a statute that established lower drinking age for females); *Stanton v. Stanton*, 421 U.S. 7, 17 (1975) (invalidating a statute that imposed child support duties on parents for their sons longer than for their daughters); *Frontiero v. Richardson*, 411 U.S. 677, 678–79 (1973) (invalidating the requirement that

Second is "substantive equality," which recognizes that equal treatment often leads to unequal outcomes due to differences between men and women.¹⁵ This approach demands that laws take account of the disparities among the sexes, with the goal of eliminating disadvantages to women.¹⁶ Substantive equality takes various different forms.¹⁷ For example, in family law, substantive equality theorists work to achieve child custody standards that take special account of women's disproportionate investment in childrearing, and standards for property division and alimony at divorce that would eliminate the disadvantages women currently face.¹⁸ "In each instance, the argument is not that women should be entitled to whatever is most favorable to them but that, depending on the circumstances, equality sometimes requires equal treatment and sometimes requires special measures to counteract men's advantages over women."¹⁹

Third is "non subordination theory," which focuses on the power imbalance between men and women.²⁰ This approach examines whether a law or policy furthers the subordination and oppression of women.²¹ Catharine A. MacKinnon, one of the major proponents of this theory, has applied it in areas of discrimination against women, such as sexual harassment, pornography, rape, and domestic violence.²²

Fourth, Bartlett lists "different voice theory," which views women's characteristics as more valuable for organizing society than existing, traditionally "male" values.²³ This theory states that women's sense of interconnectedness is greater than that of men, women value relationships more than individual rights, and women favor an "ethic of care."²⁴ Scholars have utilized this

husbands, but not wives, prove spousal dependency in order to qualify for dependency benefits).

¹⁵ See Bartlett, *supra* note 11, at 4–6.

¹⁶ See *id.* at 4.

¹⁷ See *id.*

¹⁸ See *id.* at 5.

¹⁹ *Id.* at 5–6.

²⁰ See *id.* at 6–10.

²¹ See *id.* at 6.

²² See generally CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 194–214 (1989) (compiling her essays on "dominance theory," which contends that conduct such as sexual harassment, pornography, rape, and domestic violence systematically demeans women as sexual objects, thereby reinforcing male control and power over women).

²³ See Bartlett, *supra* note 11, at 11–13.

²⁴ *Id.* at 11.

theory to promote legal reforms such as “workplace policies that allow workers to better integrate responsibilities to their families and employers, union policies that better acknowledge the values of connection and community, and corporate strategies that better reflect ‘the ethics of care, responsibility, connection and sharing.’”²⁵

Fifth is “postmodern feminism,” which is directed against conventional legal doctrine.²⁶ Postmodern theorists believe that legal rules consist of false generalizations or universalisms that are often inaccurate and unnatural.²⁷ They believe that, rather than attempting to regulate gender equality through formal laws, the state should promote conditions for social harmony between the sexes.²⁸

II. SOURCES OF CST ON WOMEN IN THE FAMILY AND THE WORKPLACE

A. *Scriptural Foundations*

It is a misconception that, according to the Bible, women are inferior to men. The Scriptures teach that God created men and women equally, in God’s own image.²⁹ The Scriptures portray women as strong, virtuous, and dignified:

When one finds a worthy wife, her value is far beyond pearls. Her husband, entrusting his heart to her, has an unending prize. She brings him good, and not evil, all the days of her life. . . . She is girt about with strength, and sturdy are her arms. . . . She reaches out her hands to the poor, and extends her arms to the needy. . . . She is clothed with strength and dignity. . . . She opens her mouth in wisdom, and on her tongue is kindly counsel. . . . Her children rise up and praise her; her husband, too, extols her: “Many are the women of proven worth, but you have excelled them all.” . . . Give her a reward of her labors, and let her works praise her at the city gates.³⁰

²⁵ *Id.* (footnotes and citation omitted).

²⁶ *See id.* at 13–17.

²⁷ *See id.* at 14–15.

²⁸ *See id.* (alluding to the fact that laws, even if intended to promote gender equality, are often created by those who are unconsciously biased against women).

²⁹ *Genesis* 1:27 (New American).

³⁰ *Proverbs* 31:10–31.

Further, Catholics believe that God raised the Blessed Virgin Mary, a woman, to the highest place in the Church.³¹ Her titles include “Mother of God” and “Queen of Heaven.”³²

A popular quote among nineteenth century women’s rights activists was “in Christ Jesus there is neither male nor female.”³³ In the biblical accounts of His interaction with women, Jesus, contrary to custom, elevated the role of women, and Paul, in his writings to the early Church, stressed that all men and women are “equal in God through Jesus Christ.”³⁴ The Gospel accounts indicate that women were prominent among Jesus’ followers, and depict women as enlightened and empowered. For example, Martha was one of the first persons to recognize the divinity of Jesus,³⁵ and women were the first witnesses of Jesus’ resurrection.³⁶

B. *Fathers of the Church*

Although St. Augustine might be considered sexist in light of twenty-first century views of women, his views were radically advanced for his time.³⁷ In his letters and sermons, Augustine deemed women as intellectually equal to men.³⁸ He directed his theological works to both men and women.³⁹ In addition, in the letters he wrote to women, he consulted them for assistance and

³¹ See Colin B. Donovan, *Mary, Mother of God and Queen of Heaven* (1999), <http://www.ewtn.com/expert/answers/mother.htm> (referring to the Virgin Mary as the queen of the “Kingdom of God”).

³² See *id.*

³³ Lydia M. Belzer, *Raising Her Voice: Early Feminist Efforts at Obtaining the Right to Speak, 1835–1860*, 13 TEX. J. WOMEN & L. 313, 328 (2004) (citation omitted).

³⁴ Haskins, *supra* note 3, at 109 (expressing that there are many biblical examples that show both Jesus and Paul advocating inclusion of women in the ministry of the early church).

³⁵ See, e.g., *John* 11:24–27 (“[Martha] said to him, ‘Yes, Lord. I have come to believe that you are the Messiah, the Son of God, the one who is coming into the world.’”).

³⁶ See, e.g., *Mark* 16:1–7 (recounting the empty tomb of Jesus as observed by Mary Magdalene, Mary, the mother of James, and Salome).

³⁷ See Maureen McKew, *Augustine on Women: Misogynist, Apologist or Simply a Mixed Bag?*, VILLANOVA MAG., Summer 2001, available at <http://heritage.villanova.edu/vu/heritage/allthings/2001SU.htm> (indicating that when Augustine did encounter women, he treated them as equals and intellectual peers).

³⁸ See *id.*

³⁹ See *id.*

had his works copied for their reading.⁴⁰ Augustine believed women to be morally and spiritually superior to men.⁴¹ He stated of his mother in dialogue, “you have attained the top of philosophy,”⁴² and frequently spoke out against discrimination against women in Roman law.⁴³

“[T]hose searching for evidence that Christianity has viewed woman as defective to man will have to look elsewhere than to Thomas Aquinas.”⁴⁴ Professor Michael Nolan discounts mistaken claims in feminist literature regarding Aquinas’s teaching on women.⁴⁵ For instance, Aquinas did not ascribe to the Aristotelian claim that women are defective males.⁴⁶ Rather, Aquinas taught that since God himself produced the first woman, she could not be defective.⁴⁷ While his colleagues believed that the male semen did not intend to produce females, Aquinas reasoned that the female is intended by nature, and since God is the author of nature, women are intended by God.⁴⁸ Thus, women could never be defective because they were intended.⁴⁹ Moreover, Aquinas stated in *Summa Contra Gentiles* that both women and men have more important purposes than procreation; their primary purpose is to know and understand the world in which they live.⁵⁰ In addition, Aquinas interpreted the account in Genesis that the first woman was created from man’s side to signify that man and woman should be allies, termed “*socialis conjunctio*.”⁵¹

⁴⁰ See *id.* (stating that there were nineteen letters written by Augustine to women, and referencing one particular letter written to a woman named Fabiola in which Augustine requested her assistance in resolving an issue).

⁴¹ See *id.*

⁴² *Id.*

⁴³ See *id.*

⁴⁴ Michael Nolan, *What Aquinas Never Said About Women*, FIRST THINGS, Nov. 1998, at 11, 12.

⁴⁵ See generally *id.* (focusing the entire article on two frequent misconceptions of Thomas Aquinas—that he believed women to be defective males, and that he believed male human embryos developed a rational soul earlier than females).

⁴⁶ See *id.* at 11.

⁴⁷ See *id.*

⁴⁸ See *id.* at 11–12.

⁴⁹ See *id.* at 12.

⁵⁰ See *id.*

⁵¹ See *id.*

C. *Modern Encyclical Teachings to Pope John Paul II*

Since 1960, documents issued from Vatican sources looked with approval on the changing status and roles of women. In *Gaudium et Spes*, Pope Paul VI recognized “new social relationships between men and women,” stating, “[w]here they have not yet won it, women claim for themselves an equity with men before the law and in fact,” and that “[w]omen now work in almost all spheres.”⁵² In *Humanae Vitae*, Pope Paul VI stated that a change is visible in the “understanding of the dignity of woman and her place in society.”⁵³

However, while the predecessors of Pope John Paul II supported woman’s increased presence in the labor force and professions, they expressed concern that this should not subtract from a woman’s role as wife and mother. *Mater et Magistra* teaches that the state has a duty to safeguard “the rights of all its people, and particularly of its weaker members, the workers, women and children.”⁵⁴ Commenting on the rights of workers, Pope John XXIII stated, in *Pacem in Terris*, that “[w]omen must be accorded such conditions of work as are consistent with their needs and responsibilities as wives and mothers.”⁵⁵ *Gaudium et Spes* also presents this concern: “[t]he children, especially the younger among them, need the care of their mother at home. This domestic role of hers must be safely preserved, though the legitimate social progress of women should not be underrated on that account.”⁵⁶

D. *Teachings of the Papacy of John Paul II to the Present*

A novel understanding of women’s dignity marked John Paul II’s teaching on women, which was a celebration of femininity unprecedented in Church history. In *Letter to Women*, he began by thanking women “for all that they represent in the life of humanity,” in their various stations in life, as mothers, wives,

⁵² PAUL VI, PASTORAL CONSTITUTION *Gaudium et Spes* ¶¶ 8–9, 60 (1965) [hereinafter *Gaudium et Spes*].

⁵³ PAUL VI, ENCYCLICAL LETTER *Humanae Vitae* ¶ 2 (1968).

⁵⁴ JOHN XXIII, ENCYCLICAL LETTER *Mater et Magistra* ¶ 20 (1961).

⁵⁵ JOHN XXIII, ENCYCLICAL LETTER *Pacem in Terris* ¶ 19 (1963) [hereinafter *Pacem in Terris*].

⁵⁶ *Gaudium et Spes*, *supra* note 52, ¶ 52.

daughters, sisters, workers, and consecrated women.⁵⁷ He characterized women who work as making an “indispensable contribution to the growth of [our] culture” and the “establishment of economic and political structures.”⁵⁸ He apologized for the historical instances in which women have been marginalized and their dignity unacknowledged, since “[w]omen have contributed to [the history of humanity] as much as men and, more often than not, . . . in much more difficult conditions.”⁵⁹ He urged that women be valued for “their skill, their professionalism, their intellectual abilities, [and] their deep sensitivity.”⁶⁰ He instructed that we must achieve full respect for women, not by merely condemning discrimination and injustices against them, but by campaigning for the promotion of women.⁶¹

John Paul II supported “Christian feminism.”⁶² In *Mulieris Dignitatem* (*On the Dignity and Vocation of Women*),⁶³ he disdained secular feminism’s “masculinization” of women, because this denied feminine “originality.”⁶⁴ “‘Christian feminism’ . . . must be grounded in ‘the immutable basis of Christian anthropology.’”⁶⁵ John Paul II displayed an alternate vision of the dignity and vocation of women grounded in natural reality, which included “the Creator’s decision that the human being should always and only exist as a woman or a man.”⁶⁶ The difference between a woman and a man is “a truth which is immutably fixed in human experience.”⁶⁷ He did not believe that women deserved superior status to men, or that a woman should

⁵⁷ JOHN PAUL II, LETTER *Letter to Women* ¶ 2 (1995) [hereinafter *Letter to Women*].

⁵⁸ *Id.*

⁵⁹ *Id.* ¶ 3; see also *Pope Says Church Supports Equality*, NAT’L CATHOLIC REP. (Kan. City, Mo.), July 14, 1995, at 8 (recounting Pope John Paul II’s statements that “the church is a ‘convinced bearer’ of the message that women and men have equal rights” and that “[i]f, at times, in the course of centuries and under the burden of history, some of its children have not been able to live out this message with equal consistency, this is a reason for great regret”).

⁶⁰ *Letter to Women*, *supra* note 57, ¶ 3.

⁶¹ See *id.* ¶ 6.

⁶² See Richard John Neuhaus, *True Christian Feminism*, NAT’L REV., Nov. 25, 1988, at 24, 24 (summarizing Pope John Paul II’s teaching on women).

⁶³ JOHN PAUL II, APOSTOLIC LETTER *Mulieris Dignitatem* ¶ 1 (1988) [hereinafter *Mulieris Dignitatem*].

⁶⁴ See Neuhaus, *supra* note 62, at 24.

⁶⁵ *Id.*

⁶⁶ *Mulieris Dignitatem*, *supra* note 63, ¶ 1.

⁶⁷ *Id.* ¶ 2.

subordinate herself to man's rule, but rather envisioned woman as equal to man.⁶⁸ John Paul II challenged men to see women not as objects of pleasure or of exploitation, but as "sister[s] in humanity."⁶⁹

John Paul II described the equality of the sexes as "complementarity," a notion that men and women, though equal, are not the same.⁷⁰ They have natures that are different and complement one another, and their roles and functions in society must flow from these natures.⁷¹ In his revision of the *Catechism of the Catholic Church*, John Paul II described men and women as equal persons and "helpmate[s]" to one another.⁷²

Pope Benedict XVI, while Cardinal Joseph Ratzinger, in *Letter to the Bishops of the Catholic Church on the Collaboration of Men and Women in the Church and in the World*, explained that, even aside from the procreation question, men and women need each other.⁷³ They are "vital helper[s]" to one another, and a society of only men or only women would be destitute.⁷⁴ He wrote, "[I]n the final analysis, every human being, man or

⁶⁸ Neuhaus, *supra* note 62, at 24 (expressing that John Paul II does not view women as "on a pedestal," but rather "very much at the side of man, as man is at her side").

⁶⁹ *Id.* John Paul II said,

Each man must look within himself to see whether she who was entrusted to him as a sister in humanity, as a spouse, has not become in his heart an object of adultery; to see whether she who, in different ways, is the co-subject of his existence in the world has not become for him an "object": an object of pleasure, of exploitation.

Id.

⁷⁰ Editorial, *A Church of Women*, AMERICA, June 17–24, 2000, at 3.

⁷¹ *See id.* (defining "complementarity," and describing it as a "philosophy espoused most strongly by Pope John Paul II in such writings as his apostolic letter *Mulieris Dignitatem*").

⁷² THE CATECHISM OF THE CATHOLIC CHURCH ¶ 372 (2d ed. 1997). Pope John Paul II said,

Man and woman were made "for each other"—not that God left them half-made and incomplete: he created them to be a communion of persons, in which each can be "helpmate" to the other, for they are equal as persons ("bone of my bones . . .") and complementary as masculine and feminine. In marriage God unites them in such a way that, by forming "one flesh," they can transmit human life: "Be fruitful and multiply, and fill the earth." By transmitting human life to their descendants, man and woman as spouses and parents cooperate in a unique way in the Creator's work.

Id. (footnotes omitted).

⁷³ *See* JOSEPH RATZINGER, CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Letter to the Bishops of the Catholic Church On the Collaboration of Men and Women in the Church and in the World* ¶ 6 (2004).

⁷⁴ *See id.*

woman, is destined to be 'for the other.'"⁷⁵ Opponents of this view of the "spousal character" of men and women reply that individuals are too biologically and psychologically complex to be simplified into a scheme of "male" and "female" differences.⁷⁶

Ratzinger stressed the importance of feminine values in the life of society, especially women's "capacity for the other," which includes their ability to "preserve the deep intuition of the goodness in their lives of those actions which elicit life, and contribute to the growth and protection of the other."⁷⁷ He described women as virtuous, courageous, and strong of character and will. "[W]omen . . . possess a singular capacity to persevere in adversity, to keep life going even in extreme situations, to hold tenaciously to the future, and finally to remember with tears the value of human life."⁷⁸ Ratzinger has taught that women hold an "irreplaceable role . . . in all aspects of family and social life involving human relationships," and therefore women should hold positions of responsibility so that they may inspire national policy and promote solutions to economic and social problems.⁷⁹

Ratzinger affirmed the importance of motherhood but criticized "any attempt to enclose women in mere biological destiny."⁸⁰ "Although motherhood is a key element of women's identity, this does not mean that women should be considered from the sole perspective of physical procreation."⁸¹ Nevertheless, women's work within the family is also valuable:

[W]omen who freely desire will be able to devote the totality of their time to the work of the household without being stigmatized by society or penalized financially, while those who wish also to engage in other work may be able to do so with an appropriate work-schedule, and not have to choose between relinquishing their family life or enduring continual stress⁸²

⁷⁵ *Id.* ¶ 14.

⁷⁶ See Sidney Callahan, *Ratzinger, Feminist? Not Quite*, COMMONWEAL, Sept. 10, 2004, at 9.

⁷⁷ RATZINGER, *supra* note 73, ¶ 13.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

E. Principles of Catholic Social Thought

The dignity of the human person is the “central unifying principle of [CST].”⁸³ CST teaches us to recognize that all persons possess an innate and universal dignity that is divinely established.⁸⁴ Women, regardless of their race, age, national origin, or status are entitled to respect and dignity under the CST vision.

CST instructs that all people are entitled to basic human rights.⁸⁵ These rights include the right to be educated, to choose a state of life, to set up a family with equal duties for man and woman, to choose a career, and to uphold a standard of living.⁸⁶ CST differs from our legal system because it teaches that these rights are not dependent on the state; the rights are not “granted” by the state, and thus the state has no authority to

⁸³ Silecchia, *supra* note 6, at 1138; *see also* Center for Social Concerns, *An Introduction to the Principles of Catholic Social Thought* ¶ 2, http://socialconcerns.nd.edu/mission/cst/cst_full.shtml (last visited Oct. 1, 2005) (“Central to the principle of human dignity is the understanding that, every human being is created in the image of God, redeemed by Jesus Christ, destined for union with God, and therefore worthy of respect as a member of the human family.”). The Catholic Church teaches that we should “respect all persons with the sense of awe that arises in the presence of all that is sacred and holy” and that “every human person is sacred from conception to death.” *Id.*

[T]hose who are weak, vulnerable, or marginalized deserve special respect, especially those who are unborn, disabled, elderly or dying. A key measure of every institution is whether it threatens or enhances the life and dignity of the human person. One factor that denies the inherent dignity of each person is discrimination in its many forms, such as that based on race, gender or economic status.

Id.

⁸⁴ *See* Center for Social Concerns, *supra* note 83 (“Our status as human beings and creatures of God gives each individual an inherent dignity that must be preserved.”).

⁸⁵ *See* Silecchia, *supra* note 6, at 1140–46; *see also* Center for Social Concern, *supra* note 83, ¶ 3.

Human dignity grounds and is protected by a spectrum of human rights and corresponding duties. Society facilitates participation in all spheres of the social order through inter-related rights and duties. Every person has the right to means that are necessary for the development of life: food, clothing, shelter, rest, medical care and the necessary social services. Likewise, all citizens have a duty to respect human rights and to fulfill their responsibilities to each other and to the larger society. The primary duty is to live in solidarity, that is, “a firm and persevering determination to commit oneself to the common good.”

Id.

⁸⁶ *See* Silecchia, *supra* note 6, at 1144 n.69 (outlining rights listed in the papal documents *Pacem in Terris*, *Rerum Novarum*, and *Gaudium et Spes*).

revoke or compromise them.⁸⁷ Under CST, women deserve rights that our society has not yet recognized and advanced. For instance, phenomena such as the “glass ceiling,” and similar barriers to women’s advancement in corporations on the basis of gender, would not exist under a CST framework.

CST teaches solidarity, the notion that all people are interdependent and that each person must seek the flourishing of others.⁸⁸ Since people are viewed as part of a community, unequal treatment of women affects all of us in some way.⁸⁹ The aim of CST is an integrated society in which men and women work together for the common good.⁹⁰ If the common good is to prevail, society must give preferential protection to those who have been the victims of discrimination and social inequity.⁹¹ Historically, American laws have treated women unfairly, and although women have made considerable strides toward equality, they still have far to go. Also, the women’s movement in this country has been spearheaded by females. CST would challenge men to perceive the plight of women as also affecting themselves and to be more involved in working for women’s rights. Moreover, CST challenges both women and men to have a global outlook, to look beyond our national borders, and to unite our national women’s struggle with the plight of women in other countries who are still fighting for the rights that we consider basic, such as voting and attaining work.

CST’s principle of subsidiarity calls us to face the issue of women’s rights at the local levels of the individual, the family, or the workplace before tackling these issues on a national or otherwise broader level.⁹² Thus, CST suggests that we notice and remedy the faults in our own situations, rather than confronting the problem only at the larger level and then hoping for a trickle-down effect. Similarly, in furtherance of the interest of promoting dialogue among husbands and wives regarding the

⁸⁷ See *id.* at 1141–42 (“While it is true that the state should protect basic human rights by law, the social justice vision articulated in [CST] warns against viewing these rights as dependent on the civil state.”) (footnotes omitted).

⁸⁸ See *id.* at 1146–47.

⁸⁹ See *id.* at 1147.

⁹⁰ See Robert P. Maloney, *Ten Foundational Principles in the Social Teaching of the Church*, <http://www.cm-ngo.net/TenFoundationalPrinciples.html> (last visited Sept. 12, 2005).

⁹¹ See *id.*

⁹² See Silecchia, *supra* note 6, at 1149–51.

best situation for their family, the principle of association holds the family unit as sacred and urges that family stability must always be protected.⁹³ This does not necessarily confine women to the domestic sphere, but promotes responsibility of both men and women for the well-being of the family.

Under the principle of participation, the rights of women workers must be respected, since work is viewed as “more than a way to make a living,” but “a form of continuing participation in God’s creation.”⁹⁴ Women have a right to productive work, decent and fair wages, union membership, private property, and other economic benefits. The principle of participation thus accords with the principle of the common good, which promotes the “social conditions that allow people to reach their full[est] human potential and to realize their human dignity.”⁹⁵ In sum, CST would encourage lawmakers to establish legal structures that would promote the just development of all people and families.

F. The “Gospel Feminists”

A major critique of the Church’s teaching on women is its position against women’s ordination to the priesthood. Many see this as “the ultimate symbol of women’s inequality in the [C]hurch.”⁹⁶ A formal declaration from the Vatican in 1977 rejected women’s ordination.⁹⁷ In his Apostolic Letter, *Ordinatio Sacerdotalis*, John Paul II offered an explanation for the Church’s refusal to ordain women.⁹⁸ “[T]he Church has no authority whatsoever to confer priestly ordination on women and . . . this judgment is to be definitively held by all the Church’s faithful.”⁹⁹ The Congregation for the Doctrine of the Faith in 1995 stated that the Church has no authority to ordain women as priests because this teaching is not a matter of Church discipline, which can be changed, but belongs to the *deposit of*

⁹³ See Maloney, *supra* note 90.

⁹⁴ See *id.*

⁹⁵ *Id.*

⁹⁶ Heidi Schlumpf, *Have We Come A Long Way, Baby?*, U.S. CATHOLIC, Sept. 2004, at 18 (recounting the results of the magazine’s survey on women in the Church).

⁹⁷ Wallace, *supra* note 4, at 34–35.

⁹⁸ JOHN PAUL II, APOSTOLIC LETTER *Ordinatio Sacerdotalis* ¶¶ 1–4 (1994).

⁹⁹ *Id.* ¶ 4.

faith, which cannot change.¹⁰⁰ Another response to the issue of women's ordination is that Jesus "continued Israel's tradition of a male priesthood" by appointing only male apostles, and therefore, the Church follows this tradition.¹⁰¹ The Church also stated that, within the complementary functions of men and women, priesthood is a male role, because a priest is an icon of Christ, and Christ was male.¹⁰²

Largely in response to this debate, a new source of CST on women has emerged, which consists of the works of progressive Catholic theologians. These intellectuals, mostly women, known as the "Gospel feminists," maintain a connection with secular feminism while focusing their goals within Gospel values.¹⁰³ "Gospel feminism" lies somewhere in between liberal feminism and papal feminism.¹⁰⁴ While the Gospel feminists do not agree with liberal feminists on issues such as abortion, they believe that papal feminism locks women into traditional sex roles and that the "notion of complementarity . . . still subordinates women to men."¹⁰⁵ They advocate "full humanity of women within a Christian context."¹⁰⁶ They teach that true feminism, which asserts that women should be equal members of society "in all ways and in all places," is part of the Gospel message.¹⁰⁷

A milestone in the Gospel feminist movement has been the *Madeleva Manifesto: A Message of Hope and Courage*,¹⁰⁸ which was produced in 2000 by fifteen women who are "widely recognized as among the country's most distinguished theologians."¹⁰⁹ In their *Manifesto*, they stated:

¹⁰⁰ See John Paul II, Address to Congregation for the Doctrine of the Faith ¶ 4 (Nov. 14, 1995), available at <http://www.ewtn.com/library/papaldoc/jp951124.htm>.

¹⁰¹ David Gregson, Priesthood—Reserved to Men, http://www.ewtn.com/expert/answers/priesthood_men.htm (last visited Oct. 2, 2005).

¹⁰² *Id.* (adding that "[t]he maleness of Christ is an important sign of His relationship to the Church, His Bride").

¹⁰³ See Patrick Marrin, *Coloring Outside the Patriarchal Lines*, NAT'L CATHOLIC REP. (Kan. City, Mo.), May 12, 2000, at 6 (describing the "Gospel feminists").

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.*

¹⁰⁶ *A Church of Women*, *supra* note 70, at 3 (defining Gospel feminism and its underlying philosophy).

¹⁰⁷ *Id.*

¹⁰⁸ See Marrin, *supra* note 103, at 6 (displaying the manifesto and commenting that it "invit[es] women to imagine different church structures").

¹⁰⁹ *Id.* at 6–7 (listing the signers of the *Madeleva Manifesto*: Holy Name Sr. Mary C. Boys, Lisa Sowle Cahill, Denise L. Carmody, Benedictine Sr. Joan Chittister, Benedictine Sr. Mary Collins, Elizabeth A. Dreyer, Maria Harris, Diana

We deplore and hold ourselves morally bound to protest and resist in church and society all actions, customs, laws, and structures that treat women or men as less than fully human. We pledge ourselves to carry forth the heritage of biblical justice that mandates that all persons share in right relationship with each other, with the cosmos and with the Creator.¹¹⁰

The Gospel feminists urge Church leaders to look to the model of Jesus Christ for the answer to the question of women's ordination.¹¹¹ Jesus was faithful to the religious traditions of his time,¹¹² yet he transformed them in light of his experience of God and his "vision of the reign of God."¹¹³ He challenged His followers to go beyond the "letter of the law" for the sake of the "spirit of the law."¹¹⁴ In the same way, the Gospel feminists implore Church leaders to look to Jesus' example and "open the institutional [C]hurch . . . to the vocations and gifts of women."¹¹⁵

III. RECONCILING FEMINIST LEGAL THEORY WITH CST

CST should not only be reconciled with feminist thought, but should also inform feminist legal theories on women in the family and in the workplace. CST differs from formal equality theory because CST acknowledges that women are not the same as men. Under CST, this is an affirming fact, not something degrading or demeaning, because neither women nor men are inferior to the

L. Hayes, Monika K. Hellwig, Dominican Sr. Mary Catherine Hilkert, Sister of St. Joseph Elizabeth Johnson, Denise R. Leckey, Gail Porter Mandell, Kathleen Norris, Jeanette Rodriguez, and Sandra M. Schneider).

¹¹⁰ *The Madeleva Manifesto: A Message of Hope and Courage*, NAT'L CATHOLIC REP. (Kan. City, Mo.), May 12, 2000, at 6 tbl.

¹¹¹ See Elizabeth A. Dreyer, *In the Tradition of Sister Madeleva*, AMERICA, June 17-24, 2000, at 14. Dreyer recounted Sandra M. Schneider's description of a Gospel feminism that turns to Jesus as the model of one who gave [H]is life for others without losing [H]imself, who belonged to yet transcended [H]is Jewish tradition, who mediated the particularity of [H]is life and situation and the universality of [H]is concern and who lived the tension between a radical subversion of the social, political and religious status quo and absolute refusal of violence as a means to its demise.

Id. at 16; see also Haskins, *supra* note 3, at 112 (stating that supporters of women's ordination point to Galatians 3:28, which teaches "that in Christ there is no longer any distinction between men and women").

¹¹² See Marrin, *supra* note 103, at 6.

¹¹³ *Id.*

¹¹⁴ *Id.* (analogizing the tension that feminists in the church face today with what Jesus encountered in "set[ting] aside ritual observance for spiritual reality").

¹¹⁵ *Id.* (finding hope in the advances that women have made in education, "especially because of the work of women religious").

other, but all people are equal in dignity. "Sex characteristics," which Fourteenth Amendment jurisprudence terms biological and psychological differences between women and men, such as pregnancy and childrearing,¹¹⁶ are part of God's design. CST teaches that women's and men's contributions and skills must be equally valued and accommodated. It seems that sex discrimination cases that have been decided under the Fourteenth Amendment would have the same outcomes under a CST vision, except, rather than reasoning that men and women deserve equal treatment based on the ways in which they are physically, intellectually, and socially similar, it would suffice that men and women are equal in their dignity and deserve certain basic human rights.

The "substantive equality" theme is most closely in line with CST because it acknowledges the differences between men and women and suggests that the law should promote equality by accounting for these differences. Similar to substantive equality theorists, John Paul II has repeatedly apologized for the ways in which women have been oppressed historically and has advocated measures to remedy past discrimination against women.

On the other hand, CST would most likely disagree with the "non-subordination theory" of the power struggle between men and women. CST would explain issues such as sexual harassment in the workplace in terms of men not respecting women's innate dignity. Under CST's notion of complementarity, gender differences do not empower men and take power away from women. Rather, women's qualities complement men's qualities, and men and women are helpmates to one another. Social justice is not about striving for individual rights but about people working together for the common good of society.¹¹⁷ Under the principle of solidarity, men and women should focus on the flourishing of others, not on competition for power, autonomy, or personal gain. Nevertheless, John Paul II's challenge to men to perceive women not as objects of pleasure or exploitation, but as

¹¹⁶ See, e.g., *United States v. Virginia*, 518 U.S. 515, 533 (1996) ("Physical differences between men and women . . . are enduring: 'The two sexes are not fungible . . .'" (citation omitted)).

¹¹⁷ Lisa Sowle Cahill, *Catholic Ethics, Women and the Real World*, AMERICA, Nov. 27, 1999, at 7, 9 (positing that both women and men are faced with dilemmas of family, work, and social responsibility, and that the Catholic moral perspective calls all people to have compassion for those who suffer).

“equal sisters in humanity” sounds much like the arguments of Catharine A. MacKinnon and others who seek to eradicate male domination and objectification of women.

“Different voice theory” is similar to the CST principles of solidarity, participation, and the common good because it favors interconnectedness and communal relationships as values for ordering society. This theory sounds much like Cardinal Ratzinger’s statement of the necessity of “feminine values,” including women’s “capacity for the other” in the life of society. CST would add to this feminist theory because the Church teaches that “[j]ustice and love do not mean something essentially different for women and for men.”¹¹⁸ Therefore, we must all take responsibility to create social institutions that promote human relationships.¹¹⁹

Finally, the principles of CST would appeal to postmodernist feminists, because it seems that its tenets of human dignity, solidarity, subsidiarity, participation, association, and the common good are precisely the kinds of “conditions for social harmony” that these theorists urge governments to promulgate.

CONCLUSION

Feminist legal theory should be reconciled and even informed by CST in discerning the role of women in the family and in the workplace. CST, from ancient biblical sources through modern Church writings, as well as works of progressive thinkers within the Church such as the Gospel feminists, affirms and celebrates the value and dignity of women. These teachings and the strides that the women’s movement has made over the past fifty years inspire hope that there will be greater empowerment and a “new social reality” for women in the Church and in society in the near future.

¹¹⁸ *Id.*

¹¹⁹ *Id.* (noting some of the ethical issues impacting Catholic women in America today, such as family and career, capital punishment, and the environment).