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THE STATUS OF WOMEN IN THE POST-CONCILIAR CHURCH

by

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## CURRICULUM STUDIORUM

Katherine Marie Meagher was born June 18, 1914, in Calgary, Alberta. She received the Bachelor of Secretarial Science degree in 1932 and the Bachelor of Arts degree in 1935, from Mount Saint Vincent University, Halifax, Nova Scotia. In 1948 she received the Master of Commercial Science degree from Boston University. She received the Licentiate in Canon Law from Saint Paul University, Ottawa, Ontario, in 1974.

## INTRODUCTION

The rights and status of women, age-long issues of concern, became the focus of special attention during the 1975 United Nations-sponsored International Women's Year<sup>1</sup>. Speaking on November 14, 1974, to Mrs. Helvi Sipila, assistant secretary general for Social Development and Humanitarian Affairs at the United Nations, and secretary general of the Women's Year project, Pope Paul VI lauded the observance which was aimed at accelerating the improvement of the status of women throughout the world. "In the contemporary effort to promote the advancement of women in society, the Church has already recognized a 'sign of the times', and has seen in it a call of the Spirit"<sup>2</sup>, said the Pope.

It was, however, just over ten years ago and shortly before the close of Second Vatican Council, that the same Pontiff, speaking to Italian women on May 30, 1965, stressed

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1 United Nations, "Equal Rights for Women: International Women's Year, 1975", in Background Papers, New York, U.N. Office of Public Information, OPI/511, April 1974. The opening sentence reads, "The achievement of equal rights for men and women has long occupied the attention of the United Nations. Although the United Nations Charter, the Universal Declaration of Human Rights, and other international instruments prohibit discrimination on the grounds of sex, the rights and freedoms they proclaim are still denied to many women, either through laws, customs, or traditional attitudes", p. 1.

2 For the text of Pope Paul's private audience with Helvi Sipila, see "In Context, 1975: International Women's Year", in Origins, 4(1974-1975), p. 344.

the necessity of formulating authentic principles about "the true dignity of women", and the importance of implementing basic norms of action to bring about the recognition of that dignity<sup>3</sup>.

The question, then, might well be asked: Just what has been done during the post-conciliar period concerning the rights and status of women within the Roman Catholic Church itself?

This study, a response to the above question, is an investigation into the developments that have been or are effecting a change in the position of women; and an analysis of the import of these changes on the status of women in the post-conciliar Church. The issue, then, is threefold: what socio-juridic factors are effecting changes in the position of women in the Church and in society; how are these factors influencing the ecclesial structures and the juridic condition of women in the Church; and what is the impact of such changes on the mission of Christian women in the modern world.

The acknowledgement of the importance and relevancy of a problem might well be termed the first step towards the solution. Has the Church, and has society, especially in an official manner, expressed concerned awareness about woman's

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<sup>3</sup> See Pope Paul VI's "Allocution to Centro Femminile Italiano", in L'Osservatore Romano, May 30, 1965, p. 1.

traditional position in Church and society?

The manifest concern of Pope Paul VI and of the members of the United Nations, has already been noted. Many more supportive excerpts from official ecclesial and societal sources could attest the universal scope of the issue. Here, however, further references will be limited to the appeal of the great Second Ecumenical Council of the Vatican, the support of the third international Synod of Bishops, and at a national social level, the thrust of the government of Canada especially manifested in the Royal Commission on the Status of Women in Canada.

The Second Vatican Council (1962-1965) was the first ecumenical council in the long history of the Church to set forth a decree on the life and mission of the laity<sup>4</sup>, and to urge in that decree that "since in our times, women have an ever more active share in the whole life of society, it is very important that they participate more widely also in the

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<sup>4</sup> Walter M. Abbott, ed., The Documents of Vatican II; see Martin H. Work's introduction to Apostolicam Actuositatem, (to be referred to hereafter as A.A.), p. 486, in which he states that "although a lay apostolate has existed in the Church since the days of our Lord in Jerusalem, it was not until the Second Vatican Council that the matter was stated in a conciliar decree".

various fields of the Church's apostolate"<sup>5</sup>. And that this mention of the changing role of women is not limited to an effect on the apostolate of the Church but designates one of the basic social issues of our times, is evident in other conciliar documents. For instance, in Gaudium et Spes, the pastoral constitution on "The Church in the Modern World", we find that woman's struggle for "an equity with men before the law and in fact"<sup>6</sup>, is listed as one of the basic socio-economic questions of the day.

The implementation of Council norms has gone on apace over the past decade, and the issue on the status of women has not been neglected. To mention but one occasion, during the third international Synod of Bishops held in Rome from September 30 to November 6, 1971, the position of women in the Church came to the fore with special emphasis. The agenda focus was on two themes: the ministerial priesthood and world justice. Woman's status broke through under both headings.

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5 Ibid., A.A., n. 9, p. 500. See also Sacrosanctum Oecumenicum Concilium Vaticanum II: Constitutiones, Decreta, Declarationes (to be cited hereafter as Vaticanum II), Cura et Studio Secretariae Generalis. Cf. A.A., n. 9, p. 476, "Cum autem nostris diebus mulieres magis magisque partes activas habeant in tota societatis vita, magni momenti est amplior earum participatio etiam in variis campis apostolatus Ecclesiae".

6 Abbott, op. cit., Gaudium et Spes (to be referred to hereafter as G.S.), n. 9, p. 206-207; also Vaticanum II, G.S., n. 9, p. 691, "Mulieres sibi vindicant, ubi eam nondum sunt consecutae, paritatem de iure et de facto cum viris".

On October 11, Cardinal George B. Flahiff of Canada, spoke on the issue of women in ministries.

In view of what has been said of a growing diversification of the ministries of the Church, I do not see how we can refrain from raising the question of the possible role of women in these ministries. We would be failing in our duty towards more than half of the Church if we did not at least speak of the subject.<sup>7</sup>

And speaking to the broader issue of justice in the world, Archbishop Leo Byrne of the United States, told the Synod on October 22:

It is necessary to oppose and eradicate all forms of legal or customary injustice which impose an inferior place on women... Women are essentially equal to men, and any law or custom to the contrary is unjust.<sup>8</sup>

It would seem evident even from the few foregoing excerpts that the changing position of women is an issue of considerable importance to at least some leaders within the Church. As to the measure in which such statements of concern have been supported by practical structural changes and canonical adaptations, this will be part of the on-going research of this study.

Is the changing position of women also a matter of concern in the secular society? The spate of literature

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<sup>7</sup> George Bernard Flahiff, Card., "Flahiff: New Ministries Limited to Men?", in Origins, 1(1971-1972), p. 296.

<sup>8</sup> Leo Byrne, Archbishop, "Giving Women their Due: Especially in the Church", in Origins, 1(1971-1972), p. 329.

specifically dealing with the issue is so great that it has been affirmed that the "rights and status of women are of contemporary importance throughout the global society"<sup>9</sup>. Here, a few observations on the Royal Commission on the Status of Women in Canada will be used as representative of one country's concern.

Neither the bill of rights enunciated in the British Magna Carta over seven hundred years ago, nor the thrust for liberty and equality proclaimed by the French revolutionists over two hundred years ago, implied the contemporary concept of equal rights for women and men. As in most countries, the rights of "man" were translated into laws and interpreted in the courts of Britain and France, as applying to the male but not to the female of the species "man"<sup>10</sup>. When the descendants of these two traditions (British and French) sat down to establish a single Canadian confederation in 1867, they seemed

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9 Sue-Ellen Jacobs, Women in Perspective, p. 1. This is an extensive bibliography of 299 pages, compiled for cross-cultural studies, in which lists on women are presented, from Africa, Middle East, Europe, Oceania, South America, North America.

10 Cf. Women's Bureau of Labour Canada, Report of the Bureau, Women's Bureau '73, p. 25: "For the great principles set out in eloquent language in the American Declaration of Independence, proclaiming that all men are created equal and that they are endowed by their Creator with certain inalienable rights, did not envisage within the concept that black men and Indians were endowed with inalienable rights equal to white men; nor that women were endowed with inalienable rights equal to men".

more concerned with the distribution of federal and provincial powers than with the rights and safeguards for the citizens, and not at all with equality of opportunities for women and men<sup>11</sup>.

The Canadian government, after one hundred years of existence, aware of these constitutional defects and many other socio-cultural factors that had developed over the years, deemed it necessary in 1967 to set up a Royal Commission on the Status of Women to inquire into and report upon the position of women in Canada and to recommend what steps might be taken by the federal government to ensure for women equal opportunities with men in all aspects of Canadian society<sup>12</sup>. After three long years of intensive work and coast-to-coast hearings, the Report was tabled in the House of Commons on December 7, 1970; and since that date the government of Canada has implemented many of the 167 recommendations<sup>13</sup>. A network of new structures has been set up at federal and provincial levels to ensure that practices are in accord with the general policy concerning the position of women: that is, the removal of sex discrimination and the provision of equal opportunity

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11 Cf. Ibid., p. 26.

12 Cf. Hon. John C. Munro, Status of Women in Canada, 1973, a follow-up statement of implementation of the 1970 Report of the Royal Commission on the Status of Women in Canada, p. 1.

13 Ibid.

for women in all fields of Canadian life<sup>14</sup>.

The Royal Commission worked from the premise that as Canada is committed to the Universal Declaration of Human Rights<sup>15</sup>, which holds that "all human beings are born free and equal in dignity and rights"<sup>16</sup>, therefore it follows that "there is no distinction in rights and freedoms between women and men"; that there is "a common status of women and men rather than a separate status for each sex"; and that "the stage is set for a new society equally enjoyed and maintained by both sexes"<sup>17</sup>.

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14 Cf. Ibid., p. 2-5.

15 U.N. General Assembly resolution adopted unanimously by the member nations on December 10, 1948.

16 See United Nations Publication, Declaration on the Elimination of Discrimination against Women. The U.N. resolution of 1948 is quoted on p. 4.

17 Cf. Report of the Royal Commission on the Status of Women in Canada, Florence Bird, Chairman, p. x, xi, xii. Given the stated premise that Canada is committed to the Universal Declaration of Human Rights, the Commission adopted four basic principles: 1. Everyone is entitled to the rights and freedoms proclaimed in the Universal Declaration; 2. Equality of opportunities for women and men should be the goal of the Canadian society; 3. The full use of human resources is in the national interest; 4. Women and men, have the same rights and freedoms, share the same responsibilities; and there should be equality of opportunity to share the responsibilities of society as well as its privileges and prerogatives. These four basic principles, however, were not enough. Because of the societal imbalance and the seriousness of the situation, it was deemed necessary for the Commission to adopt four supportive principles as well: 1. Women should be free to choose whether or not to take employment outside their homes; 2. The care of children is a responsibility to be shared by the mother, the father, and society; 3. Society has a responsibility for women because of pregnancy and child birth, and special treatment related to maternity will always be necessary; 4. In certain areas women will for an interim period require special treatment to overcome the adverse effects of discriminatory practices.

However, while there is a manifest willingness on the part of the Canadian government, as seen in the progress reports on the implementations of the recommendations of the Royal Commission on Women, to make changes in structures and institutions to improve women's position, the situation as portrayed in the opening chapter of the Report of the Royal Commission on the Status of Women in Canada, is still apt:

Men are becoming more conscious of the unbalanced nature of a social order in which everything centers on one sex alone...

There is a growing belief that many of our attitudes are based on traditions and myths which do not reflect the facts and realities of today...<sup>18</sup>

In our search for ways to ensure for women, real equality of opportunity in Canadian society, we heard women and also men, from coast to coast, tell of their hopes and frustrations concerning the status of women. The main aspiration was for elementary human rights and genuine equality.<sup>19</sup>

Thus, despite the fact that Canadian society has not yet become the "new society equally enjoyed and maintained by both sexes", still the country is committed to the principle of a "common status for women and men", in which there is "no distinction" in rights, freedoms and responsibilities between women and men<sup>20</sup>.

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<sup>18</sup> See for example, the implementation report of Hon. John C. Munro, Status of Women in Canada, 1973, already quoted.

<sup>19</sup> Report of the Royal Commission on the Status of Women in Canada, n. 5, p. 2; n. 2, p. 1; n. 9, p. 3.

<sup>20</sup> Cf. Ibid., p. xi.

From the example taken from the Canadian experience, and from the on-going work of the United Nations on the issue of sex discrimination<sup>21</sup>, as well as the concern of the Synod of Bishops, and especially the challenge of the Second Vatican Council, it can be fairly claimed that the issue on the status of women in Church and society is important and relevant; even that it is serious and explosive. In connection with the real social pressures being experienced in some areas in regard to women's "liberation", there will naturally be the question whether the secular world changes in response to human values, or whether the Church changes in response to human values. Perhaps there is a healthy tension on both sides. But at all events, the pressures being exerted by women's liberation today are widespread.

In the course of extensive reading on the topic of women, it was ascertained that there is no known work (book, article, thesis) which has dealt specifically with the status of women in the post-conciliar Church. Thus, at least in the main areas of research, the study will be covering new ground.

There were two theses, however, which did consider some aspects of woman's lay position in the Church, and thus

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<sup>21</sup> In the 1948 Universal Declaration of Human Rights, thirty articles set forth the basic rights and freedoms to which all women and men everywhere in the world are entitled because of their common human nature. For almost thirty years the U.N. has concerned itself with violations of these principles, and in 1967 it adopted the declaration on the Elimination of Discrimination against Women, in which many of the basic rights and freedoms were applied to woman's situation.

provided preliminary research on some aspects of the juridic condition of women and of the laity in the Codex Iuris Canonici.

David J. Morrison, in his thesis, The Juridic Status of Women in Canonical Law and in United States Law<sup>22</sup>, deals mainly with women in the law de personis and in the law de rebus; he then makes a survey of woman's status in American civil law. While the emphasis is on such complementary principles as unity and diversity as justifying the traditional role of women in Church and State, Morrison has strong recommendations concerning the need for positive statements on woman's canonical condition, and the need for recognition of woman's maturity and responsibility in Church and State<sup>23</sup>.

Dealing with The Juridic Condition of the People of God: Their Fundamental Rights and Obligations in the Church<sup>24</sup>, John F. Kinney, in his thesis, makes a study of incorporation in the Church, with an emphasis on the principles of equality and diversity. Equality is equated with the state of the Christi-fideles; while diversity is equated with the states of clerici, religiosi, laici<sup>25</sup>. Kinney's research endeavors to

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22 David J. Morrison, The Juridic Status of Women in Canonical Law and in United States Law.

23 Cf. Ibid., p. 73-90.

24 John F. Kinney, The Juridic Condition of the People of God: Their Fundamental Rights and Obligations in the Church.

25 Cf. Ibid., p. vii.

give

... a clear understanding of the juridic content of the fundamental rights and duties which the members of the faithful of Christ share on the basis of their baptismal equality in the Church, and their functional diversity as members with a specific canonical state.<sup>26</sup>

He recommends that future legislation emphasize "with strength and conviction", that all the Christi-fideles be truly viewed and treated as equal members in the Church<sup>27</sup>.

This present work, while respecting and on some occasions utilizing the above studies, will question some of the assumptions that both Morrison and Kinney seem to take for granted; as well as take issue with and/or endorse some of the conclusions which pertain to the position of women. Moreover, this work will not limit itself to the principles of unity, equality, and diversity, but will analyze other pertinent concepts regarding woman's lay position in the Church as set forth by the Second Vatican Council.

The study itself will be based on a survey of documents. Where available, primary sources will be used; but secondary sources will be utilized. Ecclesiastical and legal documentation will be preferred; but historical, theological, and sociological data will also be employed.

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26 Cf. Ibid., p. 5.

27 Cf. Ibid., p. 82.

The first step will be an historic view of women in a socio-juridic perspective. This was deemed necessary in order to account, in some way, for attitudes and assumptions about women which have persisted over the centuries. As western civilization owes much to the cultures of ancient Mesopotamia, Greece, Rome, and the Judaic-Christian heritages, these will be reviewed for their contributions to enduring attitudes towards women. Where possible, juridic codes and outstanding authors who influenced subsequent ages, will be used to ascertain the background of the historic perspectives on women. For the Christian heritage, women in the early Church will be reviewed. Then, as representative of the thinking of the first millenium, Saint Augustine will give witness; and Saint Thomas Aquinas will witness to the second millenium of Church history.

The second step will be an intensive survey of the canons that relate to women in the 1917 Codex Iuris Canonici, noting especially any traditional attitudinal stances towards women that may occur.

The third step will focus on perspectives on women as found in the documents of the Second Vatican Council. Here, attention will be paid to the theological and canonical principles most likely to influence the changing position of women. To this end, also, all the specific references to women in the conciliar documents will be analyzed for attitudinal stance.

This intensive review of the documents should help determine the main doctrinal tenets and the socio-juridic orientations that will shape new perspectives on women in the post-conciliar era.

In the last step, these tenets and orientations will be evaluated by determining the extent to which these new principles are being applied in attitudinal and institutional changes within the Church. A final chapter will assess the impact of the new principles on pertinent post-conciliar legislation and on sections of the revision of canon law.

This methodology should lead to the establishment of the significant doctrinal tenets and juridic orientations in the post-conciliar Church that are effecting changes in the traditional roles of women. The influence of these factors on the legal status of women in today's Church will be ascertained, and conclusions drawn regarding the "status of women in the post-conciliar Church".

Having established woman's current status, some observations concerning woman's future life and mission in the Church, will conclude the study.

The various terms that require a more specific definition such as "status", "role", and "laity", will be defined in context as the need arises.

Perhaps the one assumption on which this thesis rests is that "all human beings are born free and equal in dignity and rights"<sup>28</sup>.

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<sup>28</sup> U.N. Universal Declaration of Human Rights adopted December 10, 1948.

PART ONE

SOCIO-JURIDIC PERSPECTIVES ON WOMEN

## CHAPTER I

### HISTORIC ATTITUDES ON WOMEN

The contemporary position of women in Church and society cannot be adequately appreciated if attention is paid only to the current social and legal condition of women. Moreover, it should also be recognized that a mere cursory glance at some historic attitudes on women can also fail to give a true perspective. An attempt, however, to search out the sources of at least some prevailing attitudes towards women is deemed necessary, both to establish a base for the study of the changing position of women in the post-Conciliar Church, and to indicate the need for an on-going research of sources if an authentic awareness of woman's present position is to be attained.

In using an historic approach to gain some insight into the sources and the development of attitudes affecting women (especially those concepts that are in some measure still influencing modern outlooks), two points must be kept in mind. First, it should be remembered that the present position of women cannot be conceived exclusively as the result of an on-going evolution leading to an ever-fuller

expression of feminist liberation<sup>1</sup>. And secondly, it is to be recalled that the records kept by society have in general been determined from the male point of view so that his-story is not the whole of her-story<sup>2</sup>.

### 1. Outlooks in Ancient Societies.

In a review of the ancient Mesopotamian, Hebrew, Greek and Roman societies (which contributed largely to the shaping of western thought)<sup>3</sup>, a few extant legal codes were scanned and the theories of important authors who influenced later centuries, were reviewed. In all four societies, the male orientation was evident, but this was often perceived in the light of strong motivating factors within the societies

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1 See Jacques Mousseau, "The Family, Prison of Love", in Psychology Today, Aug. 1975, p. 57: "From the legal and political point of view, woman certainly had more rights in the Middle Ages than she had just before the French Revolution. The evolution of institutions during the 16th and 17th centuries reduced her legal independence, her legal rights, and turned her, as it did the child, into a minor. The triumph of this evolution is the Napoleonic Code."

2 See Vern L. Bullough, The Subordinate Sex, p. 4. The author claims that any history of women must of necessity be primarily a history of man's attitudes towards women: "This is not infrequently a depressing kind of history since men have usually tended to see women from two extremes, as the perfect mother symbolized by Mary or as temptress symbolized by Eve."

3 Ibid., p. 19: "The cradle of civilization, or at least of Western civilization, was the river valleys of the Near East (sometimes called the Middle East), particularly in the area extending from modern Egypt to modern Iraq. Attitudes formed in these areas were incorporated into Jewish, Greek, and later Western Roman and Christian attitudes."

themselves as expressed, for instance, in a thrust for war, for religious unity, for racial purity, or for political power. Women (with less physical strength and with deeper biological ties to the species) were perceived to have rights and liabilities that were usually linked in a dependency on the societal role of the male.

In one of the most primitive legal codes, the so-called Code of Hammurabi, the Mesopotamian society appeared as geared largely for war and defence<sup>4</sup>. At all events, many provisions were made for women in the event of a "king's battle"<sup>5</sup>. The rights of women were extensive; for example, there seemed to be a high degree of marital mutuality<sup>6</sup>, and women could own,

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<sup>4</sup> Ibid., p. 29: "Life in Mesopotamia was harsh and unpredictable... Inevitably the male would be forced to assert himself, to man the armies, to do the fighting, to keep his womenfolk in subordination." See also Chilperic Edwards, The Hammurabi Code and the Sinaitic Legislation, p. 15, 16. From various dates on inscriptions, the author estimates that Hammurabi flourished about 2100 B.C.

<sup>5</sup> Law 29: "If his son be under age, and unable to administer his father's affairs (when the father is taken in the king's battle), then a third part of the field and garden shall be given to his mother, and his mother shall bring him up." Translation as given by Chilperic Edwards, op. cit., p. 32.

<sup>6</sup> Law 151: "If a woman who dwells in a man's house has bound her husband not to assign her to a creditor and has received a tablet; then if that man had a debt upon him before he married that woman, his creditor may not seize his wife. And if that woman had incurred debt before she entered the man's house, her creditor may not seize her husband." Ibid., p. 50.

administer, and bequeath property<sup>7</sup>. While the laws, on the whole, are clearly male-oriented, women are respected and accorded protection and rights if they have class status (which could be said of the men) and particularly if the woman is a wife and mother<sup>8</sup>, or a priestess<sup>9</sup>. Women seem to have real "juridic personality" in the Hammurabi Code.

A review of the Hebrew codes in the Pentateuch revealed a patriarchal society, dominated by its own unique

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7 Law 150: "If a man has given to his wife field, garden, house, or goods, and has given her a sealed tablet; then after her husband has gone to his fate, her children have no claim. The mother can give what she leaves behind to the children she prefers. To brothers she shall not give." Ibid., p. 50.

8 Law 137: "If a man has set his face to divorce a concubine who has borne him children, or a wife who has presented him with children; then he shall give back to that woman her dowry, and he shall give her the usufruct of field, garden, and property, and she shall bring up her children. After she has brought up her children, she shall take a son's portion of all that is given to her children, and she may marry the husband of her heart." Ibid., p. 47-48. And it would seem from Law 145, p. 49, that even a wife without children has specific rights: "If a man has married a wife and she has not presented him with children, and he has set his face to marry a concubine; if that man marries a concubine and brings her into his house, then that concubine shall not rank with the wife."

9 Law 179: "If a priestess or devotee, her father has given her a dowry, and has written a deed, and has written in the table that what she leaves behind her she may give as she sees good, and has allowed the fulness of her heart; then after her father has gone to his fate she may give what she leaves behind to whom she sees good. Her brothers have no claim." Ibid., p. 58.

purpose: to witness to the Covenant of God with man<sup>10</sup>.

Circumcision in the male was the sign of this Covenant and it was the male who assumed the prime responsibility for carrying out the Covenant<sup>11</sup>. Women were mainly considered as having a generative function and a supportive role in furthering the mission of the males<sup>12</sup>. Legal purity was stressed in both men and women, with the woman's menstrual period and childbirth

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10 See Alexander Jones, ed., The Jerusalem Bible, p. 11, 12. Jones distinguishes at least five codes in the Pentateuch (the Decalogue, the Code of the Covenant, the Code of Renewal, the Leviticus laws, and the Deuteronomic Code), and states on p. 11 that "there are some astonishing similarities between some of the clauses in the Code of the Covenant or in Deuteronomy and those in the Mesopotamian codes." It may be noted, however, that the similarities do not extend to the juridic status of Hebrew women. Jones also points out on p. 11, in regard to the Pentateuch, that "to the modern mind the most remarkable feature of this legislation is its religious character."

11 "Now this is my Covenant which you are to maintain between myself and you, and your descendants after you: all your males must be circumcised. You shall circumcise your foreskin, and this shall be the sign of the Covenant between myself and you," (Gn. 17:9-14). Only males fell under the precept of presenting themselves before Yahweh three times a year (Ex. 34:23); though women took part in festive celebrations (Ex. 15:20) and in cultic festivals (Dt. 12:12).

12 Perhaps the law that most clearly shows the purpose of Hebrew marriage and the function of women, is the so-called levirate law, Dt. 25:5-7: "If brothers live together and one of them dies childless, the dead man's wife must not marry a stranger outside the family. Her husband's brother must come to her, and exercising his levirate, make her his wife, and the first son she bears shall assume the dead brother's name; and so his name will not be blotted out in Israel." A woman's supportive role is implied in the divorce laws, for a man can divorce his wife if she "has not pleased him and he has found some impropriety," (Dt. 24:1-4). There are no laws protecting the woman's interests.

itself deemed as cultic uncleanness<sup>13</sup>. In comparison with the Mesopotamian laws of much greater antiquity, the legal rights of women in the Hebrew codes were minimal.

Ancient Greece, for all its intellectual dominance, seemed to give least recognition to women as persons; but even here the ends of the Greek states should be kept in mind, for the Greeks seemed to place great emphasis on purity of race and "rarely extended citizenship to outsiders"<sup>14</sup>. Such societal ends may offer some explanation for Plato's concept of woman as a "possession", something to be used and geared to the production of Greek offspring<sup>15</sup>. However, it is to Plato's pupil, Aristotle (384-322 B.C.), that the doubtful honor of

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13 "If a woman conceives and gives birth to a boy, she is to be unclean for seven days, just as she is unclean during her monthly periods... If she gives birth to a girl, she is to be unclean for two weeks as during her monthly periods," (Lv. 12:2-5). Besides the point of cultic uncleanness, this passage also seems to indicate a lower esteem for the female child.

14 Gerald Kurland, Western Civilization I, p. 44.

15 See B. Jowett, ed., Best Known Works of Plato, p. 108, 109. Plato (427-347 B.C.) expressed some ideas about women in "The Republic" when Socrates explores "the possession and use of women and children". The question is posed: "Are dogs divided into he's and she's, or do they both share equally in hunting and in keeping watch and in the other duties of dogs? Or do we entrust to the males the entire and exclusive care of the flocks, while we leave the females at home under the idea that the bearing and suckling their puppies is labor enough for them? No... they share alike." Socrates goes on to insist that while "the males are stronger and the females weaker" still men and women have the same "natures" and if they are to have the same duties as men "they must have the same nurture and education". On p. 112-113 it is pointed out that the "difference" between men and women "consists only in women bearing and men begetting children".

establishing the "scientific" basis of woman's inferiority has been accorded<sup>16</sup>. In the Generation of Animals Aristotle presented the theory that the male as the "begetter" of offspring is the sole cause in terms of the power and movement attributed to the semen:

How is it that the semen from the male is the cause of the offspring? Does it exist in the body of the embryo as a part of it from the first, mingling with the material which comes from the female? Or does the semen communicate nothing to the material body of the embryo but only to the power and movement in it? For this power is that which acts and makes, while that which is made and receives the form is the residue of the secretion of the female. Now the latter alternative appears to be the right one both a priori and in view of the facts.<sup>17</sup>

The female supplied the matter fit for shaping (the menstrual blood), and was a contributor in generation but with a contribution that was seen as inferior to the "power and movement" of the male semen. "But the female as female is passive; and the male as male is active; and the principle of movement comes from him", and it is plain then "that he only makes a living creature by the power that resides in the semen"<sup>18</sup>.

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16 Vern Bullough, in The Subordinate Sex, on p. 64, states that "Aristotle, in effect, had put the subjugation of women on a 'scientific basis'."

17 Richard McKeon, ed., The Basic Works of Aristotle, p. 676.

18 Ibid., p. 676, 677.

This theory leads Aristotle to conclude that the female differs in essence from the male; they thus have different "natures" and the female always stands in "need" of the male principle<sup>19</sup>. Moreover, in the act of coition, the female loses even her negation and becomes one-flesh, and "this is plain in view when they copulate and are united that one animal is made out of both"<sup>20</sup>. The one flesh is male, as the determinant of the movement and formation of the material.

The active/passive differentiation of male and female is extended by Aristotle into every sphere of life as a differentiation in role, for "the male rules over the female"<sup>21</sup>, and in the Politics we read that

... moral virtue belongs to all of them; but the temperance of a man and of a woman, or the courage and justice of a man and of a woman, are not, as Socrates maintained, the same: the courage of a man is shown in commanding, of a woman in obeying.<sup>22</sup>

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19 "For there must needs be that which generates and that from which it generates; even if these be one, still they must be distinct in form and their essence must be different; and in those animals that have these powers separate in two sexes, the body and nature of the active and the passive sex must also differ". Ibid., p. 676. And later on p. 678 we read: "But the male contributes the principle of movement and the female the material. This is why the female does not produce offspring by herself, for she needs the principle; that is, something to begin the movement in the embryo and to define the form it is to assume."

20 Ibid., p. 679.

21 Ibid., p. 1144.

22 Ibid., p. 1125.

Concerning love and friendship, we read in the Nicomachean Ethics that "perfect friendship is the friendship of men" (and Aristotle means males) who are "alike in virtue"; and there is another kind of friendship which "involves an inequality between the parties", such as that of man and wife; and in such friendships which imply inequality "the love should be proportional; i.e., the better should be more loved than he loves and so should the more useful"<sup>23</sup>.

In a word, it may be said that it was the Greeks who found philosophical and scientific reasons to justify and enforce the subjugation of women.

Where the Greeks failed to develop a unified political state and jealously guarded their citizenship, the Romans with a thrust for political power, "offered their citizenship to large segments of their conquered peoples"<sup>24</sup> and developed an empire without parallel in the ancient world. The Romans excelled in two areas of "law and the art of government"<sup>25</sup>, and these factors may have contributed to the growing recognition of women as juridic persons before the law.

John L. McKenzie in his article "Woman", in the Dictionary of the Bible, asserts that Roman law and custom

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23 Ibid., p. 1061.

24 Kurland, op. cit., p. 54.

25 Ibid.

imposed a severe power of the father (patria potestas) over both sons and daughters, but that "the position of the wife and mother of a family was higher both in legal rights and in dignity than in Greece or in the East", and that by the time of the New Testament period,

... many contemporary writers regarded the freedom of women to associate freely with men and to share their social activities and public entertainments, such as the theater and the games, as a social deterioration.<sup>26</sup>

In a way, this seems contradictory: that Rome, the nation which had perhaps the strongest masculine orientation from earliest times, should come to grant to women legal rights which were in many respects equivalent to those granted to men. Yet a study of the evolution of Roman law in respect to women seems to bear this out. This brief study will concern itself with some aspects of the evolving position of the wife and mother in early Roman law.

The Twelve Tables, called Lex Duodecim Tabularum are often considered the foundation of Roman Law<sup>27</sup>. Though many

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<sup>26</sup> John L. McKenzie, S.J., Dictionary of the Bible, p. 935-936.

<sup>27</sup> See Clyde Pharr, ed., Ancient Roman Statutes, p. 8, 9. Pharr acknowledges the importance of the Twelve Tables and states that tradition tells us that the code was composed by a commission, first of ten and then of twelve men in 451-450 B.C., and was ratified by the Centuriate Assembly in 449 B.C. "For the Romans, the publication of these laws signaled a stage in the class conflict between the patricians and the plebeians, for the latter compelled the codification and the promulgation of what had been largely customary law, interpreted and administered by the former primarily in their own interests", p. 9.

of the laws were important for women, only those concerned with the husband's power over the wife (manus) and the perpetual guardianship of women (tutela) need be noted here.

A much earlier law ascribed to one of the founders, Romulus (c. 753-716 B.C.), is credited with the honor of bringing women under control by the enactment of a single law: "A woman united with her husband by a sacred marriage shall share in all his possessions and in his sacred rites"<sup>28</sup>.

While this law might denote mutuality, in reality the wife's separate juridic personality became absorbed in the husband's, or the wife came under the power (manus) of the husband. In the Twelve Tables, however,

... if any woman is unwilling to be subjected in this manner to her husband's marital control, she shall absent herself for three successive nights in every year and by this means shall interrupt his prescriptive right of each year.<sup>29</sup>

And concerning the custom of perpetual guardianship of women (tutela), the law provides a rationale for the institution: "Women, even though they are of full age, because of their levity of mind, shall be under guardianship, except vestal virgins who shall be free from guardianship"<sup>30</sup>. Thus even in these early laws, provisions were made for evasions or

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<sup>28</sup> Ibid., p. 3, Table VI.

<sup>29</sup> Ibid., p. 10, Table VI.

<sup>30</sup> Ibid.

exceptions to the laws and a certain evolution of legislation is already discernable. To evade the full effects of manus, a wife stays away from the husband for three successive nights of each year. Under tutela comes the famous rationale for the denial of rights to women: "because of their levity of mind".

Perhaps trends in woman's legal status may be clearer by comparing the laws of manus and tutela with those of a later period in Roman society. For this, the Institutes of Gaius, written some time in the mid second century A.D., will be used<sup>31</sup>.

Gaius is careful to point out that the laws of the father's power (patria potestas), apply equally to sons and daughters<sup>32</sup>, though he fails to point out that a son has the legal capacity to become a pater himself while the woman has

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31 Francis de Zulueta, The Institutes of Gaius, II; on p. 1 states that, "Nothing is known of Gaius' life", but "he was in full activity as a writer under Antoninus Pius (A.D. 138-61)."

32 "Quaecumque de filio (esse) diximus, eadem et de filia dicta intellegemus." Ibid., I, p. 22, n. 72. Henry Sumner Maine, in Ancient Laws, p. 134, points out that the ancient family was a political unit held together by common obedience to the pater-familias. To Maine, the moral elevation of the pater and the moral debasement of those under potestas is related to the political purpose rather than a lack of concern for personal rights; and he finds vestiges of this political concept of family in Roman laws and in laws derived from the Roman tradition long after the family political-unit broke down and the individual became the subject of the law.

not. As for the various forms of marriage, only the dependent marriages produced the husband's manus<sup>33</sup> but it was seen that as early as the Twelve Tables, legal recognition was given to a wife's right to escape manus. The children, however, were born into the potestas of the father even if the wife was free<sup>34</sup>.

The non-dependent marriages (the so-called free consensual marriages) seem to have existed alongside the dependent marriages from earliest times, and by the time of Gaius the dependent marriages with woman's entry into manus had been "in part abolished by statutes and in part obliterated by simple disuse"<sup>35</sup>.

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33 De Zulueta, op. cit., II, p. 39. A woman in manu could own nothing herself, while in a marriage without manus, the husband "obtained no right whatever over his wife's present or future property". See p. 36, 37 where the author states that from earliest times both free consensual marriage and dependent marriages existed, and that "Comparative law shows that all over the world dependent marriage of the type involved by sale-marriage (coemptio) goes with a patriarchal organization of the family", and often coexisting with sale-marriage are other forms, "some at least of which result in free marriage". The three forms of dependent-marriage treated by Gaius were confarreatio (a religious ceremony), coemptio (a sort of sale), and usus (if a woman cohabited with her husband for a year without the three-day interruption).

34 "If the wife stays in her own family and home, the husband, a tolerated stranger, will not readily acquire lordship over her and her children. But where husband and wife set up a separate household, the common result will be the conversion of free, into dependent marriage, and the acquisition by the husband of paternal power over the children." Ibid., II, p. 37.

35 Ibid., I, p. 35, n. 111.

In regard to the guardianship of women, Gaius states that tutela mulierum cannot be justified on rational grounds, "for hardly any valid argument seems to exist in favour of women of full age being in tutela", and he goes on to assert that the outlook which is commonly accepted, namely that women are very liable to be deceived owing to their instability of judgment, and therefore should be governed by the auctoritas of tutors, seems more specious than true, and that "women of full age conduct their own affairs"<sup>36</sup>, so that the tutor's auctoritas is often a mere form and often the tutor is compelled by the praetor to give auctoritas even against his will.

It would appear then, that by the time of Gaius, the free consensual marriage had largely displaced the dependent manus-marriage and that the institution of tutela for women was being questioned if it had not already become a mere formality<sup>37</sup>. A real evolution of law in the areas investigated is discernable; an evolution pointing to the acceptance in a marked degree, of equality between the sexes.

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36 "Feminas uero perfectae aetatis in tutela esse fere nulla pretiosa ratio suasisse uidetur... Mulieres enim quae perfectae aetatis sunt, ipsae sibi negotia tractant..." Ibid., I, p. 60, n. 190.

37 Maine, op. cit., p. 167, concerning the gradual disappearance of the tutelage of women, observes that "led by the theory of natural law", the jurisconsults had evidently by this time, "assumed the equality of the sexes as the principle of their code of equity".

## 2. Christian Views.

Turning to the Christian heritage, some of the so-called "traditional" perspectives on women in the Church are to be found in the gospels themselves, in the accounts of the early Church especially those related to Saint Paul, in the works of such Fathers of the Church as Saint Augustine, and in the teaching of such great theologians as Saint Thomas Aquinas.

In the four gospels themselves, the active participation of women throughout the accounts is notable, especially in a Jewish society in which women were accorded an inferior social status even as judged from the socio-juridic standards of the then contemporary Greco-Roman world.

The message of the reciprocal relationship of women and men with Christ and with each other in the new order of creation, is clearly brought out in all the gospels<sup>38</sup>. While women are perceived as an essential part of Christ's audience, it is also obvious that the gospels reflect the social fabric

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<sup>38</sup> Many examples could be given; these would include Mt. 12:46-50; Lk. 8:19-21; Mk. 3:31-35 when Christ described his disciple as "Anyone who does the will of God, that person is my brother and sister and mother."

of the times in which women are almost the "non-essential"<sup>39</sup>. The parable-technique used so frequently by Christ in his teaching, speaks of women as well as men as portraying his message<sup>40</sup>. The miracles of Christ are presented as applying to women as well as to men, certainly as a response to human need and without discrimination<sup>41</sup>. The part played by women in the passion, death, and resurrection of Christ deserves a

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39 The four evangelists recount the miracle of the five loaves and the two fishes (Mt. 14:20-21; Mk. 6: 42-44; Lk. 9:13-17; Jn. 6:10-14). All four attest that five thousand men were present; only Matthew adds, "to say nothing of women and children". This tendency for three out of four evangelists to ignore the presence of women, should be remembered as a possibility of the non-inclusion of women in assessing biblical literature.

40 See Constance F. Parvey, "The Theology and Leadership of Women in the New Testament", in Religion and Sexism, p. 139, where the author gives many examples of the pairing technique. To give but one example: "Also, in the parables, Luke couples the parable of the man and the lost sheep (15:3-7) with that of the woman and the lost coin (15:8-10). In each case of male-female pairing, both illustrations make the same point about the nature of the Kingdom, and both carry the same message about the openness of the Kingdom to previously excluded groups."

41 As one of the many examples that could be given, the cure of the Syrophenician woman's daughter as recounted by Mark and Matthew, has many interesting features from a feminist point of view: it was not the petitioner's passive acceptance that won praise from Jesus, but for the fact that she refuted him in his argument and Jesus replied: "For saying this, you may go home happy", (Mk. 7:28-30).

theological study in itself<sup>42</sup>. In such a study perhaps less attention could be given to the actual historic events and more discernment employed for possible "institutional" implications in women as witnesses to the resurrection and as recipients of mission. It would appear that several institutions concerning women were significantly altered by Christ's teaching and that in a manner that might have re-established the mutuality of women and men in God's plan. In Mark 10:2-9 when the pharisees questioned Christ about marriage and divorce, he denounced the law of Moses concerning divorce; and in Mark 10:11-12, he denounced the double standard concerning adultery and highlighted the mutuality of men and women by referring to Genesis 1:26-30 when "male and female he created them", and ordered them to a co-responsible regency of the earth. He also changed the emphasis given to the domestic role of women when he praised Mary for becoming a student at his feet (Lk. 10:38-42), a role usually assigned only to men. By his praise of celibacy for women as well as for men (see Mt. 19:10-12), Christ emphasized the personhood

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<sup>42</sup> Matthew recounts the appeal made on Jesus' behalf by Pilate's wife (Mt. 27:19), the women who were witnesses at the death (Mt. 27:55, 56), at the burial (Mt. 27:57-61), as recipients of the first mission (Mt. 28:7), and of the first appearance of the risen Christ (Mt. 28:9) and Mark and Luke have other accounts. From John we have the story of Mary being assigned to John's care and the equally important assignment of John to Mary's care (Jn. 19:25-27).

of woman rather than her functional role in motherhood.

In spite of the fact that the teachings and the practice of Jesus in regard to women were revolutionary and might have opened up a new era for women in the Church and in society and given new meaning to the potential relationships between men and women, this change did not happen, and the liberating principles were soon modified to impose the traditional views that society had of women. As Saint Paul plays a pivotal part both in the formation of attitudes towards women in the early Church, and in the development and spread of the Church itself, the study will look first at Paul, then follow the main trends of his attitudes towards women in the early Church.

Paul had many associations with the women of the early Church. There are numerous references in the Acts to influential women in the congregations (Ac. 17:4; 12, etc.); to the houses of women used for the Christian assemblies (Ac. 16:40; Col. 4:16; Phm.1:3, etc.). There is a sense of the importance of Lydia from Thyatira, a dealer in purple dye, who listened to Paul, "and the Lord opened her heart to accept what Paul was saying" (Ac. 16:11-15). There are many husband-wife teams which bespoke an emancipated role for such women. We see Priscilla and Aquila as Paul's collaborators and travelling companions (Ac. 18:18), as instructors of Apollos (Ac. 18:26), and who risked death to save Paul's life. It was Phoebe,

"a deaconess of the church at Cenchreae" who was evidently the bearer of the letter to the Romans (Rm. 16:1-2), and it was in response to Chloe's people that the first letter to the Corinthians was written (1 Co. 1:11). In his warm greetings to the various churches, women came in for much attention. Of some twenty-nine individuals mentioned by name, ten were women. In this list is the debated, "outstanding apostles Andronicus and Junias" (Rm. 16:7). The question, of course, is whether the "apostle" Junias is a woman. With several other husband-wife teams in the same format, it would seem that Junias has a good chance of being female.

But despite the many attestations of woman's importance in the foundation of the early Church, it is Paul who is usually blamed, and quoted, for maintaining the dependent status quo for women and for denying them equivalence with men in the cult and regency in the Church<sup>43</sup>. Most of these ideas expressed by Paul are in his first letter to the church of Corinth, a letter in which he is dealing with many serious disorders (1 Co. 10:16-26), and among these are the disorderly assemblies (1 Co. 11:21). Faced with an unruly congregation of men and women, a congregation that has not yet put on the

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<sup>43</sup> See Parvey, op. cit., p. 123-137. Parvey analyzes Paul's arguments concerning women in the various letters. Some of the ideas are incorporated in this study.

mind of Christ (1 Co. 3:1), Paul attempts to restore order. Besides factions and drunkenness (1 Co. 11:18, 22), the women are appearing without veils (1 Co. 11:6.) and are disorderly at praying (1 Co. 14:12). So Paul orders the women to keep their veils on:

A man should certainly not cover his head, since he is the image of God and reflects God's glory; but woman is the reflection of man's glory. For man did not come from woman; no, woman came from man; and man was not created for the sake of woman, but woman was created for the sake of man (1 Co. 11:7-10).

Unfortunately, this is the passage that is remembered as "doctrine" and not the corrective words which follow and present the outlook of the new dispensation:

However, though woman cannot do without man, neither can man do without woman, in the Lord; woman may come from man, but man is born of woman--both come from God (1 Co. 11:11, 12).

With this statement, the subordination of woman as presented in Paul's first words should have been resolved, for "in the Lord" men and women have mutual need of each other and no inequality or dominance is expressed. Unfortunately, the concept of the male alone representing the image of God, and woman the "reflection" of man has often been used out of context.

Paul closes the argument with an appeal to Jewish customs by saying "to anyone who might still want to argue: it is not the custom with us, or in the churches of God" (1 Co. 11:16). One point that is often lost sight of in this

argument, is that women are not forbidden to pray or prophecy in the assembly; they are merely told to keep their veils on. Paul, steeped in the Jewish heritage of the primacy of the common good, insists on the regulation of spiritual goods, and to attain "order" he writes:

As in all the churches of the saints, women are to remain quiet at meetings since they have no permission to speak; they must keep in the background as the Law itself lays it down. If they have any questions to ask, they should ask their husbands at home; it does not seem right for a woman to raise her voice at meetings (1 Co. 14:34,35).

But this ordering of the women is also followed by a corrective statement that tends to wipe out the prohibitions against the participation of women: "And so, my dear brothers, by all means be ambitious to prophesy, do not suppress the gift of tongues, but let everything be done with propriety and in order" (1 Co. 14:39, 40). As the prohibition was addressed only to wives and their questions, the many celibates whom Paul had just finished praising, should not be included. But these words, too, have been used out of context many times to help shape religious and social attitudes towards women in the Church. Paul's treatment of the Corinthian disorders has long overshadowed his theology of liberation especially in his concepts of the "new creation" in Christ. By the time of the letter to the Galatians around 58 A.D., Paul had more fully developed this concept:

All baptised in Christ, you have all clothed yourselves in Christ, and there are no more distinctions between Jew and Greek, slave and free, male and female, but all of you are one in Christ Jesus (Ga. 3:27, 28).

This excerpt might well be an expression of mankind's historic struggle for liberation in Christ: first, the division of racism (Jew and Greek) was denounced as un-Christian even in the early Church; second, the division of status (slave and free) had a long, hard struggle over the centuries until slavery was no longer tolerated by the Christian Church; and finally, the divisiveness of sexism (male and female) is at least under discussion in the contemporary Church.

How were these Galatian-principles of liberation implemented in the early Church? The vision of a new equivalence for men and women in Christ seemed quickly obscured while the Jewish traditions appear to have been accepted wholeheartedly for women (see Ti. 2:3-6). It is in Peter's letter that the question is answered, however:

In the same way, husbands must always treat their wives with consideration in their life together, respecting a woman as one who, though she may be the weaker partner, is equally an heir to the life of grace (1 Pt. 3:7).

Here, the concept of woman's spiritual equality with man, and her cultural inferiority is presented. It would seem that Christian "tradition" had already begun to interpret the "new creation" in Christ by affirming the spiritual equality of women with men, but denying to women any theological

affirmations for the transformation of social mores of the old dispensation into the promise of equivalence and the freedom of the children of God for both men and women.

It has been said that two creative eras of philosophical speculation flourished during the middle ages in the Christian west:

The first lasted from the third through the fifth century A.D., and culminated in the work of Augustine; the second, from the twelfth through the fourteenth century, was dominated by the work of Thomas Aquinas.<sup>44</sup>

To bring to a close this survey of socio-juridic perspectives on women, a few ideas from Augustine and then from Aquinas will be reviewed.

Aurelius Augustinus was born in Numidia in 354 A.D., and it was his lot to pass through many great movements of his time and to play a leading role in many of them<sup>45</sup>. These early centuries of Church history were marked by a deep interest in philosophical concepts. Among these, the concept of a dichotomy between the soul and body of man, and the idea that sex was something low and unworthy of intelligent men, made inroads into Christianity from Gnosticism and its many

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<sup>44</sup> Norman F. Cantor and Peter L. Klein, eds., Medieval Thought: Augustine and Thomas Aquinas, p. 1, 2.

<sup>45</sup> Bullough, op. cit., cf. p. 106 f.

offshoots, especially Manichaeism<sup>46</sup>. As a young man, Augustine had espoused the Manichaean outlook, and it was perhaps in his own response to Manichaeism that many of Augustine's own views on sex were formulated. Here, however, only his viewpoint on women, as found in The Confessions, will be noted:

We behold the face of the earth furnished with terrestrial creatures, and man created after Thy image and likeness, in that very image and likeness of Thee (that is, the power of reason and understanding) on account of which he was set over all irrational creatures. And as in his soul there is one power which rules by directing, another made subject that it might obey, so also for the man a woman was corporeally made, who, in the mind of her rational understanding should also have a like nature; in the sex, however, of her body should be in like manner subject to the sex of her husband, as the appetite of action is subjected by reason of the mind to conceive the skill of acting rightly. These things we behold, and they are severally good, and all very good.<sup>47</sup>

This excerpt presents the genus "man" as a dichotomy of rational soul and corporeal body in which the rational is made to rule the corporeal. The same relationship is seen to

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<sup>46</sup> "In the first part of the fifth century, Christianity, at least Western Christianity, put renewed emphasis upon ascetic ideas towards sex. This was due mainly to the influence of St. Augustine, who was responding to a new threat to Christianity, Manichaeism, a kind of Gnostic synthesis... Like Gnosticism, Manichaeism was a dualistic religion in which there was a struggle between Light and Darkness, between good and evil." Ibid., p. 116-117.

<sup>47</sup> Witney J. Oates, ed., Basic Writings of Saint Augustine; see "The Confessions", 13:XXXII, p. 253-254.

exist between the male and the female of the species with "male" standing for the rational soul, and the "female" for the corporeal body and in this sense the male is made to rule the female and the female is "made for the man". Considered as an individual, the female too has a rational nature of her own (with the implication of consequent inferiority to the male rational nature because of its association with the female body). Thus Augustine may be seen as establishing a philosophical base for the subordination, use, and carnality of women.

With this viewpoint of woman's "nature", Augustine's concept of marriage and virginity is a logical conclusion: marriage is seen in terms of the triplex bonum, virginity in terms of denying the flesh for the heavenly Bridegroom<sup>48</sup>. For women, Augustine's theories would come to mean not an affirmation of her nature in marriage or the religious life, but rather the "submission" of her person to the husband and

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48 "Denique utriusque sexus infirmitas propendens in ruinam turpitudinis, recte exipitur honestate nuptiarum, ut quod sanis esse posset officium, sit aegrotis remedium... quoniam id quod bonum habent nuptiae, et quo bonae sunt nuptiae peccatum esse numquam potest. Hoc autem tripartitum est: fides, proles, sacramentum... Unde quia satis disseruimus in eo libro quem de Bono Conjugali nuper edidimus, ubi et continentiam vidualem et excellentiam virginalem pro suorum graduum dignitate distinximus, diutius hic noster stilus non est occupandus." See J.P. Migne, ed., Sancti Aurelii Augustini, Opera Omnia, III, p. 397.

the "annihilation" of self in the religious life<sup>49</sup>.

The thinker who dominated the second great creative era of philosophical speculation (the twelfth through the fourteenth century) was Saint Thomas Aquinas (1225-1274 A.D.), a Dominican and a professor of theology at the University of Paris and devoted his great genius to "the general principles which lay behind human existence and reality"<sup>50</sup>.

It is mainly in his discussion of the creation of man in the Summa Theologica that the "production" of woman is considered, and much can be gleaned from Aquinas' response to the first question: Whether the woman should have been made in the first production of things<sup>51</sup>.

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49 "His pessimistic attitude to sexual pleasure demanded that he should find justification for its use--this was found both in the need for procreation (bonum prolis) and precaution against a partner's adultery (bonum fidei). On the other hand, true conjugal love was a purely spiritual thing (bonum sacramenti), in regard to which sexual relations could have no positive signification whatever. In fact, carnal desire was for him an evil (malum) and a disease (morbus), and could only be an obstacle to the flowering of conjugal love. The more desire is repressed, the stronger is the caritas coniugalis." See J. O'Meara, An Augustine Reader, p. 29-30. O'Meara gives the opinion that Augustine introduced a dualism into married life which has not been the best expression of Christianity.

50 See Cantor and Klein, op. cit., p. 3.

51 S. Thomae Aquinatis, Summa Theologica, I, q. 92, a. 1, p. 680.

In reply to Aristotle's dictum that "the female is a misbegotten male (De Gener. ii. 3)", Aquinas asserts that it was necessary for woman to be made as the Scripture says, as a helper to man in the work of generation, that other men are better helps in other areas; that in coition male and female are "one", but that this generative operation is lower than the intellectual operation of man; that it was necessary to bring out this distinction and thus it was fitting that the female should have been produced separately from the male even in the first production of things to bring out the distinction of the superiority of intellect over the act of generation<sup>52</sup>.

As biology had made no significant breakthrough as regards the facts of generation, Aquinas repeats the Aristotelian errors of the active-male seed, and passive-female

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52 "Respondeo dicendum quod necessarium fuit feminam fieri, sicut Scriptura dicit, in adiutorium viri: non quidem in adiutorium alicuius alterius operis, ut quidam dixerunt, cum ad quodlibet aliud opus convenientius iuvari possit vir per alium virum quam per mulierem; sed in adiutorium generationis... Quaedam vero habent virtutem generationis activam et passivam coniunctam; sicut accidit in plantis quae generantur ex semine. Non enim est in plantis aliquod nobilius opus vitae quam generatio: unde convenienter omni tempore in eis virtuti passivae coniungitur virtus activa generationis. Animalibus vero perfectis competit virtus activa generationis secundum sexum masculinum, virtus vero passiva secundum sexum femininum... Homo autem adhuc ordinatur ad nobilius opus vitae, quod est intelligere. Et ideo adhuc in homine debuit esse maiori ratione distinctio utriusque virtutis, ut seorsum produceretur femina a mare, et tamen carnaliter coniungerentur in unum ad generationis opus..." Ibid., l q. 92, a. 1, p. 681.

nutrient. By associating Adam with intellectual activity and Eve with coition, the male dominance of the rational nature is assumed, with the female nature being the sign of the dominance of the sensual. While the production of woman in the first creation is affirmed, woman symbolizes even before the fall, the inferior operations of man. Thus, from the first, Aquinas shows that he does not conceive of woman apart from her relationship with man, and in assessing that relationship he views it in terms of the male sexual reaction. Following the Augustinian tradition, Aquinas reads an androcentric meaning into Genesis 2:18, "It is not good for man to be alone; let us make him a helper like to himself." It is really this verse that becomes for Aquinas, the explanation for women; an explanation related to the male and to generation.

Dealing with the question as to why Jesus Christ took on human flesh in the male form and not as the sexless Logos, Aquinas almost regards this as a foolish question in view of the nobility of the masculine sex<sup>53</sup>. His answer affirms the goodness of God's creation in sexual form, but even goodness comes in degrees, for the feminine form is inferior.

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53 "Ad primum ergo dicendum quod sexus masculinus est nobilior quam femineus: ideo humanam naturam in masculino sexu assumpsit. Ne tamen sexus femininus contemneretur, congruum fuit ut carnem assumeret de femina." P. Faucher, O.P., ed., S. Thomae Aquinatis, Summa Theologiae, III, q. 31, a. 5, p. 204.

In dealing with the ministers of the sacraments, Aquinas seems to have difficulty with the inferior form. For instance, as regards baptism, women may baptize, but only in private and in cases of necessity and when a man cannot be had. Aquinas emphasizes that women and men act as the "instruments" of Christ<sup>54</sup>; and he does produce a new insight here: the operational effect of the Pauline concept that in Christ there is neither male nor female was used to assert that women could baptize. Had Aquinas continued from this premise he may have ushered in a new era for women. It did not happen, however, for having started with the "inferiority" assumptions of Aristotle and the "subordination" assumptions of Augustine, Aquinas attempted to reconcile Galatians 3: v. 28, with 1 Corinthians 11: v. 3, by setting up a principle

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54 *Ibid.*, III, q. 67, a. 4, p. 426. To the question, "Utrum mulier possit baptizare?" Aquinas replies, "Respondeo dicendum quod Christus est qui principaliter baptizat... Dicitur autem quod in Christo non est masculus neque femina. Et ideo, sicut masculus laicus potest baptizare, quasi minister Christi, ita etiam et femina... Ad primum ergo dicendum quod, sicut mulieri non permittitur publice docere, potest tamen privata doctrina vel monitione aliquem instruere; ita non permittitur publice et solemniter baptizare, sed tamen potest baptizare in necessitatis articulo... Ad tertium dicendum quod in generatione carnali masculus et femina operantur secundum virtutem propriae naturae: et ideo femina non potest esse principium generationis activum, sed passivum tantum. Sed in generatione spirituali neuter operatur virtute propria, sed instrumentaliter tantum per virtutem Christi. Et ideo eodem modo potest et vir et mulier in casu necessitatis baptizare."

of precedence in baptizing which does not seem to reconcile the two verses.

When it comes to the sacrament of orders, a different argument is followed by Aquinas: here a woman would lack the sign value of the male Christ, and because she has a subordinate status she is incapable of receiving the tonsure required as the first step to ordination<sup>55</sup>.

While other questions which concerned women were studied by Aquinas, perhaps enough has been quoted to show that he refined the theories of Aristotle and Augustine without questioning their assumptions of women's inferiority and subordination. Aquinas was androcentric in his assessment of women, though devoid of misogynic attitudes. Accepting the active-passive theory of generation from Aristotle, Aquinas sees the bipolarities of active-male contra passive-female as

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<sup>55</sup> Ibid., III, q. 39, a. 1, p. 772-773; under the heading of "impediments" of orders, the first article deals with "Utrum sexus femineus impediatur ordinationem". To the three arguments in favor of woman's ordination, he replies: "Sed contra: Est quod dicitur 1 Ti. 2:12, mulierem in ecclesia docere non permitto, nec dominari in virum. Praeterea, in ordinandis praeexigitur corona: quamvis non de necessitate sacramenti. Sed corona et tonsura non competunt mulieribus ut patet 1 Cor. 11:6. Ergo nec ordinum susceptio... Quia, cum sacramentum sit signum, in his quae in sacramento aguntur requiritur non solum res, sed signum rei... Cum igitur in sexu femineo non possit significari aliqua eminentia gradus, quia mulier statum subiectionis habet; ideo non potest ordinationis sacramentum suscipere." The scripture base on which this argument rests, 1 Cor. 11:6, reads that "a woman who will not wear a veil ought to have her hair cut off..."

the determining essence of each with the masculine sex the more honorable. Thus woman was assessed in her relationship to the male and not as a human person within herself with relationships to God and others. In dealing with the problem of woman's rational nature, he can consider it as inferior to man's rationality because woman's rationality subsists in an "inferior" form. Aquinas, however, dealt not only in theological and philosophical speculation; he applied his theories to the life and discipline of the Church. To Thomas Aquinas, then, may be accorded the "honor" of inserting the theory of the subordination of women into the life and practice of the Christian Church.

It is recognized that the Christian views on women considered in this chapter are by no means exhaustive though they may be representative of some of the important biblical, philosophical and theological perspectives which entered into the mainstream of ecclesiastical law and praxis right into the twentieth century. There is, perhaps a lacuna in two areas,

the historic position of women in the canon laws of the Church<sup>56</sup> prior to the Codex Iuris Canonici, and a historic review of the ministry of women in the Church particularly in relation to orders and jurisdiction<sup>57</sup>. While it is recognized that Saint Thomas Aquinas utilized Gratian's Decretum, and that it is Gratian's work itself (c. 1140 A.D.) which summarized

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<sup>56</sup> Such authors as René Metz in "Recherches sur la Condition de la Femme selon Gratien", in Studia Gratiana, 12(1964), p. 380-396; and Joan A. Range in "Legal Exclusion of Women from Church Office", in The Jurist, 34(1974), p. 112-127, have provided many interesting insights into the position of women as revealed in Gratian's treatment of lay investiture, clerical celibacy, sacramental ministry and Church office. Both authors seemed to feel that the position taken by Gratian (which summed up a tradition that came to him and initiated a tradition that derives from him), established a status of women in ecclesiastical law that would go substantially unchallenged until the twentieth century. Range points out on p. 126 that "the basis for Gratian's understanding of the role of woman", was "her guilt and her natural state of subjection". Metz observes that Gratian accepts the assumption that women are naturally inferior to men which places women under juridic incapacities and "justified" woman's submission to man; and on p. 395 Metz comments that the fathers of the Church manifest a certain ambiguity in regard to women for "Aussi longtemps que ces auteurs se trouvent sur le terrain de la foi, ils prônent le principe égalitaire; dès qu'ils l'abandonnent, ils professent l'inégalité des sexes."

<sup>57</sup> Jean Daniélou in "Le ministère des femmes dans l'Eglise ancienne", in La Maison Dieu, 61(1960), p. 70-96. On p. 94 Daniélou concludes from his study that women did enter into the ministry of minor orders; and Ethelred Tauton in The Law of the Church, on p. 643 states that while women "are not capable of orders", they can have "some power of jurisdiction"; and he cites the power of the abbess. However, it would appear that the teaching of Aquinas that women are "incapable of ordination" (q. 39, a. 1) and that the abbess does not possess "true" jurisdiction (q. 39, a. 2), have prevailed in Church law and praxis.

the tradition of the past, and carried it along even to the Code, still the attitudes on women expressed by Saint Augustine, and especially Saint Thomas Aquinas, remained basic in the law and praxis of the Church.

## CHAPTER II

### WOMEN IN THE CODEX IURIS CANONICI

The Codex Iuris Canonici became law in the Roman Catholic Church on May 19, 1918. The Codex is a monumental work that encompasses such a broad scope of ecclesiastical legislation that one might be tempted to conceive of the Church itself in terms of the Code<sup>1</sup>. While two specific inadequacies have been noted in the Code - one in respect to the role of the laity and the other in regard to the status of women in the Church<sup>2</sup> - still it is only in the light of woman's juridic condition in the Codex Iuris Canonici that changes effected by the Second Vatican Council and the post-Conciliar legislation can be assessed.

To determine the status of women in the Codex, a review will be made of women in the law De Personis and women in the

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1 John L. McKenzie, in The Roman Catholic Church, speaks of the tendency to equate the Church with the Code and states on p. 48: "We frequently have occasion to refer to the Code in describing the contemporary Roman Church, but it is no more a complete guide to the reality of the Church than the laws of a country are a guide to that country. Thus when the juridical aspect of Romanism is mentioned, it should be understood that canon law is only one aspect of it."

2 Yves Congar, O.P., in Lay People in the Church, discusses the inadequacy of the Code in relation to the laity, though he affirms on p. xiv, "This lacuna in the Code will of course be made good sooner or later." He also recognizes a lacuna about women in the theology of the laity on p. xvii.

law De Rebus. This division is not meant to parallel the Codex divisions. Under De Personis will be included the status of lay women, wives, widows and religious. Under De Rebus will be included women in relation to the sacraments, to the magisterium, and to processes and penalties. A conclusion will then be drawn concerning the status of women in the Codex Iuris Canonici.

A word should be said here about the meaning of the word "status" and the sense in which it will be used in this study. It is a difficult word to define, for sometimes even in legislation the word has both a general, non-technical meaning and at other times it has a juridic sense<sup>3</sup>. Even the juridic notion of status has two connotations: it is usually employed in a wide sense to denote the condition or position of persons in a legal system or society; but the word is sometimes used in a narrower sense to differentiate capacity

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<sup>3</sup> Webster's New Collegiate Dictionary defines "status" as the "State or condition of a person", and in Osborn's Concise Law Dictionary, "status" is defined as "The legal position or condition of a person... The status of a person is an index to his legal rights and duties, powers and disabilities".

or noncapacity<sup>4</sup>. In this study, the word "status" will be employed in its juridic sense and usually with the narrower connotation.

This juridic usage sees status not only in terms of legal rights and duties, powers and disabilities; but also in terms of a person's relative or differential attributes<sup>5</sup>. For instance, in speaking about the "status of women in the Church", the issue is not only about women's rights and responsibilities in the Christian society, but is also concerned about the comparative assessment of these rights and responsibilities with those of men in the same society. It is recognized that this differential connotation in the word "status" is the subject of important theoretical discussions<sup>6</sup>. Some authors argue that status should not indicate the natural differences between say, men and women, because such differences are based on

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<sup>4</sup> S.J. Stoljar, in "The Notion of Status", speaks of the differential connotation of status on p. 136 f. On p. 137 he says, "So seen, status behaves quite unlike other concepts. Where most concepts, so to speak, indicate what may be called 'definitional' questions (What is man? What is law?), status rather puts questions of a comparative nature (Where does X stand in relation to Y?). And these questions hint at peculiarities not just different but differential, in the sense that we now mean to compare or contrast a pair of persons, or groups of persons, not so much to define their individual attributes as, rather to 'assess' them in their respective positions to each other."

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., S. Stoljar summarizes some of these discussions on p. 138-140.

functional or generative differences rather than the common denominator of the rational human being<sup>7</sup>; still others argue that every status must be civilis, that is, the creation of positive law, and cannot be based on some generic character<sup>8</sup>. It is such thinking which perhaps leads some canonists to reject status division based on sex<sup>9</sup>. While such discussions may be labelled "theoretical" they raise very important questions for women in the Church: for instance, should women be accorded status in the Church because of their sex? And the more basic issue questions the right, or the extent of the right, of positive law to assign incapacities (i.e., to remove, qualify, and/or diminish the comparable rights and duties of persons); or the right of positive law to enhance particular

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7 Ibid., p. 139, citing Savigny, System des Heutigen Römischen Rechts, ii, p. 443 f. Stoljar claims that Savigny's major point was that the claim "status simply describes a person's degree of legal capacity", is not "historically true", for status is historically based on a person's "position in the family". Sir Henry Sumner Maine, in Ancient Law: Its Connection with the Early History of Society, and its Relation to Modern Ideas, on p. 170, also sees status as rooted in a familial relationship, and implies that status should give way to contracts: "All the forms of Status taken notice of in the Law of Persons were derived from and to some extent are still coloured by, the powers and privileges anciently residing in the Family... we may say that the movement of progressive societies has hitherto been a movement from Status to Contract".

8 Stoljar, loc. cit., on p. 139, citing John Austin from Lectures on Jurisprudence, ii, p. 684, 687-688.

9 See David J. Morrison, The Juridic Status of Women in Canonical Law and in United States Law, p. 3.

advantages or entitlements for certain groups solely because of sex.

There would appear to be diverse usages of the word "status" in the Codex Iuris Canonici. These range from the chief classifications in the public order (baptized/unbaptized in canon 87; clergy/laity in canon 107), to the classifications in the private order (husband/wife in canon 1112; superiors/subjects in canon 501). To these may be added other classifications such as cleric/laity/religious (canon 107); bishops/priests/ministers (canon 108); clerical-religious/laical-religious (canon 488, 4<sup>o</sup>); laymen/lay women (canon 742). The individual woman will find a place in many of these interlocking classifications and exclusion in others. The exclusion is mainly derived from canon 968 by which sacred ordination can be validly received only by a baptized male; and thus differentiation because of sex is evident in several of the classifications. From this it would appear that in the Code the sex of women is a "status" determinant.

#### 1. Women: De Personis.

In law a woman is fundamentally a legal person. The term "person" as subject of rights or of duties or as object of the law's concern, is usually an individual human being; but law recognizes that certain groups of people or of property can be treated as subjects and/or objects of law and

thus be persons in an artificial sense. In this study, person as an individual human being will be the only consideration. Commentators on the Code simply state that "a person in a juridical sense means a subject of rights; correlatively a person will also be a subject of duties"<sup>10</sup>. Thus in canon law, a person is a subject capable of enjoying subjective rights and duties which flow from objective law and the subjective rights of others. It is clear that the term "person" as used in canon law is not taken in its common or philosophical sense of a human individual who is aware of himself or herself and acts accordingly, nor in the scholastic sense of the individual substance of a rational nature<sup>11</sup>. Nevertheless, the lawmakers' basic concept of the human individual may also exert a real influence on the subsequent treatment of

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<sup>10</sup> T.L. Bouscaren, et. al., Canon Law, a Text and Commentary, p. 77.

<sup>11</sup> See Daughters of St. Paul, eds., The Catechism of Modern Man, where "person" is described on p. 71: "Every human being is a person, that is, his nature is endowed with intelligence and free will. Indeed, precisely because he is a person he has rights and obligations flowing directly and simultaneously from his very nature<sup>1</sup>. And as these rights and obligations are universal and inviolable, so they cannot in any way be surrendered." The footnote (1) refers to the radio message of Pius XII, Christmas Eve, 1942, A.A.S., 35(1943), p. 9-24.

legal persons<sup>12</sup>.

In the Code, canon 87 deals directly with the "person"<sup>13</sup>. This important canon deals with the necessity of baptism for a person to become a subject of the Church of Christ with all the rights and duties of a Christian. The rights and duties of a Christian are not necessarily coterminous with the natural rights and duties of an individual, but neither should they be contradictory. There are authors who feel that the law of the Church should content itself with legislating for the "Christian", and that the natural law itself should be

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12 For instance, if the sexes are conceived in terms of a common rational nature, there would tend to be but one legal status, one juridic personality (with differentiations limited to functional and generative differences); if the sexes are conceived as "complementary" or in radical polarity, the tendency would be towards a separate status for each sex. The polarity concept of the "complementary" sexes is the rationale given by David J. Morrison, op. cit., as justification for a special status for women on p. 8: "The sexes are in fact complementary. One is defined in relation to the other according to the physical characteristics differentiating men and women by which nature has provided for the reproduction of the human species. This fact is a key to the general problem of the position of women on all levels of the social structure."

13 c. 87: "Baptismate homo constituitur in Ecclesia Christi persona cum omnibus christianorum iuribus et officiis, nisi, ad iura quod attinet, obstat obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura."

transcended<sup>14</sup>. In this view, even if women are considered as subordinate by the order of creation<sup>15</sup>, as "persons-redeemed", they should be accorded equivalence and mutuality with men.

What stance is taken towards women in general in the Codex? To begin with, there is no canon which states that sex per se is a juridic factor, subject to norms that would render a woman either naturally or juridically "incapable" of functioning fully as a person within the Church. However, in the preliminary canons 87 to 107 on the general laws concerning persons, woman's sex does seem to be treated as a juridic

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14 Raoul Naz, in Traité de Droit Canonique, p. 10, sees the recipient of rights in canon law as the "person-redeemed", and says: "Si le fondement prochain du droit est la dignité de la personne humaine, Dieu en est le fondement suprême... Parce que le Christ est mort pour tous les hommes, parce que tout homme est appelé à devenir enfant de Dieu, toute personne humaine est revêtue d'une dignité immense, et les droits ou moyens que requiert cette dignité pour aboutir à son épanouissement total, sont bien au-dessus de toutes les valeurs terrestres."

15 Today, the active-male passive-female theory (on which the subordination of women may have been based) has been refuted by such writers as Dr. Joseph D. Trainer, Physiological Foundations for Marriage Counseling. On p. 93, he stresses the idea that even in the region of maximal biologic differentiation, the male and female are more alike than different; and that each parent provides an equally activating and passive factor in generation. Also in the study by John Money and Anke Ehrhardt, Man & Woman, Boy & Girl, it is remarked on p. 270: "Parents are caretakers without authority or power to make decisions as to how their own full complement of forty-six chromosomes will be halved, so that the sperm conjoins only twenty-three with the twenty-three of the egg." The myth of the sperm as "seed" is also refuted.

fact of differentiation<sup>16</sup>. It is without sex discrimination that canon 88 accords majority status to both men and women at the age of 21. The use of reason is assigned to children at the age of 7. For puberty, a boy is regarded as having reached the age of puberty when he completes his fourteenth year; a girl when she completes her twelfth. As puberty means that development of the sexual organs in man or woman<sup>17</sup>, which normally constitutes capacity for procreation, it might be assumed that this puberty norm of canon 88 will relate to marriage. However, this is not the case, for canon 1067 states that a boy under sixteen years of age and a girl under fourteen cannot validly contract marriage. It would seem the only times that the norm for a girl's puberty is applied, are in canon 2230 in regard to penalties; and canon 1223, 2<sup>o</sup>, in regard to funeral services and sepulture. According to T. Lincoln Bouscaren, notwithstanding the terms of canon 88 fixing the

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16 See Bouscaren, op. cit., p. 77, where "sex" is actually listed among the qualities which have juridical consequences.

17 Today, the need for age discrimination in puberty should be questioned, especially in the light of pubertal research. For instance, see Money and Ehrhardt, op. cit., on p. 203, 204, who state that from their own research and normative statistics from other studies, the age of puberty has been becoming progressively lower. While the normal limits for girls are between 11 and 15 years; for boys, between 10 and 14; the average puberty norm for girls is now 13; for boys, 12. The authors also state that "the onset and progress of puberty" can be given only approximately.

age of puberty for females at 12, "It is commonly and rightly held that juridical puberty for them is the same as for males, that is 14 years complete"<sup>18</sup>. So we are left with only canon 1223 which allows a girl at her legal puberty, to choose her place of funeral services and sepulture.

Other norms throughout the Code which refer specifically to women in general, are canons 133 and 2176 which warn clerics under threat of punishment, to beware of having in their houses or associating with women who may give reason for suspicion; and canon 1262 which states that it is desired that the women be separated in church from the men, and that women should assist in modest dress and with heads covered especially when receiving communion.

On the whole, it appears that the status of women in general is not fully treated within canonical legislation, with the exception of the distinctions in age noted in canon 88. However, to ascertain whether women who have attained their majority, and who have not married or entered the religious life, have the same status as men in the same circumstances, it is necessary to examine the canons that relate to the laity and to see if there are differences for lay men and women.

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<sup>18</sup> Bouscaren, op. cit., p. 81.

It is by a juxtaposition of canons 107 and 968 that women can only have laity status in the Church<sup>19</sup>, and while canon 107 also provides that both clerics and laymen may be religious, the religious state is divided into cleric-religious and lay-religious by canon 488, 4<sup>o</sup>. Thus women, excluded by canon 968 from the clerical state, retain aspects of the lay state even in the religious life.

In the Code, the laity have the right to the spiritual ministrations of the clergy (canon 682), such as the sacraments if they are worthy (canon 731) and the sacramentals (canon 1149). They have the right to join such associations as are recognized by the Church although women may be enrolled in confraternities "only to gain the indulgences and spiritual favors" (canon 709), and are thus denied full membership in sodalities and confraternities which have for their purpose "the furtherance of public worship" (canon 707).

The laity have the right to rescripts, privileges, dispensations, and judicial procedures within the prescriptions of the law (canons 36, 63, 81, 1569). They may function within the Church as notaries, proxies, advocates, experts, and witnesses (canons 373, 1657, 1792, 1974); they may help to administer Church goods by serving on administrative

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19 c. 107: "Ex divina institutione sunt in Ecclesia clerici a laicis distincti... utrique autem possunt esse religiosi", and c. 968: "Sacram ordinationem valide recipit solus vir baptizatus..."

councils under the presidency of the ecclesiastical administrator (canon 1183); and they may be hired or fired for various church-related services (canon 1185). The devout laity may assist with religious training and with preaching (canons 1333, 1327). Some of these rights and functions, however, are designated only for "laymen" to the exclusion of "women". Thus, some commentators limit the functions of notaries, proxies, advocates, administrators, to the "laymen"<sup>20</sup>, and preaching is shared only with men by canon 1327<sup>21</sup>. As regards helping the pastor with catechetical instruction, canon 1333 speaks of "devout lay persons", especially those belonging to the Confraternity of Christian Doctrine, in which women do not have full membership rights by canon 709. And although in theory, the Church has maintained a woman's spiritual equality with a man's, and canon 2003 allows any of the faithful to petition that a cause for beatification be taken up, even here the women (mulieres) must act through a proxy (canon 2004).

It would seem that in regard to the status of the lay woman in the Church there is a differential in many of the canons between men and women. The differential laity status

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20 For example, see S. Woywod and C. Smith, A Practical Commentary on the Code of Canon Law, for the translation of c. 373, c. 1657, c. 1792, etc.

21 c. 1327: "(2)...debent alios quoque viros idoneos in auxilium assumere..."

of women is further delineated as being subordinate<sup>22</sup> in such canons as 742 (where the "order" of preference is set up regarding the minister of private baptism and in general the preference is "a man to a woman"); and as inferior in such canons as 813, which sets up a subordination-principle by stating that the "server at Mass should not be a woman unless no male server can be had", but goes beyond this by stating that the woman must stay "at a distance to answer the prayers", and may not "in any way approach the altar". This procedural difference for a male and female server is not only related to the "order" of male preference over the female but also implies the "inferiority" of women.

If it was difficult to ascertain the status of women in general in the Code, there is no such difficulty in determining the status of the wife; indeed the large number of canons dealing with the wife and marriage might imply that "wife" and "woman" are synonyms. In the general laws concerning persons, the canons concerning the domicile of the wife and the rite of the wife are illustrative of the subordination of the wife to the husband.

Canons 92 to 95 cover the norms of domicile and quasi-domicile. Ordinarily the voluntary choice of a place of

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22 The term "subordination" is used in the sense of lower rank; the term "inferiority", in the sense of less merit or value within the class itself.

residence is the criterion for domicile (canon 92); but a necessary or legal domicile is imposed on wives, insane persons, and minors by canon 93. A legitimately separated wife can acquire a domicile of her own and a wife not legitimately separated from her husband can acquire a quasi-domicile (canon 93). For a wife, perhaps the main applications of the domicile norms relate to the licitness of assistance at marriages (canon 1097); the husband's domicile as regulatory in canon 1230 for a dead wife (for canon 1229 states that a wife shares the burial place of her last husband); and canon 1964 on the competency of judges in matrimonial trials.

The subordination of the wife may also be gleaned from canon 98, which deals with the rite of a wife. In general, a person belongs to the rite according to whose ceremonies he or she was baptized; and in theory all the rites are indiscriminately upheld by Church law. It would seem to follow that in a marriage between persons of mixed rites, the option to change would be open to the husband as well as to the wife, should unity of rite be deemed important to the marriage. The option, however, is restricted to the female. Section 4 of canon 98 states that the wife who belongs to a rite different from her husband's may, at the time of marriage or any time during the marriage, join the rite of her husband; and when the marriage is dissolved, she is free to return to her own rite unless particular laws rule otherwise. As no rationale

is given for restricting the option to change rite to the woman, it is possible to conclude that sex is treated as a juridic fact in this case. Again, as it is the husband who is expected to retain his rite, it would seem that it is the wife who is treated as the subordinate spouse.

In the marriage relationship, the male (regardless of merit or qualifications) is assigned the headship role; this may be deduced from such canons as 1112 which states that in general the wife shares in the state of her husband. While "equality of rights and duties" are mentioned in canon 1111 for "actions proper to conjugal life", these actions do not embrace the whole marital relationship but are interpreted only in reference to sexual intercourse<sup>22</sup>. In view of the natural differences resulting from coition, particularly pregnancy and lactation for the female, this is perhaps the one area where sex differentiation and not equivalence, should be respected.

By canon 1113, the parents are bound by a most serious obligation to provide to the best of their ability for the religious and moral as well as the physical and secular education of their children and to care for their temporal welfare. While this canon (and others which delineate parental duties such as canon 770 in regard to the parental obligation

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22 See Woywod, op. cit., I, p. 798.

to have the children baptized, and canon 1372 concerning Catholic education), places the responsibility for such duties on the "parents", still "it is clear that the chief responsibility of decision rests with the husband-father"<sup>23</sup>. In this view, the wife is seen as having a surrogate and subsequent power of parental authority.

Broadly speaking, canons 1016 to 1110 cover topics on the form and celebration of marriage. There are several canons in this section which indicate the subordinate and inferior position of women. Canon 1020 directs the pastor to question both the man and the woman carefully and separately as to whether they are under any impediment, whether they freely consent to the marriage (especially the woman); and whether they are sufficiently instructed in Christian doctrine. The insertion, "praesertim mulier", while stressing the importance of the woman's free consent, also generalizes the weakness and inferiority of some women at the expense of all women. Canon 1053 speaks of a marriage ratum non consummatum, and canon 1068 speaks of the impediment of impotency. The terms "consummation" and "impotency" are not defined in the canons,

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23 Morrison, op. cit., p. 40.

but commentators<sup>24</sup> tend to define these terms from the male performance in coition, often without making a clear distinction between the unitive act of copulation and the act of generation, an ambiguity which works to the disadvantage of women. As canon 1118 states that the valid marriage of Christians, consummated by the conjugal act, cannot be dissolved by any human authority for any reason, a basic question arises whether "the conjugal act" is to be defined in terms of its unitive function or in terms of its generative function, and whether the essential mutual contribution of the male and female should not be included in both functions.

The canons reviewed, dealing with the wife and mother, would seem to indicate the subordinate and inferior status of women in the Codex Iuris Canonici.

The widow, in the Code, has the right but not the encouragement to marry (canon 1142). Her legal domicile would become a voluntary one, and in accord with canon 98, 4<sup>o</sup>, she

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24 Bouscaren, op. cit., defines the human act of generation on p. 531 as "the penetration of the vagina by the male organ and the emission of true semen within it". The author is careful to speak of the sperm and the ovum as the "two germ cells", but other authors still speak of the sperm as the "seed". For instance, see Lawrence G. Wrenn, Annulments, who speaks on p. 7 of the Rota requirement "that the man be capable of ejaculating into the vagina what they call 'true semen', that is to say, seed produced in the testicles". Also, Edward Hudson, et. al., in Handbook for Marriage Nullity Cases, claims on p. 42, that "The vagina is the receptacle of the male seed".

may assume her own rite. However, her status retains certain aspects of the marital state. By canon 1456 she would continue to exercise the right of patronage as the husband's heir; and by canon 1224 she has the right to choose the church or cemetery for the funeral of the children. While the last canon cited gives the right to the parentes, an interpretation following the hierarchical principle of dominative power in the parents, states that "for the impuberes the father, or (if he is dead or does not act) the mother... may choose the church for the funeral and the burial-place"<sup>25</sup>.

In a commentary to canon 1101, in regard to the nuptial blessing, it is stated:

If the woman is a widow and has received the nuptial blessing in a former marriage, she cannot again receive the nuptial blessing. If the man is a widower but the woman was not married before, or, if married, did not receive the nuptial blessing at her former marriage, the couple can receive the blessing.<sup>26</sup>

Finally, in canon 1229, the wife shares the burial place of her husband; or, if she had been married several times, of her last husband. Thus, a widow has ties with the deceased husband, but a widower is not so bound.

In these canons relating to the widow, it would seem that there is a restoration of the status of the lay woman,

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<sup>25</sup> Woywod, op. cit., II, p. 41.

<sup>26</sup> Ibid., I, p. 787.

but in some areas her status is still influenced by the deceased husband. It is to be noted that there are no comparable norms addressed to the widower, and in this sense the norms are discriminatory. The canons assume the subordination of women. The status of the widow in the Codex is seen as subordinate and discriminatory.

It has already been remarked that women retain something of their lay status even as religious by canon 488, 4<sup>o</sup>. Canon 490 seems to express an awareness of language difficulties when speaking of mutual rights and responsibilities of religious men and women, though the option is made for the normative male: for the laws when expressed in the masculine gender, religiosus, religiosi, apply in the same manner to religious women, unless the context or the nature of the law prove the contrary. It is however, a positive norm of equivalence.

Despite canon 490, many canons evidence differential treatment in the norms for men and those for women. Canon 501 points out that the power enjoyed by superiors and chapters is domestic; that is the power enjoyed by the head of the family over the household. It would seem, however, that the head has a male image in such canons as 506, 2<sup>o</sup>, when the election of major superiors is taking place in monasteries of nuns with solemn vows, the bishop or his delegate must preside and two priests act as tellers; and in all religious congregations of women, the local ordinary or his delegate presides at the

election of the superior general. Canons 510 to 513, require in reports of congregations of women sent to the Holy See (some of these reports are no longer mandatory), the signature of the ordinary; and the visitation of the ordinary is directed specifically to nuns and women religious concerning enclosure and finances. There are many canons dealing with the dowry of religious women (canons 533, 1<sup>o</sup>; 535, 2<sup>o</sup>; 547-551). There are only two norms covering the confessions of men religious (canons 518 and 519), but canons 520 to 529 covering the confessions of religious women were certainly more restrictive<sup>27</sup>.

There are distinct differences in the canons concerning the enclosure of men and women religious, canons 597 to 610. The enclosure for women is subject to much greater control. As an example, for men subject to enclosure, "the admission of women of any age" is forbidden; for women, "no person of whatever sex, age, family, or condition of life" may be admitted<sup>28</sup>. The instructions for religious men who are sent collecting alms is that they should lodge with some institution of men, with clergy or laymen. For women,

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27 Such inequalities regarding confessions of religious have been largely removed by such decrees of the Sacred Congregation of Religious as Ad Instituenda Experimenta, June 4, 1970.

28 c. 599, 2<sup>o</sup>; and c. 600.

...the superioress should always send two sisters of ripened age and tried virtue; they should lodge in a sisters' convent, or, if that cannot be done, with some women of excellent character; they must not be out of the house during the night or after sunset.<sup>29</sup>

Even for burial, there are differences in ceremonies for religious women not enacted for religious men (canon 1230).

Many other instances could be given to illustrate the differences in the norms that apply to religious men and those that apply to religious women. Over the past decade, great advances have been made towards establishing a greater equality for religious men and women; but in the Code there is more detail, more protection, and perhaps more paternalism directed towards women religious. On the whole, it may be said that women religious in the Codex have a subordinate, protected status.

In summary, it would seem that a consideration of the canons affecting lay women, wives, widows and religious women, reveals that the sex of women has been treated as a juridic fact; and that the subordination of women seems to be an assumption of law. In all cases, women as members of the laity, wives, widows, and religious, were depicted as having subordinate status.

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<sup>29</sup> Woywod, op. cit., I, p. 307; citing decree of S.C. Rel., Oct. 1, 1909, A.A.S., II, p. 729; in reference to c. 623.

2. Women: De Rebus.

In considering women in what may be termed the public life of the Church, attention will be given to women in relation to the sacraments, to the magisterium, and to processes and penalties.

In regard to the sacraments, a woman can be the ordinary minister of matrimony though this is not covered by any canon. She can be the extraordinary minister of baptism in accord with canon 742, though a "man" is to be preferred to a "woman", unless decency demand that a woman be preferred. A woman can be sponsor or witness of baptism, confirmation, and matrimony (canons 764, 793, 1094). A woman has the juridic capacity to receive all the sacraments, except orders, in accord with the norms. In regard to divine office, taken in the broad sense, canon 2256 states that divine office ordained for divine cult can be performed by clerics only. Thus women, as members of the laity, are excluded from the public cult of the Church in a direct official capacity though they do share in an indirect, unofficial manner. By such canons as 813 (the server at Mass), and canon 1262 concerning the separation of men and women in church (the men with uncovered heads and the women in modest dress and with heads covered), women are not treated on a par with men as equivalent members of the laity in regard to the sacraments.

As the issue of the "ordination" of women is receiving considerable attention today<sup>30</sup>, the main canons that affect the topic will be reviewed. The purpose here is not to enter the ordination debate, but merely to expose the canonical base and perhaps raise a few questions.

Canon 968<sup>31</sup> states that sacred ordination can be validly received only by a baptized man. From the structure of the sentence, "Sacram ordinationem valide recipit solus vir baptizatus", it is not clear whether it is the radical nature of the sacrament itself that demands masculinity, or whether it is the radical nature of masculinity that makes it apt for the sacrament. Few commentators delve deeper than the

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30 As one example, see Pope Paul VI, "Women's Ordination: Letters Exchanged by Pope and Anglican Leader", in Origins, 6(1976-1977), p. 129-132.

31 c. 968, 1<sup>o</sup>: "Sacram ordinationem valide recipit solus vir baptizatus; licite autem, qui ad normam sacrorum canonum debitis qualitatibus, iudicio proprii Ordinarii, praeditus sit, neque ulla detineatur irregularitate aliove impedimento."

"tradition-principle" for a rationale<sup>32</sup>. Today, the various traditional rationales are once again under examination<sup>33</sup>, an indication of the importance of the issue to the whole Church.

Besides the theories presented as rationale for male-only ordination, the question of the source of law is perhaps even more important. The issue is brought into focus with an examination of canons 948<sup>34</sup> and 968. As already noted, canon 948 states that the sacrament of holy orders by Christ's institution distinguishes the clergy from the laity in the Church, for the government of the faithful and the ministry of

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32 See Woywod, op. cit., commenting on c. 968, says on p. 578: "From Apostolic times the tradition of the Church has excluded women from becoming ordained ministers of the Church. The same practice obtained also in the Old Testament priesthood, which is the type of the Christian priesthood... St. Paul's teaching in 1 Cor., xiv, 34, and 1 Tim., ii, 11, is absolutely opposed to the ministry of women in the Church. Several of the early Fathers of the Church (e.g., St. Irenaeus, St. Epiphanius, St. Ambrose, St. Augustine) call it an heretical error to admit women to the office and dignity of the priesthood." There are some authors, however, who attest another tradition, and consider the exclusion of women from ordination as an ecclesiastical law. See Raoul Naz, "Des Sacrements", Traité de Droit Canonique, III, p. 230: "Le can. 968, sec. 1, exclut, sous peine d'invalidité, les femmes des ordres même non sacramentels auxquels l'Eglise pourrait les admettre. S. Paul parle des veuves et d'une diaconesse qui occupaient comme une place dans la hiérarchie ecclésiastique. Ces fonctions devinrent l'objet d'un rite d'ordination. Celui des diaconesses était assez semblable à celui des diacres et comportait même généralement en Orient l'imposition des mains..."

33 See, for instance, the Biblical Commission Report, "Can Women be Priests?", in Origins, 6(1976-1977), p. 92-96.

34 c. 948: "Ordo ex Christi institutione clericos a laicis in Ecclesia distinguit ad fidelium regimen et cultus divini ministerium."

divine worship. Canon 968 states that sacred ordination can be validly received only by a baptized man. The question is, whether the canons state that the source of the exclusion of women is of divine law? Certainly, canon 948 clearly asserts that holy orders is of divine law. Canon 948 is reaffirmed in canon 107 which states that the distinction between the clergy and the laity is by divine ordinance. But in canon 968, where the qualifications for holy orders are set out, there is no assertion that these qualifications are of either divine or of ecclesiastical law. It may be assumed, however, that the setting up of qualifications is in the realm of ecclesiastical law (the realm of the reception and discipline of the sacraments).

Assuming that the prohibition against women is of divine origin, it follows that the Church possesses the power only to interpret such a law and to enjoin its observance as of obligation<sup>35</sup>. Also, such a divine law would apply to all peoples, all Christian Churches, and "even to all infidels"<sup>36</sup>. Assuming that the prohibition is not of divine, but of ecclesiastical origin, the law then would apply only to members

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35 To declare the prohibition as of divine origin, there would be some difficulty with early ecumenical council legislation and with traditions that were once a part of the Eastern Church. See, for instance, H.J. Shroeder, O.P., ed., Disciplinary Decrees of the General Councils, p. 107-108, quoting canon 15 of the Council of Chalcedon (440-461 A.D.): "A woman is not to be ordained deaconess before she is forty years of age, and then only after a careful examination..."

36 Fernando Della Rocca, Manual of Canon Law, p. 9.

of the Church and "dispensation is possible"<sup>37</sup>.

In concluding this examination of canons 948 and 968, it is clear that until the Church makes a declaration on the matter, it is at least an ecclesiastical law that only a baptized man can validly receive the sacrament of orders and that women are excluded.

Besides the question of the ordination of women, there are other issues connected with the powers of order and jurisdiction which have meaning for women.

The power of order "is the power to sanctify the faithful by sacred rites", and the power of jurisdiction "is the power to govern the faithful for the attainment of the supernatural end for which the Church is established"<sup>38</sup>. Canon 948 states that orders distinguish the clergy from the laity for the government of the faithful and the ministry of divine worship; while canon 196 asserts that the Church possesses by divine institution, the power of jurisdiction or government. Hence it is evident that an intimate relationship exists between orders and jurisdiction. Both are of divine institution for a supernatural end. Jurisdiction presupposes order (canon 118), and moderates its exercise (canon 879). However, the Code also brings out real

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<sup>37</sup> Ibid., p. 210.

<sup>38</sup> Bouscaren, op. cit., p. 98.

differences. Their source or origin is different, for order is conferred by the rite of ordination (canon 109) while jurisdiction is conferred by canonical mission (canon 109) except in the case of the supreme pontiff. The supreme pontiff obtains the primacy of jurisdiction by divine right (canon 219). Again, their particular end is different: order is to sanctify the individual; jurisdiction, to govern the faithful (c. 948).

By canon 118<sup>39</sup>, only clerics can obtain the power of orders, ecclesiastical jurisdiction, benefices and pensions. By canon 968, only men can receive ordination and be clerics. Women, therefore, cannot obtain orders which give the capacity to transmit to others the means of salvation which the Church dispenses. Women cannot receive jurisdiction, the power of ruling the faithful to attain the mission of the Church. Women are excluded from occupying any ecclesiastical office or receiving benefices or pensions related to offices. The rationale for woman's incapacity is different: orders can be received only by men, so the incapacity for orders is the female sex; jurisdiction is entrusted only to clerics, so this incapacity is woman's membership in the laity.

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39 c. 118: "Soli clerici possunt potestatem sive ordinis sive iurisdictionis ecclesiasticae et beneficia ac pensiones ecclesiasticas obtinere."

The concept of "canonical mission" in the Code is closely connected with the concept of jurisdiction, though they are distinct. By canon 109 (with the one exception of the supreme pontiff), all other degrees of jurisdiction are received by canonical mission. However, by canon 118, jurisdiction is restricted to clerics, so it would seem to follow that the laity can not be the recipients of canonical missions. Women, as members of the laity, are thus excluded from canonical missions. The apostolic works of women must then be seen as supportive or operational only in the domestic and private life of the Church.

The official teaching office of the Church, known as the magisterium, pertains to the hierarchy by reason of the power of orders and by jurisdiction (cf. canon 1323). Thus women are excluded from the official teaching office because the laity are excluded. But in canon 1327, which begins to elaborate the techniques of teaching, the bishops are told that they must employ (besides the pastors), other qualified men (viros), to help preach the faith. Even as a member of the laity, women's supportive help in teaching the faith is curtailed.

The description of woman's status in the canonical law of processes and penalties requires little comment. Women, like men, enjoy processual capacity; and as lay persons, women are excluded from judicial processes that require jurisdiction

(canon 118). Canon 1574 states that only priests may be appointed as judges; but the task jobs of couriers or messengers and constables, are to be the work of lay persons (canons 1591 and 1592), unless "prudence" demands in some special case that clerics be appointed. One area in which men and women are treated differently is in the matter of bodily inspection (canons 1977 to 1982). Besides the concern expressed in canon 1979 that the inspection of the woman must be performed "according to the rules of Christian modesty" (without a similar concern for men), it would appear that the male physician is to be preferred in the inspection and interrogation of women, no matter how expert and professional are the "midwives and matrons".

Under the canonical penal laws, canon 2218 includes sex as one of the factors to be taken into account in the application of penalties. The implementation of this may be seen in such canons as 2353 where men are penalized for abduction; though in canon 2350, 1<sup>o</sup>, it is specifically stated that "the mother not excepted" automatically incurs excommunication for procuring an abortion. Again, while there is a certain implication in such canons that certain crimes are committed only by men, there is also a tendency to assign to women a protected status in regard to penalties.

On the whole, women have no place in the public social order of the Church; though they are recipients of six

sacraments with the usual rights and privileges extended to all laity. They are excluded from the sacrament of orders because they are female; and from jurisdiction, because they are members of the laity: they are, however, more fully excluded than laymen, because they lack the "capacity" for orders.

### 3. The Status of Women in the Codex Iuris Canonici.

Many more examples of a difference in treatment between women and men could be found in the Codex Iuris Canonici. But perhaps enough has been presented to draw some conclusions concerning the status of women in the Code. It must first be remarked that the difference in treatment for women seemed to arise from various sources or outlooks. Some canons are culturally oriented and depict the social attitudes of the past, such as canon 1262 concerning the separation of men and women in the church. Other canons are protective, such as the norms concerning the pre-marital investigations with the questioning of both the man and the woman, but "especially the woman". A third group, based on the prevalent theological stance of the day, produced such canons as 968 which limits orders, and the consequent jurisdiction and canonical mission to men.

These three factors of cultural dependency, protective control, and exclusion from the official public sector of the Church may even be based on such factors as the lawmakers' concept of the sexes: men and women as complementary and in

polarity of role and function.

In brief, the status of women in the Codex Iuris Canonici is that of lay persons. At the level of laity, moreover, women are subordinate to men. Some canons depict women not only as subordinate, but even as inferior with respect to men.

PART TWO

SECOND VATICAN COUNCIL: CHANGING PERSPECTIVES

## CHAPTER III

### CONCILIAR TEACHING ON PERSONS IN GENERAL

The Second Vatican Council (opened by Pope John XXIII on October 11, 1962, and closed after four sessions on December 8, 1965, by Pope Paul VI), produced sixteen documents and a ferment in Catholic life that may be called a revolution<sup>1</sup>. This revolution (which could be more fittingly described as an "evolution"), is discernible in every aspect of the Church, but one component has been profoundly affected: the individual person. The doctrine of the centrality of the human person is basic in many of the Conciliar teachings and is clearly manifested in the presentation of the Church as the People of God, the emphasis given to the dignity of the human person, and the importance placed on the person in the new theology of the laity. All three aspects are based on the concept of Church as Mystery.

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<sup>1</sup> See Philip Hughes, A Short History of the Catholic Church, where he speaks of the achievements of Second Vatican Council on p. 278: "Amidst so great a ferment as this revolution, in which we now live, it is wise for the historian, in conclusion, to note only the more certain achievements. It is evident, for instance, that the Council, by the principle of episcopal collegiality, developed in the De Ecclesia, has endeavoured to redress that over-centralisation of authority in the hands of the Roman Curia which has characterised the last century... It is evident, too, that new avenues for fruitful work have been opened up for the laity..."

In a letter to the International Congress on the Theology of the Second Vatican Council, Pope Paul VI reminded the theologians on September 21, 1966, that

... everything that is taught by the Second Vatican Council is harmoniously joined with the preceding ecclesiastical teaching, of which it is no more than the continuation, explanations, and growth.<sup>2</sup>

But he also said some time later, that the Council told us so much about the Church that "we are experiencing a certain sense of conceptual dizziness"<sup>3</sup>. Perhaps some of this conceptual dizziness may have been caused by the shift from the concept of Church as a hierarchically-structured "perfect society" (in which laity were subordinate to clergy, and women were subordinate to men), to a concept of the Church as the Mystery of the People of God. However, this conceptual shift concerning the nature of the Church, was not initiated at the Council. As early as 1943, Pope Pius XII, in the encyclical letter Mystici Corporis, fostered a renewed appreciation of the Church as the Mystical Body of Christ. This encyclical, as W.J. Egan writes, "revitalized the Pauline and patristic concept of the Church as a supernatural organism composed of all the baptized united to Christ the head of the Body and to each other"; in

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2 Pope Paul VI, The Catechism of Modern Man, p. 643.

3 Pope Paul VI, The Teachings of Pope Paul VI: 1970, p. 407.

which Body every Christian, lay and cleric alike, "has a dynamic function to fulfill as a participant in the total mission of the Church perceived as the spatio-temporal extension of Christ the mediator"<sup>4</sup>.

The widespread liturgical and lay movements of the era were also basic to the development of the concept of Church as the Mystical Body. The beginnings of the liturgical movement go back at least to 1905 and the publication of Sacra Tridentina Synodus of St. Pius X and carried forward by Mediator Dei of Pius XII in 1947. These documents stressed that a

... full, conscious, and active participation of all the faithful in the corporate worship of the visible Church is recognized as essential to the proper celebration of the liturgy and as a right and duty consequent upon baptism.<sup>5</sup>

It was also during the first half of the present century, that many lay organizations grew up and some of the older ones began to transform themselves into what came to be known as Catholic Action. In the words of Cardinal Joseph Cardijn (who devoted his life to furthering the apostolate of the lay person in the Church),

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<sup>4</sup> W.J. Egan, "Theology of the Laity", in New Catholic Encyclopedia, 8, p. 328.

<sup>5</sup> Ibid., citing Mediator Dei.

Each young worker, each working girl has a divine destiny and a divine mission, beginning not after death, but from today, in the conditions of their everyday life, where they are the first and immediate apostles of God in their environment and among their comrades.<sup>6</sup>

These notions progressed rapidly and a more comprehensive theology of the Church as the People of God was being elaborated for Second Vatican Council.

Change was also in the air in the secular society of the early twentieth century. The emergence of the individual was not limited to a movement of the laity in the Church, but was part of a world-wide phenomena<sup>7</sup>. New scientific, economic, and ideological factors were everywhere at work, and the responsible citizens, the men and women of science, the business leaders, the politicians were making their mark on "a seething world"<sup>8</sup>.

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<sup>6</sup> Joseph Cardijn, Laymen into Action, p. 17-18.

<sup>7</sup> Ibid., on p. 77-78, J. Cardijn writes: "In order to understand the life and movement of the demographic face of the world, we must take into account the development of the scientific, technical, economic, political and, above all, the ideological factors which are changing and shaping the world at every instant. Never before in its history has it known such lightning upheavals, such rapid, extensive, profound changes."

<sup>8</sup> Ibid., p. 77.

Women, too, were changing<sup>9</sup>. Besides taking an ever-more significant role at the personal, familial, professional, social and civic levels, women were also becoming concerned about their traditional subordination and their image of dependency, passivity, and inferiority. Feminist movements<sup>10</sup> began to have an impact on society at large<sup>11</sup>, and today there

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9 See Joseph Masson, S.I., "De Mulieris Loco et Officio in Mundo et in Ecclesia", in Periodica, 64(1975), where he describes some of these changes. On p. 64 he says, "Nostro enim tempore, insatisfactio mulierum quoad suum minorem statum in societate multum aucta est tum propter profundas sociales mutationes, tum etiam propter diffusionem educationis inter eas, tum propter creationem inter mulieres alicuius coetus selecti (élite), educatissimi et sui valde conscii."

10 See Maren Lockwood Carden, The New Feminist Movement, on p. xi, the author summarizes the two main trends in the feminist movements: "The two branches of the feminist movement have gone about their modernization task in somewhat different ways. The liberation-oriented women have turned to their own experiences for their data. These experiences were part of the abrasive crunch that resulted when tradition crashed headlong into a newly emerging societal structure... Suddenly, under the bland questionnaire responses that surveys of women--in no-matter-what role situation--had uniformly reported, there was revealed the hidden anguish, anger, and resentment that had been festering in the minds of so many women, darkly, hopelessly, for so long... The rights-oriented feminists have followed more traditional styles. They have called our attention to the sexist bias in our scientific paradigms that has had dysfunctional consequences not only for women but also for our society as a whole."

11 See Jan Griesinger, ed., Women in the Struggle for Liberation, where the extent of the woman's liberation movement is seen in terms of social, political, economic, cultural, juridic, and domestic changes which are effecting profound institutional repercussions as reported from South Africa, Tanzania, Guinea and the Cape Verde Islands, Kenya, Dahomey; from China, Japan, Vietnam, the Philippines; from Italy, Britain, Denmark; from Cuba, Peru, Brazil; from Iran, Israel, Lebanon, Palestine; from the United States and from Canada.

are sociologists who affirm that the movement has already shaken loose, and in many sectors demolished, many of the laws and structures that no longer fit the modern world<sup>12</sup>.

It is then, from an entirely new term of reference, that the laity, and women in particular, read and interpret the documents of the Second Vatican Council.

#### 1. The Church as the People of God.

In the sixteen conciliar documents, the Catholic Church, officially and theologically describes and understands itself as a Mystery. The term "mystery" has nothing of the occult or esoteric in its connotation, nor is it used strictly as something that has not been, or cannot be, explained. The term is used in the documents to indicate that the Church, "as a divine reality inserted into history, cannot be fully

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<sup>12</sup> Charles H. Anderson, Toward a New Sociology, claims on p. 77, that "sex and racial statuses, though commonly related to other factors that create inequality, may not in and of themselves be considered as hierarchical aspects of inequality. Males and females can no more intrinsically be arranged hierarchically in sociological terms than can blue-eyed and brown-eyed people"; and on p. 361, speaking of emerging structures and the large numbers of people working for change, he says: "Combined with a commitment to the understanding of man in society and an exposition of the mechanics of oppressive and unjust social institutions, there is in the new sociology a driving commitment to see also the elimination of oppression and injustice and the expansion of a creative humanism."

captured by human thought or language"<sup>13</sup>. As Pope Paul VI said in his opening talk at the second session on September 28, 1963, "The Church is a Mystery. It is a reality imbued with the hidden presence of God. It lies, therefore, within the very nature of the Church to be always open to new and greater exploration"<sup>14</sup>.

The Church is first and foremost a Mystery, the historical, public sign of God's invisible, redemptive presence to the world and to mankind: "The Church, or, in other words, the kingdom of Christ now present in mystery, grows visible in the world through the power of God"<sup>15</sup>. This is accomplished in and through Christ, and it is by "her relationship with Christ that the Church is a kind of sacrament of intimate union with God, and of the unity of all mankind"<sup>16</sup>. But sacraments, according to traditional Catholic doctrine, are both outward signs of faith and instruments of the grace they signify.

Every sign has two aspects: invisible and visible. The invisible aspect of the Church is always the presence of God; the visible aspect is the People of God:

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<sup>13</sup> W. Abbott, The Documents of Vatican II, p. 14, footnote n. 1.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., Lumen Gentium (subsequently referred to as L.G.), n. 3, p. 16.

<sup>16</sup> Ibid., L.G., n.1, p. 15.

It has pleased God, however, to make men holy and save them not merely as individuals without any mutual bonds, but by making them into a single people, a People which acknowledges him in truth and serves him in holiness.<sup>17</sup>

God is present in and through the People themselves, the new "People of God"<sup>18</sup>.

As the Church is a Mystery which cannot be exhaustively defined, Lumen Gentium begins by recalling the various symbols or biblical metaphors used throughout the ages to give some insight into the nature of the Church: a sheepfold, a land to be cultivated, the building of God, the spouse of Christ, our Mother<sup>19</sup>. Some of these symbols are evidently based on traditional attitudes towards the female nature seen as receptive, passive, auxiliary. It is of interest to note that as the doctrine of the People of God is developed, new symbols seem to evolve as the Church is referred to as "the priestly

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17 Ibid., L.G., n. 9, p. 25.

18 Ibid., p. 24; see footnote n. 27, giving the rationale for the term, People of God: "This title, solidly founded in scripture, met a profound desire of the Council to put greater emphasis on the human and communal side of the Church, rather than on the institutional and hierarchical aspects which have sometimes been overstressed in the past for polemical reasons."

19 Ibid., Cf. L.G., n. 6, p. 18-20. D. Winzen, in "Symbols of Church", in New Catholic Encyclopedia, 3, p. 724-725, says that the images of dwelling, garden, and women and their derivatives are the most widely used symbols of the Church. These symbols are apt to recall the Aristotelian concept of woman as "earth", which nurtures the male seed.

community"<sup>20</sup> and the family is referred to as "the domestic Church"<sup>21</sup>.

The doctrine of the Church as the People of God, puts great emphasis on the human and communal side of the Church, and this emphasis is brought out in the conciliar presentation of the marks of the Church (one, holy, universal, apostolic), and the two derivative marks of non-discrimination and perfectibility.

The Church shines forth in the world as "a People made one with the unity of the Father, the Son, and the Holy Spirit"<sup>22</sup>, and it is the Spirit who gives the People "a unity of fellowship and service"<sup>23</sup>. All the faithful, although scattered throughout the world, and even throughout the generations, are in communion with each other in the Holy Spirit<sup>24</sup>. Thus the Church established by Christ is indeed one and unique, but this oneness is characterized not by conformity and

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20 Abbott, op. cit., L.G., n. 11, p. 28.

21 Ibid., L.G., n. 11, p. 29.

22 Ibid., L.G., n. 4, p. 17.

23 Ibid.

24 Vaticanum II, L.G., n. 13, p. 115: "Ad novum Populum Dei cuncti vocantur homines. Quapropter hic populus, unus et unicus manens, ad universum mundum et per omnia saecula est dilatandus, ut propositum adimpleatur voluntatis Dei, qui naturam humanam in initio condidit unam; filiosque suos, qui erant dispersi, in unum tandem congregare statuit (cf. Io. II, 52)."

uniformity, but by diversity and unity<sup>25</sup>.

As the oneness of the Church is brought about by the action of the Holy Spirit working within each individual, so it is the Holy Spirit who is the Holy One, and who works to bring about the holiness of the People of God. The Holy Spirit was sent on the day of Pentecost to men and women alike, "in order that he might forever sanctify the Church, and thus all believers would have access to the Father, through Christ, in the one Spirit"<sup>26</sup>. This holiness of the Church is unceasingly manifested through those fruits of grace that the Spirit produces in each member of the faithful: "It is expressed in multiple ways by those individuals who, in their walk of life, strive for the perfection of charity, and thereby help others to grow"<sup>27</sup>. Holiness is no longer considered as the special prerogative of any sex, or any state of life, but it becomes "the very goal of the Church both in this life and in the next"<sup>28</sup>.

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25 See Ibid., Unitatis Redintegratio (subsequently referred to as U.R.), n. 16, p. 266: "Cum autem unitati Ecclesiae minime obstet, immo decorem eius augeat et ad missionem eius implendam non parum conferat quaedam morum consuetudinumque diversitas, uti supra memoratur..."

26 Abbott, op. cit., L.G., n. 4, p. 16-17.

27 Ibid., L.G., n. 39, p. 66.

28 Ibid., p. 65-66, footnote 181.

It is also by the Holy Spirit that the People of God are spread throughout the whole world and must exist in all ages, so that the Church as catholic and universal, may fulfill God's purpose: "For all the faithful scattered throughout the world are in communion with each other in the Holy Spirit"<sup>29</sup>. It is in the Holy Spirit and through the common sharing of a diversity of gifts and the common effort to attain fullness in unity, that "the whole, and each of the parts, receive increase"<sup>30</sup>, and the universality of the Church is attained.

The mark of apostolicity in the Church is also the work of the Holy Spirit. The concept of apostolicity is given at least two meanings in the documents: fidelity to the teachings and tradition of the apostles themselves; and the apostolic-succession concept that the sacramental and jurisdictional legitimacy of Catholic bishops is grounded in their "historical linkage with the apostles themselves"<sup>31</sup>. Both connotations are found in the conciliar documents, with a difference of emphasis in accord with the various topics. In Dei Verbum, the emphasis is on the fidelity of each man and woman to the teachings of the apostles. Now what was taught

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29 Ibid., L.G., n. 13, p. 31.

30 Ibid.

31 Richard P. McBrien, The Remaking of the Church, p. 33.

and handed on by the apostles includes everything which contributes to holiness of life and the increase in faith of the People of God, for this "tradition which comes from the apostles develops in the Church with the help of the Holy Spirit"<sup>32</sup>. In Christus Dominus, apostolicity is seen as succession, for the "order of bishops is the successor to the college of the apostles in teaching authority and pastoral rule; or, rather, in the episcopal order, the apostolic body continues without a break"<sup>33</sup>. And in Lumen Gentium, the two concepts of apostolicity (fidelity and succession), are linked when it states that the gospel which the apostles handed down is for all times the source of life for the Church and for "this reason the apostles took care to appoint successors in this hierarchically structured society"<sup>34</sup>.

From the consideration of the Church as one, holy, universal, and apostolic, it is seen that the role of the Holy Spirit as the animator of the People of God is stressed in the conciliar teaching. And this animation of the Spirit is operative without discrimination. For the chosen People of God is one: "one Lord, one Faith, one baptism" (Ep. 4:5).

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<sup>32</sup> Abbott, op. cit., Dei Verbum (subsequently referred to as D.V.), n. 8, p. 116.

<sup>33</sup> Ibid., Christus Dominus (subsequently referred to as C.D.), n. 4, p. 399.

<sup>34</sup> Ibid., L.G., n. 20, p. 39.

As members, "they share a common dignity from their rebirth in Christ; they possess in common one salvation, one hope, and one undivided charity"<sup>35</sup>. And all discriminations of race, status, and sex are resolved, for

... there is in Christ and in the Church no inequality on the basis of race or nationality, social condition or sex, because "there is neither Jew nor Greek; there is neither slave nor freeman; there is neither male nor female. For you are all one in Christ Jesus" (Gal. 3:28, Greek text; cf. Col. 3:11).<sup>36</sup>

Almost as a final note of warning, the Council Fathers, while continuing to speak out strongly against discrimination within the Church, also remind the People of God that the four qualities of unity, holiness, universality and apostolicity, are not yet within the full possession of the Church. As Christ was sent by the Father, "to bring good news to the poor" (Lk. 4:18), so the Church encompasses "all those who are afflicted with human weakness", and while "embracing sinners in her bosom, is at the same time holy and always in need of being purified"<sup>37</sup>. It is no wonder then, that the documents revert frequently to the continual need for growth and reform within the Church itself. For although the Holy Spirit has remained faithful to the Church, so that it has never ceased

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35 Ibid., L.G., n. 32, p. 58.

36 Ibid.

37 Ibid., L.G., n. 8, p. 24.

to be a sign of salvation, still the Church realizes, "that among her members, both clerical and lay, some have been unfaithful to the Spirit of God during the course of many centuries", and even today, the Church is aware "how great a distance lies between the message she offers and the human failings of those to whom the gospel is entrusted"<sup>38</sup>.

It would seem that the Council Fathers, by presenting the Church as the People of God (that is of a community of men and women), and not primarily in terms of structures and doctrines, have provided the teaching that could revolutionize religious thought and practice to the eventual elimination of the subordinate status of women. In this "revolution", a growing awareness of the personhood of women, will raise questions about the suitability of certain ecclesial symbols and language based on a concept of women seen solely in her functional relationship to the male. The vision of the Church as Mystery, will tend to see a transcendence not only of the male, but of the female as well. The Church as sacrament will demand that the visible reality (the People of God) give authentic expression of the inner reality (the Spirit of God in whom there is no discrimination). The marks of the Church will be a showing forth of the unity, the holiness, the universal love, and the apostolic faith of each man and woman

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<sup>38</sup> Ibid., G.S., n. 43, p. 245.

united fully in and through the Holy Spirit. Yet, while the marks or qualities will always continue in the Church because of the Holy Spirit, in another sense they are not yet realized. In this sense, the changing perspectives on women will continue to influence the on-going life and mission of the Church.

## 2. The Dignity of the Human Person.

Closely connected with the teaching of Church as the People of God, is the emphasis given to the centrality of the person in the conciliar documents. The teaching on the dignity of the human person could also "revolutionize" the position of women in the Church.

In perceiving the Church as Mystery, it was ascertained that the external manifestation of the inner presence of the Spirit is the community, the People of God. This brings to light a basic problem that has been with us through the ages: Is there a primacy of community, or a primacy of person, in the Church?

Perhaps such a question is possible only because of a faulty concept of both person and community, with "person" conceived as a solitary, self-fulfilling individual; and "community" as the restrictive bonding of individuals. It is, nonetheless, an important question. The western mentality is quick to assert that institutions are for persons, and not persons for the institutions. But it could be argued that

the Church is not simply an institution, but is first of all a community of believers, and that "this community of believers exists in radical dependence upon a divine revelation"<sup>39</sup>. Could it not be asked whether in the Church, as we know it, it is the revelation that is primary, and that believing persons are submitted to it? This is a significant question for women, who are assigned status because of sex, and the rationale for doing so is often simply the accord with God's plan.

In his study of the problem, Aloysius Schaldenbrand reminds us of the revelation, that man, "male and female", is made to the image of God, which has much to say about the ingredients of community, as well as the personal fulfillment of each man and woman<sup>40</sup>. James B. Ashbrook reaches the same conclusion when he points out that Genesis 2:20-25, has often been interpreted as referring only to marriage and the communal meaning has been ignored: that without a counterpart Adam

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<sup>39</sup> Aloysius Schaldenbrand, ed., Primacy of the Person in the Church, p. 43.

<sup>40</sup> Ibid.; A. Schaldenbrand attempts to resolve the problem on p. 43: "To be sure, it is easy to show that there really is no quarrel between the primacy of the person defended here and the authority of the Word. For this authority is eminently respectful of the person's dignity as absolute existence-value. Far from making a thing of the person, far from manipulating him or reducing him to the rank of mere means, the authority of the Word addresses the person at the highest point of personal power: this is, at the god-like point of freely refusing or freely receiving Another."

was only potentially human and not actually human<sup>41</sup>. While such authors assert that the communal experience defines the person, and that it is the non-manipulative community that liberates and fulfills the person, still such a non-manipulative community must remain the ideal. Practically speaking, the actual state of affairs, even within the Church, is not ideal if any members suffer "the unfreeing effects of inner compulsions, group pressures, and coercive leaders"<sup>42</sup>. The question still remains: is there a primacy of community, or a primacy of person, in the Church? But to this must be added the question: can the community itself define the person?

The Fathers of the Second Vatican Council did not evade the questions. The two documents which addressed themselves specifically to "man" and his/her relationship with community, were Gaudium et Spes, the Pastoral Constitution of the Church in the Modern World, and Dignitatis Humanae, the Declaration on Religious Freedom. In fact, chapter 1 in Gaudium et Spes is entitled, "The Dignity of the Human Person", and this is followed in chapter 2 by "The Community of Mankind".

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<sup>41</sup> James B. Ashbrook, Humanitas, says on p. 157: "While the truly other is needed for humanness, an inner division is its concomitant. Genesis 2 dramatizes the process... There is a going out from the self and a taking back into the self... It is not a matter of the separate sexes. It is humankind becoming genuinely human."

<sup>42</sup> Schaldenbrand, op. cit., p. 45.

First, the importance of having a true perspective on man is acknowledged in the documents, for according to "the almost unanimous opinion of believers and unbelievers alike, all things on earth should be related to man as their center and crown"<sup>43</sup>. Man at the center, however, might exalt himself as the absolute measure of all things, or he might be at the mercy of forces which can debase him "to the point of despair"<sup>44</sup>. It is necessary, then, to have a "just" understanding of man's centrality, and the reason for his/her unique position. For this, the teaching of Scripture is recalled; that "man", created in the image of God, is capable of knowing and loving the Creator, and was appointed by God as ruler of all earthly creatures to subdue them and use them to God's glory; and this mandate was issued to men and women, for "God did not create man as a solitary"<sup>45</sup> being.

In the introductory statement to Gaudium et Spes it is stated that one of the signs of the times is that "the human

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43 Abbott, op. cit., G.S., n. 12, p. 210.

44 Ibid., G.S., n. 12, p. 210.

45 Ibid., G.S., n. 12, p. 211. Also on p. 211, the interpersonal-communion interpretation of Gen. 1:27 is clearly stated: "For from the beginning, 'male and female he created them' (Gen. 1:27). Their companionship produces the primary form of interpersonal communion. For by his innermost nature man is a social being, and unless he relates himself to others he can neither live nor develop his potential."

race has passed from a rather static concept of reality to a more dynamic, evolutionary one"<sup>46</sup>, and the conviction grows that mankind should "consolidate its control over creation" and establish a social order which will affirm human dignity and help the dependent, such as women, laborers, the hungry, to develop the gifts of their personality<sup>47</sup>.

Thus, the questions posed to the Council Fathers have already been answered in part. They affirm a "dynamic-evolutionary" perspective on man; that men and women find self-actualization in community; and that while God makes possible their future, he also makes men and women responsible for that future. Besides these broad affirmations, the Council then goes into the main characteristics of the human person, especially those that pertain to human dignity: the unity of the human person, dignity of mind, primacy of conscience,

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<sup>46</sup> Ibid., G.S., n. 5, p. 204.

<sup>47</sup> Ibid., G.S., cf. n. 9, p. 207. See also, Bernard Lonergan, S.J., "The Transition from a Classicist World-View to Historical-Mindedness", in Law for Liberty. On p. 130, Lonergan explains the view which sees men and women not as unchanging abstractions, but as concrete "being" constantly developing and "becoming", which is called the "historicist" perspective as opposed to the "classicist" position of the unchanging, eternally true, concept of human nature. "On this view intentionality, meaning, is a constitutive component of human living; moreover, this component is not fixed, static, immutable, but shifting, developing, going astray, capable of redemption; on this view there is in the historicity, which results from human nature, an exigence for changing forms, structures, methods; and it is on this level and through this medium of changing meaning that divine revelation has entered the world and that the Church's witness is given to it."

liberty, interdependence, and man in the "new order" of creation.

To begin with, though made of body and soul, there is a unity of the human person, for "man is one"<sup>48</sup>. Thus the Greek dichotomy of soul-imprisoned-in-body is untenable, and men and women are not allowed to despise the bodily life, but are obliged to regard the whole body and soul as good<sup>49</sup>. But man must also remember that although made by God in holiness, he "set himself against God and sought to find fulfillment apart from God"<sup>50</sup>. The very dignity of man postulates that God be glorified "in his body" and he must "forbid it to serve the evil inclinations of his heart"<sup>51</sup>. The Council then goes even further than an insistence on the unity of the person, it points out man's unity (not identity with) nature.

Through his bodily composition he gathers to himself the elements of the material world. Thus they reach their crown through him, and through him raise their voice to free praise of the Creator.<sup>52</sup>

The dignity of the human mind is also affirmed. By employing the talents of mankind, great victories have been won, especially in our times, by the "probing of the material

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48 Abbott, op. cit., G.S., n. 14, p. 212.

49 Ibid., cf. G.S., n. 14, p. 212.

50 Ibid., G.S., n. 13, p. 211.

51 Ibid., G.S., n. 14, p. 212.

52 Ibid.

world and in subjecting it to himself"<sup>53</sup>. Truth, however, is not presented as a static conception because mankind "has always searched for more penetrating truths"<sup>54</sup>. To this search for truth, all men and women are called. They are called to go even beyond truth itself, for the "intellectual nature of the human person is perfected by wisdom", and our era needs wisdom even "more than bygone ages if the discoveries made by man are to be further humanized"<sup>55</sup>. And it would seem to follow, that to exclude any particular perception of truth, or any particular possession of wisdom, would be a disservice in the discernment of truth itself. And while dialogue in the search for truth, extended fully to men and women, will inevitably lead to contestation and even disagreement, still such is the worthwhile price for the sort of clarification and light needed to deal with questions, today grown enormously complex<sup>56</sup>.

The primacy of conscience is similarly affirmed as a mark of true dignity. It is but logical for Gaudium et Spes to move from a consideration of the dignity of the human mind in its search for truth and wisdom, to a consideration of the

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53 Ibid., G.S., n. 15, p. 213.

54 Ibid., G.S., n. 15, p. 213.

55 Ibid.

56 Cf. Schaldenbrand, op. cit., p. 45.

human mind making a practical judgment on the moral issues at hand.

In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals and from social relationships;

and hence, "the more that a correct conscience holds way, the more persons and groups turn aside from blind choice and strive to be guided by objective norms of morality"<sup>57</sup>. This sentence, while showing a relationship between the "correct" conscience and objective norms of morality, does not assert that conscience is seen primarily in terms of conforming to an objective moral order that exists "out there", or that sin would consist primarily in terms of acts that violate laws. Rather, the correct conscience is seen primarily in the subjective knowing and judging processes, without a neglect of the objective norms. As Charles Curran sees it,

The criterion of right conscience must be sought not primarily in the object out there, but in the subjective knowing and judging processes themselves, without however neglecting the objective pole of human experience.<sup>58</sup>

The declaration Dignitatis Humanae also speaks of these subjective and objective aspects of conscience. After stating

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57 Abbott, op. cit., G.S., n. 16, p. 214.

58 C. Curran, "How my Mind has Changed: 1960-1975", in Horizons, 2(1975), p. 198.

that all men are bound to seek the truth, especially in what concerns God and his Church, a solemn declaration of the primacy of conscience is made.

This sacred Synod likewise professes its belief that it is upon the human conscience that these obligations fall and exert their binding force. The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.<sup>59</sup>

Thus there seems to be a shift from a formation of conscience conceived mainly as information about existing laws; to one that confirms the responsibility of the person, and shows an awareness of that person's horizons, "through which the subject interprets and understands reality"<sup>60</sup>. The importance of subjectivity together with a renewed biblical understanding has given great importance "to the concept of conversion as the central moral message of the gospel, and the call for the individual Christian to constantly expand one's horizons in the light of the gospel"<sup>61</sup>.

The excellence of liberty as a concomitant for human dignity is affirmed by the Council, for only in freedom can man direct himself toward goodness.

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59 Abbott, op. cit., Dignitatis Humanae (subsequently referred to as D.H.), n. 1, p. 677.

60 Curran, op. cit., p. 199.

61 Ibid.

For its part, authentic freedom is an exceptional sign of the divine image within man. For God has willed that man be left "in the hand of his own counsel" so that he can seek his Creator spontaneously, and come freely to utter and blissful perfection through loyalty to him.<sup>62</sup>

Hence, human dignity demands that each man and woman act according to a knowing and free choice, a choice that is "personally motivated and prompted from within"<sup>63</sup>. Nor can men and women discharge their obligation to seek truth, "unless they enjoy immunity from external coercion as well as psychological freedom"<sup>64</sup>.

Liberty, moreover, is not exercised in isolation, but is directed towards interdependence and community. The interdependence of persons is affirmed by the Council, for man's "social nature makes it evident that the progress of the human person and the advance of society itself, hinge on each other"<sup>65</sup>. But the orientation of this interdependence is all important:

For the beginning, the subject and the goal of all social institutions is and must be the human person, which for its part and by its very nature stands completely in need of social life.<sup>66</sup>

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62 Abbott, op. cit., G.S., n. 17, p. 214.

63 Ibid.

64 Ibid., D.H., n. 2, p. 679.

65 Ibid., G.S., n. 25, p. 224.

66 Ibid.

Thus, even the Church, with its divine mandate, is eminently respectful of the person's dignity as absolute existence-value<sup>67</sup>.

But is not the whole notion of the dignity of the human person thus far presented in the conciliar documents, the same as the Hebraic notion of person (albeit the male person), in that the individual was seen as good and purposeful<sup>68</sup>? While the best of the Hebraic notion of man is indeed contained in the documents, the conciliar notion of the dignity of the human person sees it both in the male and in the female, in a new creation where all "the members ought to be moulded into Christ's image until he is formed in them (cf. Gal. 4:19)"<sup>69</sup>. To the natural human dignity is added the revelation of Christ and mankind's incorporation in Christ. Christ instituted the new covenant in his blood, "by calling together a People made up of Jew and Gentile, making them one, not according to the flesh but in the Spirit"<sup>70</sup>. This was to be the new People of God, whose heritage was "the dignity and freedom of the sons of God"<sup>71</sup>. Because all are called to holiness and have an

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67 Cf. Schaldenbrand, op. cit., p. 43.

68 See J. Ashbrook, op. cit., where he speaks, on p. 145, of the dignity of the Hebrew: "Did not the Hebrews proclaim that life was good, that life is purposeful?... Creation sets in motion both direction and hope. People can trust life's meaning because everything unfolds within the purpose of God."

69 Abbott, op. cit., L.G., n. 7, p. 21.

70 Ibid., L.G., n. 9, p. 25.

71 Ibid.

equal privilege of faith, there can be "in Christ and in the Church no inequality on the basis of race or nationality, social condition or sex"<sup>72</sup>. To sum up its teaching on the dignity of the human person, Gaudium et Spes proclaims the basic equality of men and women.

Since all men possess a rational soul and are created in God's likeness, since they have the same nature and origin, have been redeemed by Christ, and enjoy the same divine calling and destiny, the basic equality of all must receive increasingly greater recognition.<sup>73</sup>

It may be said that the Council has presented two important trends of thought to be kept in mind in evaluating the juridical status of women: we are all members of the People of God without distinctions based on sex, status, or race; and the dignity of each person is to be fostered in terms of unity, equality, and freedom, in the perspective of a new creation to be brought to fulfillment in Christ.

In addition, all the qualities that pertain to the true dignity of the human person, should be applied to women as well as to men. Women and men should be viewed as having all things related to them as their center and crown. Neither women nor men should be made inferior to institutions no matter how venerable. Women should not be viewed as static in their function or nature, but as capable of self-determination and

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72 Ibid., L.G., n. 32, p. 58.

73 Ibid., G.S., n. 29, p. 227.

transcendence. Woman's rational nature and the quests of her mind should be respected. The primacy of a woman's conscience should be honored, and not shaped unduly by objective norms formulated by preconceived attitudes concerning a woman's "proper role". Women should be accorded the same liberty and interdependence accorded men; and this should not be overly restricted by social mores, stereotyped sex roles and customs. But above all, women and men should be accorded an equivalence and mutuality of duties and responsibilities in the order of the "new creation".

To accord the dignity of a human person to women, means that they can no longer be assigned to roles of subordination, inferiority, passivity, or dependency because of their sex.

### 3. The Person in the Lay State.

In considering the Church as Mystery it was seen that the Church, as the People of God, has been established by Christ as a communion of life, charity, and truth; and as his instrument for the redemption of the whole world. In this People of God, the primacy of the person is affirmed and man is seen as the center and crown of all creation. Man, however, reaches fulfillment in community, and it is the People of God who share in Christ's redemptive role, particularly as priest,

prophet, and king<sup>74</sup>, and who receive the mandate from Christ himself to share in his life and mission<sup>75</sup>. As the mandate is thus given to all members of the People of God (priests, religious, and lay persons), a question arises concerning the modality of lay participation in the mandate of Christ. To examine the issue, the conciliar documents will be scanned to ascertain the meaning and nature of the lay state, the special mission of the lay apostolate, the implications for the lay person in the conciliar teachings on infallibility and charisms, and the new relationship patterns indicated in the concept of the People of God in hierarchical communion. From this, the general position of the lay woman in the new theology of the laity may be deduced. Besides the decree Apostolicam Actuositatem, and chapter 4 on "The Laity" in the dogmatic constitution Lumen Gentium, the conciliar doctrine on the laity is found in practical implementation throughout all the documents, particularly in the pastoral constitution Gaudium et Spes.

The meaning of "laity" is presented in the documents both in a negative and in a positive sense. In Lumen Gentium the negative aspect of canon 107 is retained though in a more pastoral tone of distinction, for the "term laity is here understood to mean all the faithful except those in holy orders

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74 Cf. L.G., n. 10, 12, 13.

75 Cf. L.G., n. 17.

and those in a religious state sanctioned by the Church"<sup>76</sup>. However, this is immediately followed by the more positive description of the laity in terms of their baptism and their active role in the People of God:

These faithful are by baptism made one body with Christ and are established among the People of God. They are in their own way made sharers in the priestly, prophetic, and kingly functions of Christ. They carry out their own part in the mission of the whole Christian people with respect to the Church and the world.<sup>77</sup>

The decree Ad Gentes has perhaps an even more succinct description when it thus describes the laity: "These are those Christians who have been incorporated into Christ by baptism and who live in the world"<sup>78</sup>. Thus "not living in the world" must be descriptive of the clergy and religious.

In the above definitions, distinctions are made among People of God, faithful, laity; and among laity, clergy, religious. However it is not distinctions that are highlighted, but rather the internal union and the inter-relations that exist among the groups:

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76 Abbott, op. cit., L.G., n. 31, p. 57.

77 Ibid.

78 Ibid., Ad Gentes (subsequently referred to as A.G.), n. 15, p. 603.

For the distinction which the Lord made between sacred ministers and the rest of the People of God entails a unifying purpose, since pastors and the other faithful are bound to each other by a mutual need.<sup>79</sup>

This points to the bonding force as "need", or a relationship of support and dependency, though "pains are taken to dispel the common misconception that the laity are in all respects subject to, and dependent upon, their pastors"<sup>80</sup>.

Basically this is still the authority obedience approach of the Codex Iuris Canonici, though expressed in a pastoral tone. It does not carry the whole message of the type of bond that unites clergy, religious, and laity in the Church<sup>81</sup>.

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79 Ibid., L.G., n. 32, p. 58.

80 Ibid., L.G., p. 58, footnote n. 165.

81 On this point, see Yves Congar, Blessed is the Peace of My Church, p. 73: "The truth of the faithful-pastor relation must be sought in the frame and in the light of the ecclesiology re-established by Vatican II after six centuries of juridicism and four centuries increasingly dominated by the unconditioned affirmation of authority. The Council, as has been rightly asserted by Father Schillebeeckx, has effected a vertical re-centering on Christ and a horizontal de-centering toward the totality of the People of God. Cardinal Suenens has clearly shown how the Council, at all levels, has substituted for the solitary exercise of authority a spirit of co-responsibility and structures of co-responsibility: at the level of the Holy See (collegiality, synod of bishops), at the level of priests (presbyteral board), at the level of religious, both male and female, and at the level of laymen (pastoral board, organisms of Catholic Action, etc." (Citing E. Schillebeeckx, L'église du Christ et l'homme d'aujourd'hui selon Vatican II, p. 122 f.; and Cardinal Suenens, "La coresponsabilité dans l'église d'aujourd'hui").

In fact, all that had been said of the People of God, "applies equally to the laity, religious, and clergy"<sup>82</sup>, and it is the Spirit of Christ himself who unifies and bonds the whole.

For from him the whole Body (being closely joined and knit together through every joint of the system according to the functioning in due measure of each single part) derives its increase to the building up of itself in love (Eph. 4:15-16).<sup>83</sup>

Thus the bond is the Holy Spirit, and the interrelationships are the pursuit of the common goal, the establishment of the kingdom.

Broadly speaking, the nature of the lay state may be described as a participation in the priestly, prophetic, and kingly functions of Christ<sup>84</sup>. The lay person carries out the functions of Christ in a characteristic manner. It is important for the lay person to recognize and to share in the priestly, prophetic and kingly roles assigned by Christ.

The lay person shares in Christ's priesthood. This priesthood is vested in the person's living union with Christ, a union which never separates but rather integrates the ordinary conditions of life, so that secular affairs, family

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82 Abbott, op. cit., L.G., n. 30, p. 56.

83 Ibid., L.G., n. 30, p. 57.

84 Cf. Vaticanum II, L.G., n. 31, p. 152: "...christi-fideles scilicet qui, utpote baptisate Christo concorporati, in Populum Dei constituti, et de munere Christi sacerdotali, prophetico et regali suo modo participes facti, pro parte sua missionem totius populi christiani in Ecclesia et in mundo exercent."

and business affairs are fully relevant to the individual's spiritual life; and "even the hardships of life, if patiently borne - all of these become spiritual sacrifices acceptable to God through Jesus Christ (cf. 1 Pet. 2:5)"<sup>85</sup>. The priestly ministry of the lay person, "without interfering with the proper autonomy of worldly affairs, brings about a certain 'consecration' of the world to God its Creator"<sup>86</sup>. It is also in the priestly role that the lay person is a witness to Christ and is vivified in his Spirit for the performance of every good and perfect work<sup>87</sup>.

The lay person shares in Christ's role as prophet. Christ fulfills his prophetic office, not only through the hierarchy, but also through the lay person; for Christ has bestowed an "understanding of the faith and the grace of speech (cf. Acts 2:17-18; Apoc. 19:10)"<sup>88</sup>, so that the power of the gospel might shine forth in the social and family life. Prophecy is perhaps most closely associated with witnessing and teaching the gospel to the world, but even the "Christian family loudly proclaims both the present virtues of the kingdom

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85 Abbott, op. cit., L.G., n. 34, p. 60.

86 Ibid., footnote n. 170.

87 Cf. Vaticanum II, L.G., n. 34, p. 156: "Supremus et aeternus Sacerdos Christus Iesus, cum etiam per laicos suum testimonium suumque servitium continuare velit, eos suo Spiritu vivificat indesinenterque impellit ad omne opus bonum et perfectum."

88 Abbott, op. cit., L.G., n. 35, p. 61.

of God and the hope of a blessed life to come"<sup>89</sup>. And lay people are urged, not only to be passive witnesses of Christ, but to perform "eminently valuable work on behalf of bringing the gospel to the world", and to this end they are urged "to acquire a more profound grasp of revealed truth, and insistently beg of God the gift of wisdom"<sup>90</sup>. Thus, while presenting the passive use of prophecy as characteristic of the gift of prophecy in the lay person, the active implementation of the gift is also characteristic and encouraged. In Gaudium et Spes the hope is expressed, "that many laymen will receive an appropriate formation in the sacred sciences, and that some will develop and deepen these studies by their own labors"<sup>91</sup>. Such theological studies are to be open to all, without discrimination:

In order that such persons may fulfill their proper function, let it be recognized that all the faithful, clerical and lay, possess a lawful freedom of inquiry and thought, and the freedom to express their minds humbly and courageously about those matters in which they enjoy competence.<sup>92</sup>

The constitution thus sets theological research, teaching, and elaboration of doctrine as one of the freedoms inherent in the People of God and certainly applicable to lay men and women.

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89 Ibid.

90 Ibid., L.G., n. 35, p. 62.

91 Ibid., G.S., n. 62, p. 270.

92 Ibid.

The lay person shares in the Kingship of Christ. The gift of kingship is related to ecclesial government and discipline. Lumen Gentium also speaks of the kingship of the People of God in terms of a missional relationship to Christ as King: "Reflecting the universal lordship of Christ, the Church spontaneously tends to spread everywhere, thereby bringing men of every nation into intimate spiritual union with one another"<sup>93</sup>. In the kingdom, "established by Christ as a fellowship of life, charity, and truth", the People of God are sent forth "into the whole world as the light of the world and the salt of the earth"<sup>94</sup>. Participation in the kingship of Christ means not only becoming a citizen of the kingdom, but also denotes the obligation to extend the kingdom. But how will the laity participate in the kingly office of Christ? For the lay person, the extension of the kingdom is seen in such things as conquering the reign of sin in oneself and in others, in placing a true value on all creation, by competency in secular fields, in human labor, in providing an equitable distribution of created goods, by improving institutions and conditions in the world, by achieving justice, charity, and peace<sup>95</sup>. The laity have the principal role in the

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93 Ibid., L.G., p. 30, footnote n. 42.

94 Ibid., L.G., n. 9, p. 26.

95 Ibid., summary of L.G., n. 36, p. 62, 63.

universal fulfillment of this purpose<sup>96</sup>. It becomes apparent, that the lay person has a responsibility not only to be an obedient citizen in the kingdom, but also has a proper share in the governing, the discipline, and the extension of the kingdom.

It is perhaps in the exercise of the kingly prerogative, that the unique mission of the laity becomes apparent. The mission of the laity was deemed so important to the Council Fathers that a decree, Apostolicam Actuositatem, was devoted entirely to the lay apostolate. Here, only the main characteristic aspect of the lay mission will be noted. Lay people specifically extend the kingdom of Christ by ordering temporal affairs "according to the will of God", and while it is true that those in holy orders and the religious life may be involved in temporal affairs, "a secular quality is proper and special to laymen"<sup>97</sup>. Lay people must take up the renewal of the temporal order as their own special assignment. They must act directly and in a definite way in the temporal sphere, cooperating with other citizens and seeking the justice of God's kingdom in all situations: "God's plan for the world

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96 See Vaticanum II, L.G., n. 36, p. 159-160: "Fideles igitur totius creaturae intimam naturam, valorem et ordinationem in laudem Dei agnoscere, et per opera etiam saecularia se invicem ad sanctiorem vitam adiuvere debent, ita ut mundus spiritu Christi imbuatur atque in iustitia, caritate et pace finem suum efficacius attingat. In quo officio universaliter adimplendo laici praecipuum locum obtinent."

97 Abbott, op. cit., L.G., n. 31, p. 57.

is that men should work together to restore the temporal sphere of things and to develop it unceasingly"<sup>98</sup>. Indeed, it is the task "of the whole Church to labor vigorously so that men may become capable of constructing the temporal order rightly and directing it to God through Christ"<sup>99</sup>. The special mission of the lay person is thus designated as the temporal sphere. This temporal sphere is also the concern and task of the whole People of God, but it is the lay people who are directly involved in consecrating the world to Christ.

Closely connected with the priestly, prophetic, and regency gifts of the laity, are the conciliar teachings on infallibility and charisms.

The principle of the infallibility of the People of God is enunciated in Lumen Gentium. The faithful in the Church have traditionally been characterized by the so-called "sense of the faith", and the Council developed this concept in the theology of the laity as a concomitance of sharing in Christ's prophetic office.

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98 Ibid., A.A., n. 7, p. 497.

99 Ibid.

The body of the faithful as a whole, anointed as they are by the Holy One (cf. Jn. 2:20; 27), cannot err in matters of belief. Thanks to a supernatural sense of the faith which characterizes the People as a whole, it manifests this unerring quality when from the bishops down to the last member of the laity, it shows universal agreement in matters of faith and morals.<sup>100</sup>

By this sense of faith, or infallibility, which is aroused and sustained by the Spirit of truth, God's People are enabled to accept the Word of God, to cling to the faith, to penetrate it more deeply by accurate insights, and "apply it more thoroughly to life"<sup>101</sup>. Thus, each lay person in the Church shares in the sense of the faith; and this concept of the infallibility of the People is not contradicted when Lumen Gentium also discusses the infallibility of ecumenical councils, of the pope, of the college of bishops<sup>102</sup>; for

To the resultant definitions, the assent of the Church can never be wanting, on account of the activity of that same Holy Spirit, whereby the whole flock of Christ is preserved and progresses in unity of faith.<sup>103</sup>

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100 Ibid., L.G., n. 12, p. 29.

101 Ibid., L.G., n. 12, p. 30; see also p. 29, 30.

102 Ibid., L.G., n. 25, p. 47-50; also cf. Congar, op. cit., who sees the implementation of the principle of the infallibility of the People of God as defined in Lumen Gentium, in the development of a new mode of doctrinal formulation. He says, on p. 76: "The hierarchy, the pope himself, is not above the community, but in it. This excludes, in our opinion, certain formulations of papal primacy or infallibility which would make of it the monarchic source of all power, of all doctrinal certitude for the Church."

103 Abbott, op. cit., L.G., n. 25, p. 49.

For the individual lay person, the gift of the sense of faith, should establish a sense of confidence in the Spirit of truth, a reliance on the Holy Spirit, and the competency to express that truth in life and mission. Likewise, all authority in the Church, "must be subject to the realities and to the ideals which it can eventually lead, along with the very persons whom it must command", and must also be aware that, in the words of St. Benedict, "sometimes, God reveals his will through the most humble (Regula, c. 3)"<sup>104</sup>.

The conciliar teaching on charisms is also presented in Lumen Gentium under the development of the prophetic gift in the laity. This teaching, too, has important bearing on lay men and women. For while it is true that charisms have always been acknowledged in the Church, their scope and importance may not always have been appreciated. Charisms are gifts given mainly for the building up of the Church and the kingdom, and "each individual part of the Church contributes through its special gifts to the good of the other parts and of the whole Church"<sup>105</sup>. While it is the Holy Spirit who sanctifies "the People of God through the ministry and the sacraments", the Spirit is not limited to these means of grace but "gives to the faithful special gifts as well

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104 Congar, op. cit., p. 78.

105 Abbott, op. cit., L.G., n. 13, p. 31.

(cf. 1 Cor. 12:7), 'allotting to everyone according as he will' (1 Cor. 12:11)"<sup>106</sup>. All such gifts, whether received through the ministry and the sacraments, or through other means utilized by the Holy Spirit, should be used not only for the individual, but for others as well<sup>107</sup>. And the Council makes it abundantly clear that the mandate to use the charisms, is given to each Christian by Christ himself, and while enjoying the freedom of the Holy Spirit, at the same time "they must act in communion with their brothers in Christ, especially with their pastors"<sup>108</sup>.

The placing of charisms at the service of the community is a procedural directive, and it is of interest that pastors too are included in the communitarian situation. However, pastors have yet another function to be exercised in regard to charisms. They "must make a judgment about the true nature and proper use of these gifts, not in order to

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106 Ibid., A.A., n. 3, p. 492.

107 Cf. Vaticanum II, A.A., n. 3, p. 464-465: "Ad hunc apostolatam exercendum Spiritus Sanctus, qui populi Dei sanctificationem per ministerium et sacramenta operatur, fidelibus peculiaria quoque tribuit dona (cf. 1 Cor. 12, 7), ea 'dividens singulis prout vult' (1 Cor. 12, 11), ut 'unusquisque, sicut accepit gratiam, in alterutrum illam administrantes' sint et ipsi 'sicut boni dispensatores multiformis gratiae Dei' (1 Pt. 4, 10), in aedificationem totius corporis in caritate (cf. Eph. 4, 16). Ex horum charismatum, etiam simpliciorum, acceptione, pro unoquoque credentium ius et officium oritur eadem in bonum hominum et aedificationem Ecclesiae exercendi in Ecclesia et in mundo, in libertate Spiritus Sancti, qui 'ubi vult spirat' (Io. 3, 8)."

108 Abbott, op. cit., A.A., n. 3, p. 493.

extinguish the Spirit, but to test all things and hold fast to what is good (cf. 1 Th. 5:12, 19, 21)"<sup>109</sup>. The admonition here is for discernment, not for control or extinction<sup>110</sup>.

The strong affirmation of the lay person in the conciliar teaching, seems to envisage new relationship patterns in the Church. While the Council does not actually propose a new structural arrangement for the Church, it does speak frequently of the concept of "hierarchical communion", a term which is applied not only to the episcopal and presbyteral

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109 Ibid.

110 See Congar, op. cit. Congar considers the theology of the People of God with its focus on the priesthood and the place it makes for charisms, the most crucial chapter of Lumen Gentium, for it is essentially an affirmation of the person, of his free determination, of his free initiative in the determination of the grace of God and of the freedom that procures this grace; a personal-principle approach that does not sunder the hierarchic-principle but embraces it. On p. 64, he says: "This involves the recognition, one remarkably granted by the Council, of the role of charisms in the building of the Church. Everything does not proceed from above, through the paths of the institution. We must recognize the place of personal gifts and of initiatives in which the freedom of the Holy Spirit acts. It would be wrong to see in man and the Christian only a being determined by factors that transcend him and dominate him... Experience superabundantly confirms what present-day philosophy, one of whose themes is choice, tells us."

bodies<sup>111</sup>, but which denotes real relationships within the whole of the People of God. It may also be deduced that a perfect-society concept of Church, with hierarchic-linear relationships throughout the society, is no longer tenable<sup>112</sup>. The term "hierarchical communion" as used throughout the documents, seems to emphasize the noun "communion", and the hierarchic principle is denoted as within the community and at the service of the community for the "nurturing and constant

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111 See Abbott, op. cit. The pope and bishops are in hierarchical communion, for by "virtue of sacramental consecration and hierarchical communion with the head and other members of the college, a bishop becomes a part of the episcopal body" (C.D., n. 4, p. 398-399). Bishops and priests are in hierarchical communion for all "priests, together with bishops, so share in one and the same priesthood and ministry of Christ that the very unity of their consecration and mission requires their hierarchical communion with the order of bishops" (Presbyterorum Ordinis, subsequently referred to as P.O., n. 7, p. 546). And it is implied that the priests and people are in hierarchical communion: "Since the priestly ministry is the ministry of the Church herself, it can be discharged only by hierarchical communion with the whole body" (P.O., n. 15, p. 564).

112 See Yves Congar, "My Path-Findings in the Theology of Laity and Ministries", where he speaks of the Church structure. On p. 175 he describes an organizational schema in which the relationships would be linear: Christ would be seen as establishing the hierarchy, giving to it alone a mission and mandate; and the hierarchy would carry out the mandate by bringing people into the Church. Congar does not find such a hierarchic-power line concept of relationships tenable: "The Church is no merely juridical institution founded at a single point in history and subsisting by the simple interplay of structures in the institution, without the Saviour actively and incessantly intervening. That position is not tenable, neither in consideration of God's actuating power, nor in relation to a necessary pneumatology, nor in face of the rediscovery of the charisma and the variety of ministries whereby God builds up the Church."

growth of the People of God"<sup>113</sup>. Indeed, it was for this very purpose of growth that "Christ the Lord instituted in his Church a variety of ministries which work for the good of the whole body"<sup>114</sup>. The plural noun "ministries", is important here, for it signifies that the whole Body, the Church of Christ, is not built up solely by the action of the official hierarchical ministry, but in the words of Yves Congar, the Church is established,

... by a multitude of diverse modes of service, more or less stable or occasional, more or less spontaneous or recognised and when the occasion arises consecrated, while falling short of sacramental ordination.<sup>115</sup>

The People of God as hierarchically constituted, requires the structural lines of relationship and support as juridically determined; but the Council also insists that there must exist unstructured bonds of love, dialogue, and interdependence<sup>116</sup>. The Council gives direction and encouragement in establishing such bodies as the synod of bishops,

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113 Abbott, op. cit., L.G., n. 18, p. 37.

114 Ibid.

115 Congar, op. cit., p. 176.

116 Cf. Abbott, op. cit., P.O., n. 7, p. 546-548. Speaking about the priests "hierarchical communion" with the bishop, it reads, on p. 547: "Therefore, on account of this communion in the same priesthood and ministry, the bishop should regard priests as his brothers and friends."

senates of priests, and pastoral councils<sup>117</sup>.

In summary, the Council teaching on the person in the lay state, affirms the lay person's participation in Christ's priestly, prophetic, and kingly functions. The lay person receives a special mandate from Christ to order temporal affairs according to the will of God; and shares in the supernatural sense of the faith which characterizes the People of God as a whole. The Council recognizes the role of charisms in the building up of the Church and thus there is the recognition of personal gifts and initiatives in which the Holy Spirit acts in freedom. Even the structure of the Church is understood of the People of God as hierarchically constituted; in which there are a variety of ministries: some ordained to the official sacramental ministry while others are raised up as charisms given by the Spirit. In all, the community of the People of God appears as the enveloping reality, but the person is still seen as the center and crown of all creation. Moreover, Lumen Gentium makes it abundantly clear, that everything that has been said about the People of God applies equally to the "laity, religious, and clergy",

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117 Ibid. For example, synod of bishops, see C.D., n. 5, p. 399-400; senate of priests, P.O., n. 7, p. 548; pastoral councils, C.D., n. 27, p. 416.

and that what pertains to the laity in a particular way, is meant for both men and women<sup>118</sup>.

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118 Cf. Vaticanum II, L.G., n. 30, p. 151: "Quodsi omnia quae de Populo Dei dicta sunt, ad laicos, religiosos et clericos aequaliter diriguntur, laicis tamen, viris et mulieribus, ratione condicionis et missionis, quaedam particulariter pertinent, quorum fundamenta ob specialia rerum adiuncta nostri temporis magis expendenda sunt."

## CHAPTER IV

### THE POSITION OF WOMEN IN THE CONCILIAR DOCUMENTS

The conciliar teaching on persons in general has much to say about the juridical status of women as recognized in the conciliar documents. For our purpose, however, a study of the documents for specific references made to women is important; first, to ascertain how the doctrinal theory on persons is applied to women; secondly, to see under what content or circumstances women are given special attention; and thirdly, to assess the attitudinal stance towards women as expressed in the various passages.

#### 1. Specific References to Women.

In the official Constitutiones, Decreta, Declarationes of Second Vatican Council<sup>1</sup>, the term "mulieres" has twelve references listed in the Index<sup>2</sup>: seven of these are in Gaudium et Spes and five are in the closing message addressed "To Women". However, these twelve references do not in any way encompass the many allusions to women; for the term, "men and women", (viri et mulieres) or some equivalent, is used over

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1 Sacrosanctum Oecumenicum Concilium Vaticanum II, Constitutiones, Decreta, Declarationes, Cura et Studio Secretariae Generalis Concilii Oecumenici Vaticani II. (subsequently referred to as Vaticanum II).

2 Ibid., p. 1215.

sixty times in the documents<sup>3</sup>. Besides, many generic terms such as "man" (homo), "People of God" (populus Dei), "faithful" (christifideles), "laity" (laici) and others, are used extensively and apply to both men and women. It would seem, however, that when "men and women" are specifically mentioned, the inclusion of women is given special emphasis.

This study of the specific references made to women in the conciliar documents, will be limited to passages dealing solely with women and to those addressed to both "men and women". For convenience, the references will be grouped in the topical arrangements into which they seem to fall; and then assessed for attitudinal outlook. Two broad attitudinal stances will be used as criteria: androcentric and dimorphic. An androcentric stance, as employed in this study, is indicative of a male-centered outlook that tends to look at women mainly in their relationship to men, particularly in their functional roles of wife and mother. A dimorphic<sup>4</sup> outlook tends to see

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<sup>3</sup> As counted in The Documents of Vatican II, by Walter M. Abbott, S.J., and translated by Joseph Gallagher. The term "men and women" (or the equivalent) occurred 61 times. However, a check with the official Constitutiones, Decreta, Declarationes, showed that some of these were broad translations of a more generic term.

<sup>4</sup> John Money and Anke A. Ehrhardt, in Man & Woman, Boy & Girl, define dimorphism on p. 299: "Dimorphism - having two forms or manifestations, though of the same species, as in ... a male and female form." And Webster's New Collegiate Dictionary defines dimorphic as "characterized by dimorphism". In this study, the word "dimorphic" is used (for want of a more descriptive term), not in a technical sense, but as emphasizing the one human nature in both men and women.

women basically as persons, and shows an awareness of the equivalence of the male/female manifestation of the human species. The special references made to women in the documents are found mainly in seven categories: non-discrimination in the Church, symbols, the teaching on the "new creation", new relationship patterns in the Church, the theology of the laity, marriage and family life, and the religious life. The closing message addressed "To Women" will be treated separately. Most of these subjects have already been mentioned in the conciliar teachings examined so far. Here, the special application to women will be noted.

a) Women and the Theory of Non-Discrimination.- There are at least nine statements of the non-discriminatory stance of the Church found in the conciliar documents. These statements are found in Lumen Gentium, Gaudium et Spes, Nostra Aetate, Gravissimum Educationis, and in Dignitatis Humanae. Three of the statements are specific about "sex" discrimination.

The constitution Lumen Gentium states the theology of ecclesial non-discrimination when it proclaims:

Hence, there is in Christ and in the Church no inequality on the basis of race or nationality, social condition or sex, because "there is neither Jew nor Greek; there is neither slave nor freeman; there is neither male nor female. For you are all one in Christ Jesus" (Ga. 3:28, Greek text; cf. Col. 3:11).<sup>5</sup>

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5 Abbott, op. cit., L.G., n. 32, p. 58.

The passage then goes on to explain the diversity of different "paths" in the Church. It is

... by the will of Christ (that) some are made teachers, dispensers of mysteries, and shepherds on behalf of others, yet all share a true equality with regard to the dignity and to the activity common to all the faithful for the building up of the body of Christ.<sup>6</sup>

Here, Lumen Gentium affirms the basic equality of men and women, and sees apostolic role differentiations as "the will of Christ". As it reads, the passage is dimorphic in outlook, though there is a certain ambiguity in the explanation of the diversity of different paths.

It is in Gaudium et Spes that non-discrimination is repeatedly affirmed. There are at least six strong statements to this effect, and three of them have specific references against sex discrimination. Speaking about social justice, the rationale is seen as the essential equality of men, and the constitution continues:

True, all men are not alike from the point of view of varying physical power and the diversity of intellectual and moral resources. Nevertheless, with respect to the fundamental rights of the person, every type of discrimination, whether social or cultural, whether based on sex, race, color, social condition, language, or religion, is to be overcome and eradicated as contrary to God's intent.<sup>7</sup>

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6 Ibid.

7 Ibid., G.S., n. 29, p. 227-228.

The one example given of the type of discrimination that must be eradicated in accord with God's will, is sex discrimination:

For in truth, it must still be regretted that fundamental personal rights are not yet being universally honored. Such is the case of a woman who is denied the right and freedom to choose a husband, to embrace a state of life, or to acquire an education or cultural benefits equal to those recognized for men.<sup>8</sup>

On the topic of recognizing and implementing man's right to culture, Gaudium et Spes speaks of certain decisions that must be made in the economic and political fields, both nationally and internationally, as a step towards liberating men from the misery of ignorance:

By these decisions universal recognition and implementation should be given to the right of all men to a human and civic culture favorable to personal dignity and free from any discrimination on the grounds of race, sex, nationality, religious, or social conditions.<sup>9</sup>

In the examples that follow, women are again mentioned:

Women are now employed in almost every area of life. It is appropriate that they should be able to assume their full proper role in accordance with their own nature. Everyone should acknowledge and favor the proper and necessary participation of women in cultural life.<sup>10</sup>

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<sup>8</sup> Ibid., G.S., n. 29, p. 228.

<sup>9</sup> Ibid., G.S., n. 60, p. 266.

<sup>10</sup> Ibid., G.S., n. 60, p. 267.

The first passage affirming non-discrimination in man's right to culture, and the subsequent passage encouraging women's participation in cultural life, seem to present two outlooks on women. The first stresses non-discrimination "on the grounds of sex" and is fully dimorphic in attitude, for it implies that personal dignity demands equal rights and opportunities for men and women in attaining human and civic culture. The second passage speaks of women's "proper role in accordance with their own nature", and implies that rights and opportunities should be based on male and female roles. Should this be the correct interpretation, the second passage tends to be androcentric in outlook.

There are three other passages in Gaudium et Spes which express the conciliar thinking on non-discrimination: two are on the subject of economics (especially wages and working conditions)<sup>11</sup>; and one is about political participation<sup>12</sup>. Non-discrimination because of sex is not specifically mentioned in any of these, nor are "women" mentioned in the subsequent

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<sup>11</sup> Ibid. See the two passages in G.S., n. 66, p. 274 and p. 275, re "group discrimination"; and "all discrimination with respect to wages and working conditions must be carefully avoided."

<sup>12</sup> Ibid., G.S., n. 75, where it is pointed out on p. 285 that "juridical-political structures should, with ever better success and without discrimination", afford all their "citizens" the chance to participate in government and share in establishing the constitutional bases of political states, and institutions, and choosing leaders.

examples. However, the terms used, "workers" and "citizens" might well be inclusive of both men and women<sup>13</sup>.

The declaration Nostra Aetate deals with relationships with non-Christian churches and asserts that love is the eradication of divisions, and he "who does not love does not know God (1 Jn. 4:8)". As a consequence, "the Church rejects, as foreign to the mind of Christ, any discrimination against men or harassment of them because of their race, color, condition of life, or religion"<sup>14</sup>. Though sex discrimination is not mentioned here, the generic "homo" is used throughout.

In Gravissimum Educationis, the declaration on Christian Education, there is one passage dealing with non-discrimination:

Since every man of whatever race, condition, and age is endowed with the dignity of a person, he has an inalienable right to an education corresponding to his proper destiny and suited to his native talents, his sex, his cultural background, and his ancestral heritage.<sup>15</sup>

This is a difficult passage to assess. It is to be noted that the non-discrimination is in respect to "race, condition, and age". Sex is treated as a factor of

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13 See Marvin A. Zuker and June Callwood, Canadian Women and the Law, p. 67 f.; where political and economic inequalities between Canadian men and women are still considered among the most glaring discriminations.

14 Abbott, op. cit., Nostra Aetate (subsequently referred to as N.A.), n. 5, p. 668.

15 Ibid., Gravissimum Educationis (subsequently referred to as G.E.), n. 1, p. 639.

differentiation, along with "native talent", "cultural background", and "ancestral heritage"; a treatment not in accord with a dimorphic outlook.

Moving on to the declaration on Religious Freedom, Dignitatis Humanae, there is a stress on the right of all citizens and religious bodies to "religious freedom" and on the imperative that this right should be recognized and made effective in practice. To this end, there must be no discrimination among "citizens", and "government is to see to it that the equality of the citizens before the law ... is never violated for religious reasons whether openly or covertly"<sup>16</sup>. The emphasis here is on non-discrimination among citizens and religious bodies.

In spite of the universality of these many declarations, when the theory of non-discrimination in respect to sex is applied throughout the documents, there are some instances of a rather male-centered outlook. One idea that has already been noted, and that recurs in the Council texts, is reference to the activities of women "in accord with their nature". Women, in other words, have a "proper" role, and it is not a woman's self-determining consciousness of her "rights" to culture and education that determines her liberation from societal restrictions and ignorance, but her nature and proper role.

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<sup>16</sup> Ibid., D.H., n. 6, p. 685.

The differentiations based upon sex are still evident when Gaudium et Spes speaks of the "due consideration" that should be paid to "mothers of families" and to the "person's sex"<sup>17</sup>. Again, Gravissimum Educationis, reminds teachers to pay "due regard to every educational activity, to sexual differences, and to the special role which divine Providence allots to each sex in family life and in society"<sup>18</sup>. However, sex differentiations are most evident in the statements relating to ordination and reception of ministries<sup>19</sup>. And while Ad Gentes recognizes that the ministry of deacons will become more effective "because of the sacramental grace of the diaconate"<sup>20</sup>, no recognition is given to the new ministries being carried out by women (religious and lay), nor is it acknowledged, as is the case for men, that works performed by women are also in need of effective grace.

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17 Ibid., G.S., n. 67, p. 276. This could be an example of "protective" legislation. A dimorphic attitude would speak of "due consideration" for fathers and mothers of families.

18 Ibid., G.E., n. 8, p. 647.

19 Ibid., see for instance, L.G., n. 29, p. 56; Optatam Totius (subsequently referred to as O.T.), n. 2, p. 439; A.G., n. 16, p. 605.

20 Cf. Vaticanum II, A.G., n. 16, p. 576-577: "Iuvat enim viros, qui ministerio vere diaconali fungantur, vel verbum divinum tanquam catechistae praedicantes, vel nomine parochi et episcopi dissitas communitates christianas moderantes, vel caritatem exercentes in operibus socialibus seu caritativis, per impositionem manuum inde ab Apostolis traditam corroborari et altari arctius coniungi, ut ministerium suum per gratiam sacramentalem diaconatus efficacius expleant."

b) Women and Symbols.- There is an extensive use of signs and symbols used throughout the conciliar documents, and mention has already been made about the use of women as symbols. There are at least four passages in Lumen Gentium which seem to reflect, not only the symbol, but also an attitude towards women through the use of the symbolic language.

One symbol is the Eve/Mary sign used in the traditional meaning of death and life: "The Father of mercies willed that the consent of the predestined mother should precede the Incarnation, so that just as a woman contributed to death, so also a woman should contribute to life"<sup>21</sup>. Another symbol is the man/wife sign used to denote Christ's relationship to the Church:

Having become the model of a man loving his wife as his own body, Christ loves the Church as His bride (cf. Eph. 5:25-28). For her part, the Church is subject to her Head (cf. Eph. 5:22-23).<sup>22</sup>

The symbol of the Church as bride is used:

Moving forward through trial and tribulation, the Church is strengthened by the power of God's grace ... so that in the weakness of the flesh she may not waver from perfect fidelity, but remain a bride worthy of her Lord.<sup>23</sup>

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21 Abbott, op. cit., L.G., n. 56, p. 87-88.

22 Ibid., L.G., n. 7, p. 22.

23 Ibid., L.G., n. 9, p. 26.

And the symbol of the Church as mother is also used:

The Church ... becomes herself a mother by accepting God's word in faith. For by her preaching and by baptism she brings forth to a new and immortal life children who are conceived of the Holy Spirit and born of God. The Church herself is a virgin, who keeps whole and pure the fidelity she has pledged to her Spouse.<sup>24</sup>

While such symbols are traditional and part of our heritage, it may be asked whether they are truly compatible with the Conciliar doctrine of male and female equivalence in human and Christian dignity: woman is presented mainly in a sexual relationship to man in terms that do little to depict the equality and mutuality of men and women.

c) Women and the "New Creation".- In the conciliar teaching on the "new creation" established by Christ, there are several references to "men and women". Gaudium et Spes seems to find the foundation of this concept in Genesis, "for from the beginning, 'male and female he created them' (Gen. 1:27)", and the stage was set for "the primary form of interpersonal communion"<sup>25</sup>. In equality and mutuality, they were blessed and told to be "fruitful, multiply, fill the earth and conquer it", and both were told to be "masters ... on the earth (Gn. 1:27, 28)". However, the spirit of vanity and malice transformed those human energies intended for the

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<sup>24</sup> Ibid., L.G., n. 64, p. 92-93.

<sup>25</sup> Ibid., G.S., n. 12, p. 211.

service of God and man, into "an instrument for sin"<sup>26</sup>. But men and women were not to remain forever imperiled by pride and self love, but would be redeemed and made into a new creation by Christ:

For redeemed by Christ and made a new creature in the Holy Spirit, man is able to love the things themselves created by God, and ought to do so... using and enjoying them in detachment and liberty of spirit, man is led forward into a true possession of the world.<sup>27</sup>

In the new creation, the mutuality of men and women is clearly expressed, as the renewal brought by Christ manifests itself in a human interdependence which grows more tightly drawn and spreads by degrees over the whole earth, and "involves rights and duties with respect to the whole human race"<sup>28</sup>. This new creation is not something for the far distant future; for it is "by baptism" that each person becomes "that new creation"<sup>29</sup>.

The new creation notion is perhaps the fullest expression of the dimorphic outlook; to the balanced awareness of the mutuality of men and women in all spheres of life and mission, is added the concept of incorporation into Christ which raises such mutuality into the manifestation of Christ

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26 Ibid., G.S., n. 37, p. 235.

27 Ibid.

28 Ibid., G.S., n. 26, p. 225.

29 Ibid., cf. G.E., n. 8, p. 646.

himself in the prolongation of his work in history.

d) Women and New Relationship Patterns.— The subject of the new relationships arising from the concept of the People of God constituted in hierarchic communion in the Church has been discussed in the section on the theology of the laity; here the focus will be on the attention given in the conciliar documents on the collaboration of men and women in bringing about a "new order" in the world. There are several passages that refer to the man/woman partnership in the establishment of new relationships in society and in the Church, sometimes described as the new order, and even as the "better world"<sup>30</sup>.

Gaudium et Spes, while not suggesting that the basic unity of the human family is something new, does call attention to mankind's growing awareness of common bonds forming a world community, for "the human family is gradually recognizing that it comprises a single world community and is making itself so"<sup>31</sup>. Among the signs of the times that indicate a new socialization in the world, are to be numbered the broader desires of mankind, including the fact that women now claim

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<sup>30</sup> Ibid., cf. G.S., n. 21, p. 219: "... the Church sincerely professes that all men, believers and unbelievers alike, ought to work for the rightful betterment of this world in which all alike live."

<sup>31</sup> Ibid., G.S., n. 33, p. 231; see also footnote n. 89, p. 231.

"an equity with men before the law and in fact"<sup>32</sup>, and the familial pressures indicative of the "new social relationships between men and women"<sup>33</sup>.

It is mainly in and through the local Church that men and women, endowed with their own national culture, will forge the ties that bind the whole community of mankind together; and without such men and women, the Church will not be truly established, nor fully alive, nor will it be "a perfect sign of Christ among men"<sup>34</sup>. A new social activism must be undertaken by men and women in a spirit of confidence, responsibility, and with an awareness that the better world can only be built upon truth and justice:

In every group or nation, there is an ever-increasing number of men and women who are conscious that they themselves are the artisans and the authors of the culture of their community. Throughout the world there is a similar growth in the combined sense of independence and responsibility. Such a development is of paramount importance for the spiritual and moral maturity of the human race.<sup>35</sup>

And the passage continues with the assurance that this "truth grows clearer if we consider how the world is becoming unified and how we have the duty to build a better world

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32 Ibid., G.S., n. 9, p. 207.

33 Ibid., G.S., n. 8, p. 206.

34 Ibid., cf. A.G., n. 21, p. 610, which refers specifically to the laity.

35 Ibid., G.S., n. 55, p. 260-261.

based upon truth and justice", and thus we will become "witnesses of the birth of a new humanism, one in which man is defined first of all by his responsibility toward his brothers and toward history"<sup>36</sup>.

Women, along with men, are expected to bring about the new order, to establish new social and institutional patterns, to display leadership and initiative. And all this, that "the world might be fashioned anew according to God's design and reach its fulfillment"<sup>37</sup>.

e) Women in the New Theology of the Laity.- The theology of the laity has been reviewed; and here, only the specific references made to women, or to men and women, will be noted. In the two documents dealing with the laity, Lumen Gentium and Apostolicam Actuositatem, ten such direct references are made. Only a few of these references need to be highlighted.

In Lumen Gentium, the inclusion of both men and women in the term "laity" is stressed in the opening paragraph, for "there are certain things which pertain in a particular way to the laity, both men and women, by reason of their situation and mission"<sup>38</sup>. This is followed with the strong

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36 Ibid.

37 Ibid., G.S., n. 2, p. 200.

38 Ibid., L.G., n. 30, p. 56.

non-discriminatory statement that in Christ and in the Church there is no inequality because of sex, "for all are one in Christ"<sup>39</sup>. Then there is the reminder, that "certain men and women" assisted Paul the Apostle by "laboring much in the Lord"<sup>40</sup>; and the special contribution of husband and wife in the evangelization of the world is given special attention<sup>41</sup>.

In Apostolicam Actuositatem, in the introduction to the various fields of the apostolate, there is the specific invitation to women to share more actively in the Church's apostolate:

Since in our times women have an ever more active share in the whole life of society, it is very important that they participate more widely also in the various fields of the Church's apostolate.<sup>42</sup>

Again, referring to the manner in which "men and women" assisted Paul, the laity are called to supply what is lacking to their brethren in true evangelization<sup>43</sup>. And finally, the

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39 Ibid., L.G., n. 32, p. 58.

40 Ibid., L.G., n. 33, p. 60.

41 Ibid., cf. L.G., n. 35, p. 61; see also G.S., n. 34, p. 232: "For while providing the substance of life for themselves and their families, men and women are performing their activities in a way which appropriately benefits society."

42 Ibid., A.A., n. 9, p. 500.

43 See Vaticanum II, A.A., n. 10, p. 476: "Verae enim apostolicae mentis laici, ad modum illorum virorum et mulierum qui Paulum in Evangelio adiuuabant (cf. Act. 18, 18:26; Rom. 16, 3), supplent quod suis fratribus deest..."

decree directs that centers of study be set up "to serve men and women" for the better development of their natural capacities<sup>44</sup>.

On the whole, the presentation of the new theology of the laity in the conciliar documents, applies fully to the men and women of the Church, and is enunciated in a dimorphic awareness of the equivalence and mutuality of men and women.

f) Women in Marriage and Family Life.- In the area of marriage and family life, the position of women is presented in a very positive way in the conciliar documents. Husbands and wives are seen as cooperators in establishing "the healthy condition of that community produced by marriage and family"<sup>45</sup>, and the cooperation is described as a "partnership"<sup>46</sup>.

To begin with, Gaudium et Spes shows an awareness of such changes in the contemporary social order as the

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<sup>44</sup> See ibid., A.A., n. 32, p. 507: "Centra insuper documentationis et studiorum non solum in re theologica, sed etiam in materia anthropologica, psychologica, sociologica, methodologica, quo melius foveantur laicorum ingenii facultates, virorum mulierumque, iuvenum et adultorum, pro omnibus apostolatus campis erigantur."

<sup>45</sup> Abbott, op. cit., G.S., n. 47, p. 249.

<sup>46</sup> See Vaticanum II, G.S., n. 48, p. 754: "Intima communitas vitae et amoris coniugalís, a Creatore condita suisque legibus instructa, foedere coniugii seu irrevocabili consensu personali instauratur." The beginning of this passage is translated in Abbott, op. cit., on p. 250 as the "intimate partnership of married life and love..."

father-centered family<sup>47</sup>. A reference is also made to basic changes in attitudes, for "the human race has passed from a rather static concept of reality" to a more dynamic, evolutionary perception<sup>48</sup>. Thus, the family itself is seen in a somewhat different perspective.

Perhaps the new perspective, in the words of Charles Anderson, is a shift from the "extended" family concept, to that of the so-called "nuclear" concept<sup>49</sup>. At all events, the notion of marriage conveyed by Apostolicam Actuositatem is perhaps more descriptive of the nuclear family:

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47 See Vaticanum II, G.S., n. 6, p. 687: "Eo ipso communitates locales traditionales, uti sunt familiae patriarchales, 'clans', tribus, pagi, varii coetus et consortionis socialis necessitudines, pleniores in dies immutationes experiuntur."

48 Abbott, op. cit., cf. L.G., n. 5, p. 204.

49 Charles H. Anderson, Toward a New Sociology, speaks of the "extended family" on p. 290: "The extended family system tends to be a rigid social structure, carefully defining reciprocal rights and responsibilities and unambiguously placing men above women and adults above children." The "nuclear family", on p. 291 is seen as, "...the elemental family members: parent(s) and children." The nuclear family as an independently operating unit is "clearly definable"; whereas the extended family as part of the broader social structure, tends to be merely a part of the total "social status hierarchy." On p. 292, the author sees part of the reason for a decline of the extended family in the new social position of women: "Legislation governing the rights of women helps undermine the system of patriarchal dominance and the confinement of women to the household for purely domestic and child-bearing purposes. Other statutes dealing with marriage, divorce, abortion, legitimacy, taxation, and education, variously undermine the rigidity and control of the extended family."

Christian husbands and wives are cooperators in grace and witnesses of faith on behalf of each other, their children, and all others in their household... They and the rest of the faithful, therefore, should cooperate with men of good will to ensure the preservation of these rights in civil legislation, and to make sure that attention is paid to the needs of the family in government policies regarding housing, the education of children, working conditions, social security, and taxes.<sup>50</sup>

Gaudium et Spes develops the concept of marriage as a partnership and gives it a theological basis. In a passage that has already entered into canonical jurisprudence<sup>51</sup>, marriage is described as the "intimate partnership of married life and love", established by the Creator and qualified by his laws<sup>52</sup>.

The complete text stresses the concept of marriage as a "covenant" in which there is a mutuality of help and service rendered by husband and wife through the marital unity of their individual persons and actions:

Thus a man and woman, who by the marriage covenant of conjugal love "are no longer two, but one flesh" (Mt. 19:6), render mutual help and service to each other through an intimate union of their persons and their actions. Through this union they experience the meaning of their oneness and attain to it with a growing perfection day by day.<sup>53</sup>

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50 Abbott, op. cit., A.A., n. 11, p. 502.

51 See the article on this topic by William J. LaDue, "Conjugal Love and the Juridical Structure of Christian Marriage", in The Jurist, 34(1974), p. 36-67.

52 Abbott, op. cit., G.S., n. 48, p. 250.

53 Ibid.

Here, indeed, the one-flesh image is used, not to signify the obliteration of personhood (the wife's), but to stress the marital unity attained in mutuality and collaboration. Even the structure of marriage is simply stated as flowing "from the equal personal dignity" of wife and husband, a dignity that is implemented in mutuality and love<sup>54</sup>.

This awareness of the dignity and mutuality of husband and wife is to be expressed ever more fully in the ceremonies of the sacrament of matrimony. By this special sacrament, Christian spouses "are fortified and receive a kind of consecration in the duties and dignity of their state", and penetrated with the spirit of Christ, "they increasingly advance their own perfection, as well as their mutual sanctification, and hence contribute jointly to the glory of God"<sup>55</sup>. The sacrament is normally to be celebrated within the Mass; the "prayer for the bride" is to be duly amended to remind both spouses of their equal obligation to remain faithful to each other", and the "blessing should always be given to the spouses"<sup>56</sup>. These details are practical implications of marital mutuality.

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54 Cf. Vaticanum II, G.S., n. 49, p. 758-759: "Aequali etiam dignitate personali cum mulieris tum viri agnoscenda in mutua atque plena dilectione, unitas matrimonii a Domino confirmata luculenter apparet."

55 Abbott, op. cit., G.S., n. 48, p. 251.

56 Ibid., Sacrosanctum Concilium (subsequently referred to as S.C.), n. 78, p. 162.

Marriage and conjugal love are seen by their nature as ordained toward the begetting and education of children. Children are "the supreme gift of marriage and contribute very substantially to the welfare of their parents"<sup>57</sup>. It was God himself "who made man from the beginning male and female (Mt. 19:4) , and wishing to share his own creative work, "he blessed male and female saying: 'Increase and multiply' (Gen. 1:18)"<sup>58</sup>. These words show an awareness of the active and equally-contributive part played by women and men in procreation (without ignoring the functional differences), and might even suggest a more shared domestic responsibility on the part of father and mother<sup>59</sup>. However, while stressing the need for "painstaking cooperation", the "kindly communion of minds", and the "joint deliberation of spouses", Gaudium et Spes does not go so far as to declare mutuality of responsibility for child care:

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57 Ibid., G.S., n. 50, p. 253-254.

58 Ibid., G.S., n. 50, p. 254.

59 See Vaticanum II, G.S., n. 48, p. 756: "Coniuges autem, dignitate ac munere paternitatis et maternitatis ornati, officium educationis praesertim religiosae, quod ad ipsos imprimis spectat, diligenter adimplebunt."

The active presence of the father is highly beneficial to their formation. The 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.<sup>60</sup>

The above passage falls back to the assumption that women have a natural "domestic role"; whereas the presence of the father is "highly beneficial". Somehow, this seems to fall somewhat short of mutual responsibility for children<sup>61</sup>.

The matter of family planning "belongs to the honest judgment of the parents"<sup>62</sup>; though this honest judgment supposes a rightly formed conscience. Thus it is highly important that men and women be given every opportunity to practice upright and truly human responsibility, a

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60 Abbott, op. cit., G.S., n. 52, p. 257.

61 See Kathleen Archibald, Sex and the Public Service, p. 8, 13. The author points out that the assumption that women stay at home and look after the children, while the men engage in work that supports the whole familial structure, is fast losing ground in a contemporary society in which such factors as the economic necessity, make it necessary for even married women to work; the husband's role in assuming mutual domestic responsibility is also on the increase.

62 Cf. Vaticanum II, G.S., n. 87, p. 827: "Nam iuxta inalienabile hominis ius ad matrimonium et generationem prolis, deliberatio circa numerum prolis gignendae a recto iudicio parentum pendet ac nullo modo auctoritatis publicae iudicio committi potest. Cum autem parentum iudicium conscientiam recte formatam supponat, magni momenti est ut omnibus aditus praebeatur ad colendam rectam et vere humanam responsabilitatem quae legem divinam, attentis adiunctis rerum et temporum, respiciat."

responsibility that respects the divine law and takes account of circumstances and the times in which we live<sup>63</sup>.

The presentation of marriage in the conciliar documents is fully dimorphic in outlook. The great change from looking on the familial structure as male-centered, observable in the Codex Iuris Canonici, to one that is mutually participatory with shared responsibility for both spouses, is one of the great advances presented by Second Vatican Council, and will no doubt continue to have liberating influences on women.

g) Women and the Religious Life.- The juxtaposition of "men and women" or an equivalent, occurs at least twenty times in the conciliar documents in passages that relate to the religious life. Not all of these will be examined, for several are repetitious, but the important areas of mutuality will be indicated. Here, also, the quotations do not show the whole thrust of the teachings, for many generic terms such as "religious" are used to denote both women and men.

Throughout the documents, a clear distinction is maintained between the clerical-religious life (for men), and

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63 Ibid.: "De progressibus porro scientificis in explorandis methodis quibus coniuges iuvare possint in ordinando numero prolis, quarum firmitas bene probata est et congruentia cum ordine morali comperta habetur, homines sapienter certiores fiant."

the lay-religious life (open to men and women)<sup>64</sup>. While it devolves on the hierarchy of the Church, to govern the practice of the evangelical counsels with wise legislation, still, guided by the Holy Spirit, the hierarchy also endorses the rules "formulated by eminent men and women, and authentically approves later modifications"<sup>65</sup>. Not only does she approve, but "Mother Church rejoices at finding within her bosom, men and women who more closely follow and more clearly demonstrate the Savior's self-giving"<sup>66</sup>. In the decree, Perfectae Caritatis, all religious are called to the appropriate renewal of the religious life, and a special word is addressed to the secular institutes. "This profession confers a consecration on men and women, laity and clergy, who reside in the world", and these institutes are asked to "preserve their proper and particular character"<sup>67</sup>.

For all persons consecrated to the religious life, the renewal and adaptation of their life is of great importance to the Council fathers, indeed this renewal and adaptation is the main thrust of Perfectae Caritatis. Some of the norms set for

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64 See Vaticanum II, Perfectae Caritatis (subsequently referred to as P.C., n. 10, p. 341: "Vita religiosa laicalis, tam pro viris quam pro mulieribus, statum in se completum professionis consiliorum evangelicorum constituit."

65 Abbott, op. cit., L.G., n. 45, p. 76.

66 Ibid., L.G., n. 42, p. 72.

67 Ibid., P.C., n. 11, p. 473, 474.

this renewal, have proven to be of great significance to religious women.

The appropriate renewal of religious life is seen as involving two simultaneous processes: (1) a continuous return to the sources of all Christian life and to the original inspiration behind a given community; and (2) an adjustment of the community to the changed conditions of the times. The fundamental norm of the religious life is the following of Christ as proposed by the gospel, and this norm is "to be regarded by all communities as their supreme law"<sup>68</sup>.

The importance of each person's participation comes into clearer focus, for "successful renewal and proper adaptation cannot be achieved unless every member of a community cooperates"<sup>69</sup>. It is to be noted here, that the decree, consistent with the Council's teaching on authority as a service function, does not call religious men and women by the name of "subject", but uses the word, "sodales" or fellow members<sup>70</sup>. The word itself speaks to the concept of shared responsibility in religious life.

A continuing development is seen to be as necessary for religious women as for men.

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68 Ibid., P.C., n. 2 (a), p. 468.

69 Ibid., P.C., n. 4, p. 469.

70 Ibid., see P.C., p. 469, footnote n. 15.

Therefore religious men other than clerics, and religious women as well, should not be assigned to apostolic works immediately after the novitiate. In suitable residences and in a fitting manner, let them continue their training in the religious life and the apostolate, in doctrine and technical matters, even to the extent of winning appropriate degrees.<sup>71</sup>

This directive is totally dimorphic in outlook and the need for both women and men to receive training and educational opportunities is seen in terms of apostolic needs. No cautions or protective norms are proposed especially for women.

The papal cloister for nuns totally dedicated to contemplation "is to be retained", though modified according to the conditions of time and place<sup>72</sup>. No similar directive is given for contemplative orders of monks.

Norms concerning the habit ask that they be suited to the circumstances of time and place as well as the services required by those who wear them, while "habits of men and women which do not correspond to those norms are to be changed"<sup>73</sup>.

Some of the liturgical changes proposed for religious in Sacrosanctum Concilium are examples of the same non-discrimination. For instance, "orders of canons of monks and of nuns, and of other regulars bound by law or constitutions to choral office, must celebrate the entire office", and

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71 Ibid., P.C., n. 18, p. 478-479.

72 Ibid., P.C., n. 16, p. 478.

73 Ibid., P.C., n. 17, p. 478.

competent superiors may grant the use of the vernacular, "to nuns and to members of institutes dedicated to acquiring perfection, both men who are not clerics and women"<sup>74</sup>.

In the training of missionaries, "priests, brothers, sisters, and laymen", each according "to his own state", should receive preparation and training<sup>75</sup>. Here there is a return to education in terms of "states", and not in terms of needs and talents. However, "as many brothers and sisters as possible should be well instructed and prepared in the catechetical art, so that they can collaborate in the apostolate to an even greater extent"<sup>76</sup>. Thus women, as well as men, are to be trained in matters dealing with the faith; and the norms are dimorphic.

The coordinating of the work of religious is important, and "therefore, extreme usefulness recommends conferences of religious men and unions of religious women", and these conferences should try to discover what things can be done by combined efforts, and should be in close touch with the episcopal conferences<sup>77</sup>.

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74 Ibid., S.C., n. 95 (a), p. 166; and n. 101 (2), p. 167.

75 Ibid., A.G., n. 26, p. 616.

76 Ibid., A.G., n. 26, p. 616-617.

77 Ibid., A.G., n. 33, p. 622.

There are several passages with a juxtaposition of men and women, which seem to depict a mutuality of mission and participation in the extension of the kingdom. To mention only two:

By their prayers and by their active labors, religious men and women play an indispensable role too in rooting and strengthening the kingdom of Christ in souls, and in causing it to expand.<sup>78</sup>

This passage indicates that women, too, have the "capacity" to root or establish, to strengthen and expand, the kingdom of Christ. While lay religious do not take over the priestly functions, nor the lay functions, there are clear relationships among the three:

Religious brothers and sisters should esteem the apostolic works of the laity and, according to the spirit and norms of their communities, willingly devote themselves to promoting lay enterprises. They should also strive to support, uphold, and complement priestly functions.<sup>79</sup>

On the whole, it would seem that the main differences in rights and responsibilities for religious, are seen between clerical religious and lay religious, not between male and female lay-religious. With but few exceptions, there is a strong dimorphic awareness of the collaboration of men and women in the religious life and mission.

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<sup>78</sup> Ibid., A.G., n. 15, p. 603.

<sup>79</sup> Ibid., A.A., n. 25, p. 514-515.

h) The "Closing Message to Women".- At the end of Second Vatican Council, on December 8, 1965, Pope Paul spoke to the Council fathers, and several cardinals read messages in the name of all, to various groups of people. Special messages were addressed to rulers, intellectuals and scientists, artists, women, the poor, sick and suffering, workers, and youth. The address "To Women", was read by Leon Cardinal Duval of Algiers, assisted by Julius Cardinal Doepfner of Munich and Raoul Cardinal Silva of Santiago<sup>80</sup>.

By singling out women as a special category of concern, a very positive awareness of women's social inequalities was indicated; and by implication this message expresses the regret of the Church for the position of women. In general, the content of the message does show an awareness of change in women's position, though this is envisaged more in terms of increased influence than in terms of self actualization:

But the hour is coming, in fact has come, when the vocation of woman is being achieved in its fullness, the hour in which woman acquires in the world an influence, an effect, and a power never hitherto achieved.<sup>81</sup>

In addressing "women of all states" - girls, wives, mothers and widows, consecrated virgins and women living alone - it is noted that "the Church is proud to have glorified and liberated women, and in the course of the centuries, in

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<sup>80</sup> Ibid., "To Women", p. 732-734.

<sup>81</sup> Ibid., p. 733.

diversity of characters, to have brought into relief her basic equality with man"<sup>82</sup>.

The special conciliar appeal to women is perhaps most indicative of what is expected of women, and at the same time it reveals a certain attitudinal stance towards women themselves:

You women have always had as your lot the protection of the home, the love of beginnings, and an understanding of cradles. You are present in the mystery of a life beginning. You offer consolation in the departure of death. Our technology runs the risk of becoming unhuman. Reconcile men with life and above all, we beseech you, watch carefully over the future of our race. Hold back the hand of man who, in a moment of folly, might attempt to destroy human civilization.<sup>83</sup>

The passage reflects the general tone of the message. It is written in terms that generally refer to male-dependency relationships that may occur in a woman's life. The attitude of men tending to think of women in terms of relationship functions rather than in terms of their existent realities as human beings, is evident. While granting the truth and even the basic importance of these relational roles, the failure to speak to women in terms of their personhood and accomplishments remains a lacuna.

In this overview of specific references made to women in the conciliar documents, the general assessment is very

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82 Ibid.

83 Ibid.

positive. In the important areas of the lay theology, marriage and family life, the religious life, the juridical status assigned to women is one of equality with men, with diversifications dependent upon what may be considered as the will of God. In the new creation of grace, men and women are redeemed in Christ in whom there is neither "male nor female". On this base, the Council teaches that non-discrimination because of sex is against God's will and contrary to the positive teaching of the Church. In the application of this teaching, it is perhaps the diversifications or differentiations between men and women that become the factors of determination. Women are considered as having a unique nature, divinely established and manifested in characteristics proper to women in their societal role.

## 2. Canonical Implications of the Conciliar Teaching.

The first question to be asked in regard to the canonical implications of the conciliar teaching on persons in general and women in particular, is the juridical significance. Not everything written in the documents may, or even should be, interpreted as legal norms. By canon 227 in the Codex Iuris Canonici, the decrees of a Council have no definite binding force, unless they have been confirmed by the Roman Pontiff and promulgated by his orders. The sixteen conciliar documents were confirmed and promulgated by Pope Paul VI on

various dates from December 4, 1963, until December 8, 1965. After the promulgation, Pope Paul explained that all the conciliar norms must be respected, but that on many occasions, the Council "formulated principles, criteria, desires which must be given concrete expression in new laws and instructions, in new organisms and offices, in spiritual, cultural, and moral movements, and in organizations"<sup>84</sup>. This means that while the teaching and principles of the Second Vatican Council are stable and valid, there are many matters that require implementation through legislative preciseness in post-conciliar legislation.

Applying all this to the conciliar teaching on persons, as gleaned from the study of the Mystery of the Church as the People of God, the concept of the dignity of the human person, and the theology of the laity, an attempt will be made to see whether the enunciated principles should lead to juridic determination in post-conciliar legislation, and in what way these principles may have canonical implications for women.

a) Canonical Implications on Persons in General.- The doctrinal importance, and the canonical expression, of the Church as the Mystery of the People of God, is of paramount importance in recognizing the centrality of persons in Church law, and is significant for women. It need only be recalled

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<sup>84</sup> Cf. Pope Paul VI, August 17, 1966, in La Documentation catholique, 63(1966), c. 1478.

that in the conception of the Church as perfect society as juridically expressed in the Codex Iuris Canonici, there tended to be an emphasis on institutions, and women were not part of the official public structure of the Church. In the study of the Church as the People of God, however, the inner presence of the Holy Spirit was seen as manifesting itself throughout the Church, in all persons.

The Mystery of the People of God was solemnly set forth in Lumen Gentium, one of the two dogmatic constitutions issued by the Council. In terms of title and of content, this document has been hailed as "the most momentous achievement of the Council, both because of its important contents and because of its central place among the Council documents"<sup>85</sup>, and the doctrine of the Mystery of the Church as the People of God is basic in this constitution<sup>86</sup>. It would follow then, that the principles set forth in this doctrine, such as the life and mission of the People of God, the importance of charisms, the impossibility of expressing the full nature of the Church in terms of structure, the establishment of the

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<sup>85</sup> Abbott, op. cit., p. 10; an introduction to Lumen Gentium by Avery Dulles.

<sup>86</sup> Ibid., O.T., n. 16, p. 452. There is specific mention made concerning the application of the Mystery of the Church: "Again, in the explanation of canon law and Church history, the Mystery of the Church should be kept in mind, as it was set forth in the Dogmatic Constitution on the Church, promulgated by this holy Synod."

"new creation" so that all baptized men and women are formed in the likeness of Christ; such principles must be accepted as "stable and valid". The equality of men and women in terms of the People of God, is thus firmly established in conciliar documentation, and whenever juridic convalidation is required, the principle of equality should be respected.

The second theological concept that was reviewed, the dignity of the human person, is also of paramount significance for women. This tenet is most fully elucidated in Gaudium et Spes, Lumen Gentium, and in Dignitatis Humanae. The first two documents are constitutions and solemnly set forth the centrality of this important concept; the last mentioned document is a declaration, enunciating an existing reality<sup>87</sup>. In these documents the centrality of human dignity is affirmed, and even institutions, both private and public, "must labor to minister to the dignity and purpose of man"<sup>88</sup>. Equal dignity is accorded to men and to women, for "all things on earth should be related to man as their center and crown", and man in this context means men and women, "for from the beginning

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<sup>87</sup> See Francis G. Morrisey, The Significance of Papal and Curial Pronouncements, p. 7. Without assessing the importance or the newness of documentary content, Morrisey sees the distinction between constitutions and declarations not so much in the importance of the content, but in the nature of the content material itself.

<sup>88</sup> Abbott, op. cit., G.S., n. 29, p. 228.

'male and female he created them' (Gen. 1:27)"<sup>89</sup>. And in setting forth the doctrine of the dignity of the human person, sex discrimination "is to be overcome and eradicated as contrary to God's intent"<sup>90</sup>. It would seem that the doctrine of the dignity of the human person is to be religiously believed by the faithful, and should be manifested in legislative norms. Such canonical manifestations should include all the factors that contribute to human dignity: respect for the human mind, the primacy of conscience, freedom of choice, subordination of structures to the human person, and equal privileges of faith in the "new creation". These, and other factors that contribute to the dignity of the human person, must find expression in post-conciliar legislation.

The third, and last, theological concept that was seen as having great significance for women, is the new theology of the laity. The doctrinal importance and the juridical expression of the life and mission of the laity affects laymen and women. The new theology of the laity is set forth in Lumen Gentium, in Gaudium et Spes, and in Apostolicam Actuositatem. The first two are constitutions, the third, a decree. It would appear, then, that the theology of the laity has real doctrinal importance and should be manifested in

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89 Ibid., G.S., n. 12, p. 211.

90 Ibid., G.S., n. 29, p. 228.

canonical norms. Such norms would include the factors considered by the Council fathers as contributing to the nature and mission of the laity. Among such factors, it must be noted that by baptism, men and women are made one body with Christ; they share in the priestly, prophetic, and kingly functions of Christ; they carry out their special mission among the People of God both in the Church and in the secular world; they specifically seek God by ordering temporal affairs according to the plan of God; and among the laity there is no inequality on the basis of sex. These, and other factors that contribute to the theology of the laity, must become juridically normative in post-conciliar legislation.

There is no doubt that the teaching of the centrality of the person is firmly established in doctrine as part of the faith, and must be manifested in legislative norms. But when specific applications to women are proposed, the question is not so simple. Until the recognition of women in Church law is the same thing as the recognition of the person in the law, there are important issues to be resolved. Some of these issues became evident in the specific references made to women in the conciliar documents.

b) Canonical Implications for Women.— The specific references made to women in the conciliar documents establish equality with men, but with real diversifications in application. The rationale for diversification continues to utilize

an "equal but different" principle based largely on "natural" differences between men and women. This results in a separate status for women, a somewhat ambiguous concept of juridic personality, and characteristic "roles" for men and women in their membership in the private and public order of the Church. Such issues of differentiation should not simply be accepted as assumptions, but seem to call for deeper theological and juridical resolution. Some implications for women in these areas have already been noted. Here the issues will be made more specific.

The polarity (or complementarity) concept of the sexes is certainly muted in the documents; but it is revealed in the closing message "To Women", where women are addressed mainly in terms of their sexual-relational roles not in terms of accomplishments or personhood (especially evident when this message is compared to those addressed to rulers, to men of thought and science, etc.). The same polarity is evidenced in such references as "education" corresponding to one's sex<sup>91</sup>, the preservation of woman's "domestic role"<sup>92</sup>, and woman's

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91 Cf. Vaticanum II, G.E., n. 1, p. 390: "Omnibus hominibus cuiusvis stirpis, condicionis et aetatis utpote dignitate personae pollentibus, ius est inalienabile ad educationem, proprio fini respondentem, propriae indoli, sexus differentiae..."

92 Ibid., Cf. G.S., n. 52, p. 764: "Praesentia actiosa patris eorumdem efformationi magnopere prodest, sed et cura domestica matris, qua liberi praesertim iuniores indigent, in tuto ponenda est..."

participation in cultural life in accord with her "proper role" and her "nature"<sup>93</sup>.

A polarity concept of personhood tends to assign special status to women. In the Codex Iuris Canonici, the polarity concept seemed basic, for woman's sex was seen as having a specific group of legal incapacities with special juridic effects which comprised her status in law. The males, considered as the norm, remained without status at the level of their masculine nature, but with status assigned for state of life, office, merit and qualifications. There is no positive evidence in the conciliar documents that this stance is not still maintained. The issue, then, concerns the question whether there should be but one status in the law for persons; a common status for men and women.

Closely allied with the common-status concept, is that of one juridic personality. A juridic person presently acquires status in virtue of such juridical facts as baptism, age, place of origin, domicile, marital state, legitimacy of birth, consanguinity, affinity, rite (canons 87-98); and sex per se is not listed in the Code. However, it was ascertained that many of these elements were found to have specific male-orientations: place of origin, domicile, legitimacy of birth,

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<sup>93</sup> Ibid., cf. G.S., n. 60, p. 778: "Mulieres in fere omnibus vitae campis iam adlaborant; convenit autem ut partes suas secundum propriam indolem plene assumere valeant."

and rite. A woman's juridic personality is thus determined in terms of the male orientation. For instance, a wife's juridical personality is directly related to the husband's; and as a widow, the woman does not assume the full juridic status of an adult unmarried woman.

In the conciliar documents, only two of the determinant juridical facts are mentioned: baptism and rite. The decree, Unitatis Redintegratio, states that by the sacrament of baptism, "a man becomes truly incorporated into the crucified and glorified Christ and is reborn to a sharing of the divine life"<sup>94</sup>. Concerning "rite", the assurance is given to those churches that differ in rite, that they "are of equal dignity"<sup>95</sup>. On the whole, there seems to be no real difference in stance in regard to these and the other juridic facts mentioned in the Code. Women, then, could continue to have a juridic personality defined in terms of male-oriented juridic factors. However, given the premise of the dignity of the human person, the issue becomes the consideration of a single juridical personality, common to both men and women before the law. Such a common juridic personality would treat men and women as equals before the law, and provide the basis for equality of rights and duties in all the baptized.

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94 Abbott, op. cit., U.R., n. 22, p. 363.

95 Ibid., Orientalium Ecclesiarum (subsequently referred to as O.E., n. 2 and n. 3, p. 374.

In the concept of "one juridical personality", both men and women are seen as possessing the same natural and supernatural rights and duties, with the "capacity" to place all naturally valid acts. No essential distinction would be made between the sexes on the basis of this juridic personality; however, for individuals in different circumstances and in accord with the various functions performed by each, there will arise differences in rights and responsibilities.

An equality of juridic personality for men and women would seem to have two main corollaries: (1) all members of the People of God would have the same rights, responsibilities, the same protection and penalties, in all norms that relate to the People of God; and (2) all lay men and women would have the same rights and responsibilities, the same protection and penalties, in accord with lay status. In practice, this would mean that all protective norms for women would be removed or extended to men; that women would have the same opportunities as men to enter any state of life to which they may be called; that women, like men, would have equal opportunities in the legislative, executive, and judicial structures of the ecclesial society.

A common juridic personality, leading to a common status in law for both men and women, would resolve many difficulties in the legal treatment of the sexes; but the application of such concepts would still remain problematic if

at the levels of social and/or interpersonal relationships the factor of sex remains a divisive determinant. This becomes evident when a law assigns female "roles" and a "proper" sphere for women. Under this heading, the structural and relationship patterns in such areas as the family, community and religious life, the institutional structure of the Church, might be included.

In the specific references made to women in marriage and the family life, a very significant emphasis was noted in describing marriage as a "conjugal covenant", as an "intimate partnership of married life and love"<sup>96</sup>, as an interpersonal relationship that entailed the "kindly communion of minds and the joint deliberation of spouses"<sup>97</sup>. "Firmly established by the Lord, the unity of marriage will radiate from the equal personal dignity of wife and husband, a dignity acknowledged by mutual and total love"<sup>98</sup>. The principle of marital equality of husband and wife is firmly established and it remains to be convalidated in law. To this end, a wife can no longer be assigned to sharing the canonical effects of the husband's status (cf. canon 1112), but a common marital status is called for. In regard to the wife, the matter of domicile, rite,

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96 Abbott, op. cit., G.S., n. 48, p. 250.

97 Ibid., G.S., n. 52, p. 257.

98 Ibid., G.S., n. 49, p. 253.

place of burial, and all such topics, are choices that should be made from the same terms of reference accorded the husband. The authority patterns should not be determined with the man the automatic "head-of-the-house", but the principles of "joint deliberation", mutual consent, consensus, and respect for mutual self-determination must be given scope for realization within the family structure.

In a partnership structure of marriage, the authority-figure over children needs reassessment. In the Code it was seen that a mother's authority is surrogate to the father's authority; this needs revision in terms of parental instead of paternal power. The mode of designating legitimacy and illegitimacy needs adjustment from the point of view of the centrality of the person. The father's and the mother's reciprocity of duties towards the children (legitimate or illegitimate) should become more comprehensive in terms of domestic and educational responsibilities. In all, it would seem that the conciliar "covenant-family" type, calls for many juridic structural changes.

The conciliar documents invite widows "to make great contributions toward holiness and apostolic endeavor in the Church"<sup>99</sup>, and they are assured that widowhood, "accepted bravely as a continuation of the marriage vocation, will be

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<sup>99</sup> Ibid., L.G., n. 41, p. 69.

esteemed by all"<sup>100</sup>. While the last assurance is apt for widows and widowers, the first exhortation is made to widows. The council, then, appears more protective towards the widow. In a concept of common status, both widow and widower would be accorded the necessary protective help.

The special references to women in the religious life, revealed a high degree of mutuality between men and women in the lay-religious state. Translating this equality into post-conciliar legislation, would mean equivalent norms in entrance requirements, impediments, age requirements, in confessions, financial reports, the ordinary's presidency at times of elections, and the many other discrepancies between lay religious men and women.

The concept of the People of God constituted in hierarchical communion, also calls for juridical convalidation. If "community" is to be the expression of the structure, then law must foster communities at every level. As a more comprehensive recognition is given to the role of community, a more realistic concept of power and jurisdiction will emerge, especially with the deepening awareness of the lay person's participation in Christ's priestly, prophetic, and kingly roles; and the growing realization that the body of the faithful as a whole "cannot err in matters of belief". A wider

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100 Ibid., G.S., n. 48, p. 252.

awareness of unity is already evident in Chapter 3 of Lumen Gentium, where jurisdiction and orders are no longer seen as having two principles, but are rooted in the pneumatic oneness of the Church<sup>101</sup>; a pneumatic oneness that also extends, in a certain way, to the People of God.

The public constitutional order of the Church has long been conceived as distinct from the concept of the Church as the community of the faithful. In this view, the entrusting of the total power of teaching and government to the apostles, was seen as the basis for restricting the sacerdotal power to males, in accord with the "will" of Christ<sup>102</sup>. The canonical status of women in the public ecclesiastical order of the Church as presented in the Codex Iuris Canonici was seen as essentially negative. In general, a woman lacks legislative powers (except to form customary law), executive powers, judicial powers, authentic personal teaching power; and whatever administrative authority may be entrusted to her is limited by precautions and conditions. In the presentation of the hierarchical structure of the Church in Lumen Gentium,

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101 Ibid., L.G.; especially n. 21, p. 41: "But episcopal consecration, together with the office of sanctifying, also confers the offices of teaching and of governing."

102 The whole question of the jus divinum and its relation to specific legislation and institutions in Church law must be seriously examined today, especially in the light of historical-theological considerations.

the "traditional" view has been maintained<sup>103</sup>. However, a vital question for women is connected with the male-orientation of orders and jurisdiction still remains: Can the ministry of women in the Church receive sacramental confirmation? The question is now being asked from a new perspective: in the light of the conciliar confirmation of the dignity of the human person, the equality of men and women, the transcendence of men and women in the "new creation", what change in attitude can be expected in the official recognition of the ministry of women<sup>104</sup>.

In the conciliar documents, a widened sense of the magisterium is implied. The Council sees the spreading of the gospel as the task of the whole body of baptized Christians, of the entire People of God, in which work bishops, priests, and faithful all co-operate by playing their respective roles. For women, this teaching should ensure an official participation in the ministry of pastoral preaching, catechetics, and

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<sup>103</sup> Abbott, op. cit., L.G., n. 18-29, p. 37-56; also Vaticanum II, L.G., n. 29, p. 150: "De consensu Romani Pontificis hic diaconatus viris maturioris aetatis etiam in matrimonio viventibus conferri poterit, necnon iuvenibus idoneis, pro quibus tamen lex coelibatus firma remanere debet." This is one of the few direct references indicating the maintenance of the male tradition.

<sup>104</sup> On this topic, see Jean Beyer, "Current Questions", p. 94: "In my own view, the question of the ministry of women is bound up historically with the development of orders in the Church, and with the process of clericalization whereby every category of ministry became absorbed into the episcopal and presbyteral priesthood."

Christian instruction, in accord with general norms for the laity.

In summary, it would appear that the doctrine of centrality of the human person has been applied in some of the areas that relate specifically to women. The conciliar teaching on marriage and family life is perhaps the fullest expression of the equivalence and mutuality of men and women. In the lay religious life, the principles of equivalence and mutuality are basic, with the few exceptions relating to special "roles" for women. The conciliar teaching on the laity, embraces fully the equality of men and women. In the public order of the Church, no shift from the traditional outlook on the "hierarchical structure" is found.

PART III

WOMEN IN THE POST-CONCILIAR CHURCH

## CHAPTER V

### CHANGING OUTLOOKS AND STRUCTURES

The conciliar teaching on persons evidences a vision of humanity that affirms the primacy of the person and the equality of men and women. These men and women exist today in a society that is dynamic and evolutionary, and they have received a mandate from Christ himself to assume responsibility for the new world order. In the accomplishment of this Christian mission, new and reformed institutions, roles, and relationship patterns are envisaged.

Within this concept of Christian anthropology, however, there are vestiges of a differential treatment of women, which retains a polarity (or even complementary) perspective of men and women. The reconciliation of this perspective with the conciliar teaching of the unity of man<sup>1</sup> remains a basic

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<sup>1</sup> Cf. Vaticanum II, G.S., n. 14, p. 698: "Corpore et anima unus, homo per ipsam suam corporalem condicionem elementa mundi materialis in se colligit, ita ut, per ipsum, fastigium suum attingant et ad liberam Creatoris laudem vocem attollant."

issue<sup>2</sup>.

A review of topics that have a direct bearing on women's position, and a critical analysis of allusions made to women in post-conciliar documentation, seem to allow the following organization of material: references in Papal communications and Vatican commissions; certain changes in ecclesial structures affecting women.

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2 See M. Nadine Foley, "Woman in Vatican Texts: 1960 to the Present", paper presented at Symposium on Women and Church Law, Rosemont, Pennsylvania, Oct. 10, 1976; the author, on p. 27, 28, discusses the three approaches to the "sexual polarity of man's existence" found reflected in representative Christian thinkers in the view of Paul K. Jewett in Man as Male and Female (Grand Rapids, William B. Eerdmans Publishing Co., 1975) on p. 24-25. In brief, Jewett sees the three approaches as: 1. The male/female distinction has nothing to contribute to our understanding of Man as created in the divine image. True humanity transcends sexuality. (This approach reflects some Fathers of the Church who tended to see human sexual polarity as a consequence of the Fall.) 2. While the male/female distinction is not an essential part of the doctrine of Man, it is evident from scripture that both the male and female share in the divine image. Therefore, in understanding Man, there should be no striving to transcend the distinction between male and female. (Jewett sees this view espoused by theologians such as Augustine, Thomas Aquinas and Calvin.) 3. To be in the image of God is to be male and female: the fellowship as male and female is what it means to be in the image of God. Before men and women become related as husband and wife, they are related as men and women by God's creative act. To be Man is to be male and female, male or female. (An approach made by such thinkers as Karl Barth.) Jewett feels that none of the three approaches develops the male/female relationship theologically. The theological issue remains.

### 1. Papal Communications and Vatican Commissions.

The modern world is characterized by rapid changes in the scientific, social, economic and political spheres; and since the Second Vatican Council even the Catholic Church is experiencing the change of aggiornamento. There are few nations, families, or individuals who have remained untouched by such developments. All this can be both challenging and disturbing to contemporary man. It is the task of Pope Paul VI to lead and encourage the Church at a critical time. In the discharge of his onerous task, Pope Paul has been untiring in exercising his pastoral mission of giving light and incentive to the Christian world and implementing both the letter and the spirit of Second Vatican Council. He does this, not only through his personal allocutions and encyclicals, but through the documents issued by various commissions, through the legislation which governs the presence and actions of the Church, and through the on-going support and inspiration given to the drafters of the new Code of Church law. Pope Paul's teaching and directives are taken as the stimuli behind the various categories to be considered in "Changing Outlooks and Structures".

a) Pope Paul VI: Persons and Women.- In considering the communications of Pope Paul VI that directly and indirectly affect the position of women, there appears to be at least four major topics: the rights and dignity of the human person, the

mission of lay men and women, the vocation of women, and the issue of the ordination of women. Only selected texts will be reviewed, as typical of a much larger documentation on each topic.

Among the most influential documents that have issued from the popes over the past decades are those dealing with the social teaching of the Church. Pope Paul VI, in Populorum Progressio<sup>3</sup>, refers especially to Leo XIII, Pius XI, and John XXIII<sup>4</sup>. All of these popes enunciated the social teaching of the Church in the context of the dignity and freedom of the human person; or, as Pope Paul expressed it, in the context of "man's complete development and the development of all mankind"<sup>5</sup>. Yet within some of these earlier tracts on social justice, there are allusions to women which give the implication that what is said of "man" in general does not

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3 Pope Paul VI, Populorum Progressio (subsequently referred to as P.P.), March 26, 1967; published by United States Catholic Conference.

4 Ibid., see n. 2, p. 3: "Our predecessors in their great encyclicals, Leo XIII in Rerum Novarum, Pius XI in Quadragesimo Anno, and John XXIII in Mater et Magistra and Pacem in Terris - not to mention the messages of Pius XII to the world - did not fail in the duty of their office of shedding the light of the Gospel on the social questions of their times."

5 Ibid., P.P., n. 5, p. 5.

does not apply to women without distinction<sup>6</sup>.

In Populorum Progressio, Pope Paul announces the establishment of the Pontifical Commission on Justice and Peace as an instrument to bring "to the whole of God's People the full knowledge of the part expected of them at the present time," and he expresses the hope that this Commission "can and should bring together men of good will with our Catholic sons and our Christian brothers"<sup>7</sup>. The encyclical depicts man's development in terms of a vocation to self-fulfillment, the assumption of personal and communal responsibility, the

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<sup>6</sup> See Irene Poelzer, "The Church and Women", in The Chelsea Journal, 1(1975). On p. 259, 260 the author summarizes the allusions to women found in some of the earlier papal pronouncements: "In his encyclicals Rerum Novarum, and in Christian Marriage, Leo XIII opposes and denounces the idea that women should perform the same work as men. Furthermore, although he subscribes to the equality of men and women in dignity and being, he supports the superior position for men in the authority of the husband, and the role of women as being in the home ... Pius XI reaffirmed in Casti Connubii that woman's sphere is the home. Though marriage partners must strive for mutual growth, the husband had primacy over wife and children. This did not mean that the wife is placed on the same level as legal minors for indeed she held the primacy in love. Pius XI also urged in Quadragesimo Anno a family wage for men in order to allow wives and mothers to remain in the home... In his many addresses to women's groups Pius XII reiterated the equality in dignity of men and women before God, but deplored the social conditions which caused women to leave the home and thus interfered with the close harmony of the sexes and sullied the true dignity of women... John XXIII made a startling breakthrough on the ideological level in favor of women. In Pacem in Terris he states: "Since women are becoming ever more conscious of their human dignity, they will not tolerate being treated as mere instruments, but demand rights befitting a human person both in domestic and public life."

<sup>7</sup> Pope Paul VI, P.P., loc.cit., n. 5, p. 5.

acquisition of a true scale of values, and in working towards a more human condition. The family is referred to as "life's primary environment" which must be maintained as the place where the various generations come together "to harmonise personal rights" with the other requirements of social life<sup>8</sup>. The whole of Populorum Progressio evidences a deep concern for the dignity and rights of the human person; the appeal is for the development of "people". The language used throughout the letter is male oriented, and there are no direct allusions to women.

The following year, on July 25, 1968, the encyclical letter, Humanae Vitae, was issued by Pope Paul<sup>9</sup>. Here, no attempt will be made to even touch on the world-wide controversy sparked by this encyclical<sup>10</sup>. The letter will be assessed merely on the attitudinal stance towards persons found therein.

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8 Ibid.; a summary of n. 15-19, and n. 38, and 36.

9 Pope Paul VI, Humanae Vitae, July 25, 1968; published by St. Paul Editions.

10 On this topic, see Charles E. Curran, "How my Mind has Changed: 1960-1975", in Horizons, 2(1975). On p. 189, the author claims that the context within which moral theology developed since 1960, "produced the greatest period of tension and upheaval the Roman Catholic Church has known since the Reformation", and that much of that context was the result of the birth-control issue. To Curran, the problem seemed to evolve around the issue of dissent: "Not only did the birth-control controversy occupy the center stage in Roman Catholic moral theology for these years, but in my judgment the controversy itself is paradigmatic for future developments in moral theology."

In addressing new aspects of the problem on the regulation of birth, mention is made of demographic development, world population, economic conditions, and the change "both in the manner of considering the person of woman and her place in society"<sup>11</sup>. The most important new aspect is left for the last, the principle of totality:

Finally, and above all, man has made stupendous progress in the domination and rational organization of the forces of nature, such that he tends to extend this domination to his own total being: to the body, to psychical life, to social life, and even to the laws which regulate the transmission of life.<sup>12</sup>

It is this principle of totality which the Pope seems to designate as a violation of a person's true dignity. At first sight, there appears to be a contradiction here. Does not human dignity itself demand complete dominion over one's body? Without resolving the possible contradiction, Humanae Vitae states:

In fact, just as man does not have unlimited dominion over his body in general, so also, with particular reason, he has no such dominion over his generative faculties as such, because of their intrinsic ordination towards raising up life, of which God is the principle.<sup>13</sup>

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11 Pope Paul VI, Humanae Vitae, loc.cit., n. 2, p. 4.

12 Ibid.

13 Ibid., n. 13, p. 11.

This premise seems to assert that "person" cannot be defined fully as an autonomous being; but that obligations to God, to others, and to the self, are part of personhood itself. This concept of person is in full accord with Gaudium et Spes<sup>14</sup>, where man at the "center" is seen to be in danger of exalting himself as the absolute measure, and the male-female companionship is seen as the primary form of interpersonal relationships: "For by his innermost nature man is a social being, and unless he relates himself to others he can neither live nor develop his potential"<sup>15</sup>.

The concept that man in his innermost nature is a social being and must relate to others for life and development, also implies the corollary that man is not totally self sufficient and there are binding obligations to God and others. This understanding of personhood seems basic to the notion of responsible parenthood as set forth by Humanae Vitae:

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14 Cf. Vaticanum II, G.S., n. 12, p. 696-697: "Quid est autem homo? Multas opiniones de seipso protulit et profert, varias et etiam contrarias, quibus saepe vel se tamquam absolutam regulam exaltat vel usque ad desperationem deprimit, exinde anceps et anxius... At Deus non creavit hominem solum: nam inde a primordiis 'masculum et feminam creavit eos' (Gen. 1, 27), quorum consociatio primam formam efficit communionis personarum. Homo etenim ex intima sua natura ens sociale est, atque sine relationibus cum aliis nec vivere nec suas dotes expandere potest."

15 W. Abbott, The Documents of Vatican II, n. 12, p. 211.

In relation to physical, economic, psychological and social conditions, responsible parenthood is exercised, either by the deliberate and generous decision to raise a numerous family, or by the decision, made for grave motives and with due respect for the moral law, to avoid for the time being, or even for an indeterminate period, a new birth.<sup>16</sup>

In this passage, the deliberate decision of husband and wife is respected; but the decision is not made by "autonomous" beings, but by persons who recognize duties towards God, themselves, the family and society.

Besides upholding the conciliar concept of person in regard to the regulation of births, the encyclical also evidences a view of marriage which attests strong affirmations of the mutuality of the marital life and mission, with full regard for the personhood of the wife and of the husband.

It is in fact justly observed that a conjugal act imposed upon one's partner without regard for his or her condition and lawful desires is not a true act of love, and therefore denies an exigency of right moral order in the relationships between husband and wife.<sup>17</sup>

In many ways, Humanae Vitae may be seen as a defence of the dignity of the person. The encyclical, moreover, is important for the doctrinal teaching on the mutuality of the marital life and mission which has full regard for the dignity and responsibility of the wife and of the husband.

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<sup>16</sup> Pope Paul VI, Humanae Vitae, loc.cit., n. 10, p. 9.

<sup>17</sup> Ibid., n. 13, p. 10.

In his apostolic letter On The Occasion of the Eightieth Anniversary of the Encyclical "Rerum Novarum"<sup>18</sup>, Pope Paul VI builds on the concept of man's self-fulfillment as set forth in Populorum Progressio and affirmed in Humanae Vitae, and questions, "Is not genuine progress to be found in the development of moral consciousness, which will lead man to exercise a wider solidarity and to open himself freely to others and to God"<sup>19</sup>? In the face of so many new questions, Christians are called upon "to undertake the daring and creative innovations which the present state of the world requires"<sup>20</sup>. Some of these innovations are in the realm of justice, changes of attitudes and structures, political power aimed at the achievement of the common good, and a sharing in responsibility: "The passing to the political dimension also expresses a demand made by the man of today: a greater sharing in responsibility and in decision-making"<sup>21</sup>. Among the new social problems noted (urbanization, unemployment, emigration, etc.), is included the "role of women"<sup>22</sup>.

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<sup>18</sup> Pope Paul VI, "Apostolic Letter of His Holiness Pope Paulus PP. VI on the Occasion of the Eightieth Anniversary of the Encyclical 'Rerum Novarum'", of May 14, 1971, in The Teachings of Pope Paul VI, 1971, p. 343-374.

<sup>19</sup> Ibid., n. 41, p. 366.

<sup>20</sup> Ibid., n. 42, p. 367.

<sup>21</sup> Ibid., n. 47, p. 370.

<sup>22</sup> Ibid., n. 13, p. 350.

As one of the new issues facing the world is the changing status of women, Pope Paul in this apostolic letter declares that this new trend calls for further elaboration of the social doctrine of the Church to meet the emerging factor.

Similarly, in many countries a charter for women which would put an end to an actual discrimination and would establish relationships of equality in rights and of respect for their dignity is the object of study and at times of lively demands. We do not have in mind that false equality which would deny the distinctions laid down by the Creator himself and which would be in contradiction with woman's proper role, which is of such capital importance, at the heart of the family as well as within society. Developments in legislation should on the contrary be directed to protecting her proper vocation and at the same time recognizing her independence as a person, and her equal rights to participate in cultural, economic, social and political life.<sup>23</sup>

Here, it is made clear that issues relating to women are receiving the attention of the magisterium of the Church; and that this attention is not only provoked by the gospel message of human dignity and freedom, but also by an emerging social awareness of human reality. Affirmation is given to the end of sex discrimination, and the establishment of relationships of equality in rights and dignity. This equality must not deny the natural distinctions between men and women. This leads to the designation of woman's "proper" role and

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23 Ibid.

vocation: the "heart" of the family and society<sup>24</sup>. Legislation is directed to a recognition of woman's independence as a person; to equal participatory rights with men in cultural, economic, social, and political life; to "protecting" woman's proper vocation.

In regard to the laity, Pope Paul lost no time in fostering the good news of Second Vatican Council announcing the enhanced position of the laity<sup>25</sup>. Over the years, the Pope continues to devote much of his time to encouraging the laity to be in the forefront in collaborating with all men of good will in order to bring about the progress of

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24 The extent of discrimination against women might well dictate the singling out of women for special concern in the area of human rights. This, however, must not be done at the expense of discriminating against men. If woman's proper role is motherhood, is man's proper role, fatherhood? Should not legislation be directed to "protecting" the proper vocation of both men and women? Even more basic, perhaps, is the question whether a person's "proper" role is always determined by sex, or by the "rational" human nature.

25 See The Pope Speaks, 11(1966), p. 161 f. In an address to the Permanent Committee of the Congress of the Lay Apostolate, on May 8, 1966, the Pope outlined the lay apostolate in the light of the Council. The following day, in an address to a general audience, Paul spoke of the concept of the People of God in the Church. This was followed on March 16 by a talk on "Sanctity for Laymen". The list goes on, and talks to the laity seem to increase with each passing year.

humanity<sup>26</sup>. The Holy Father is consistent in viewing the laity as an integral part of the Church and often rejoices in the pneumatic oneness of the People of God:

We are all equal, we are brothers (Mt. 23, 8), we are animated by the same life-bringing and sanctifying Spirit (1 Cor. 23, 4 f.)... participation in the Church's mission is open to all Christians, her sons; open, but binding.<sup>27</sup>

Speaking on January 10, 1972, about the "Church's Contribution to Peace and Justice in the World", Pope Paul described the Church as "a sign and safeguard of the transcendence of the human person"<sup>28</sup>, and devoted most of his talk to the place of the laity in the Church<sup>29</sup>. In these talks, references are most frequently made to "laymen" and the language throughout tends to be male-oriented.

After a decade of encouragement, how have lay men and women responded to the Pope's oft-repeated call to action?

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<sup>26</sup> See Pope Paul VI, "Church's Contribution to Peace and Justice in the World", in The Teachings of Pope Paul VI: 1972. On p. 200, speaking of the presence of the Church in the world, we read: "In the first place", the Church "is made for men and made up of men", and lay people "are called through their 'prophetic and royal' duty to be in the forefront" in collaborating vigorously, so that created goods may be perfected "for the benefit of every last man".

<sup>27</sup> Pope Paul VI, "Responsibility of the Laity in the Church's Mission", in The Teachings of Pope Paul VI: 1971, p. 123.

<sup>28</sup> Pope Paul VI, "Church's Contribution...", loc.cit., p. 200.

<sup>29</sup> Ibid., p. 200 f.

Pope Paul VI gave his own assessment of this in an address to the College of Cardinals on June 22, 1974:

In the first place Our thoughts turn to the beloved Catholic laity... The Holy See, alert to the signs of the times, never misses any opportunity to get today's men and women more actively involved in the life and activity of the Church; it does this through its actions in the liturgical and doctrinal fields, and through its provisions for catechetical, organizational and social renewal. There are signs of a heartening response in this regard, even though much remains to be done and great efforts must still be made in order for the Catholic laity to share effectively in the Church's constant drive for evangelization and service.<sup>30</sup>

There can be no doubt that the life and mission of the laity is close to the heart of Pope Paul VI. It may also be remarked that while the earlier talks to and about the laity, were usually couched in terms of the normative "layman", the more recent talks speak specifically about lay "men and women". Women, with men, are being asked to assume a collaborative role in the lay apostolate.

If the allocutions of Pope Paul VI present an on-going development of the new orientations towards mission through the collaboration of men and women in the lay apostolate, another preoccupation seems to appear in the talks of the Pope in recent years: the vocation of women.

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<sup>30</sup> Pope Paul VI, "An Era of Vitality for the Church", in The Pope Speaks, 19(1974-75), p. 124.

Speaking on December 9, 1972, to the Union of Italian Catholic Jurists<sup>31</sup>, the Pope reminded the jurists that the Church's teaching on the right to birth is based on the dignity of the human person<sup>32</sup>, and the person's right to life and protection:

In this connection certain distortions of the present demand, just in itself, for female emancipation, or for so-called sexual freedom, are false and alienating, such as those that are contrary not only to Catholic morality, but also to general human ethics.<sup>33</sup>

Pope Paul then points out that the problem of abortion cannot be based solely on the individualistic consideration of the woman, but must also envisage the common good and "above all that of the personality of the unborn child"<sup>34</sup>. The Holy Father then states that

... real female emancipation does not lie in a formalistic or materialistic equality with the other sex, but in recognition of what is essentially specific in the female personality, woman's vocation to be a mother.<sup>35</sup>

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31 Pope Paul VI, "The Defence of the Right to Birth Against the Evil of Abortion", in The Teachings of Pope Paul VI: 1972, p. 320-323.

32 Ibid., p. 321, where Pope Paul states that in the first place, "the dignity of the human person, which is offended not only in the innocent victim of the killing, is also offended in the mother who deliberately seeks to do so, and in all those - doctors or nurses - who cooperate in voluntary abortion."

33 Ibid., p. 322.

34 Ibid., p. 323.

35 Ibid.

A polarity perspective of men and women seems to be emphasized in this passage, and "equality" seems equated with differentiation.

Just two years later, on December 8, 1974, Pope Paul VI again spoke to the Union of Italian Catholic Jurists<sup>36</sup>, on "The Role of Woman in Contemporary Society". This talk portrays a deepened awareness of the "crisis" proportion of the woman issue. Speaking of the contemporary socio-cultural transformations that have effected a "remarkable change in the position and roles of women"<sup>37</sup>, the Pope remarks that this shift has "put woman at the center of an as yet unresolved crisis in institutions and culture"<sup>38</sup>. Pope Paul then outlines some existent realities in regard to women:

Today, then, we are faced with developments of enormous importance: first and foremost, the equal rights given to women, along with their increasing emancipation from the control of men; a new conception and interpretation of their roles as wives, mothers, daughters and sisters; the ever greater availability to them of a vast and expanding range of specialized professional occupations; their growing tendency to prefer jobs outside the home with its effects on the marital relationship and, above all, on the education of the children, who are prematurely freed from the authority of the parents and especially of the mother.<sup>39</sup>

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<sup>36</sup> Pope Paul VI, "The Role of Woman in Contemporary Society", in The Pope Speaks, 19(1974-75), p. 314-318.

<sup>37</sup> Ibid., p. 314.

<sup>38</sup> Ibid., p. 314-315.

<sup>39</sup> Ibid., p. 315.

The Pope's assessment of these changes is very positive, seeing that in these new circumstances, "the woman of today and tomorrow will perhaps be able more easily to develop her full potential"<sup>40</sup>.

Pope Paul reduces his remarks to what he calls "a few essentials" to establish "the place women should have in a renewed society", and tells the jurists that we should "willingly vote for":

1) the recognition of the civil rights of women as the full equals of men, wherever these rights have not yet been acknowledged;

2) laws that will make it really possible for women to fill the same professional, social and political roles as men, according to the individual capacities of the person;

3) the acknowledgement, respect and protection of the special prerogatives of women in marriage, family, education, and society;

4) the maintenance and defense of the dignity of women as persons, unmarried women, wives and widows; and the help they need, especially when the husband is absent, disabled, or imprisoned, that is, when he cannot fulfill his function in the family.<sup>41</sup>

These "few essentials" are among the clearest unqualified statements of the rights of women to be found in any papal communication. The first two essentials are a recognition of the equivalence of men and women as persons. The third essential pays due respect to the generative differences between men and women; and the fourth essential recognizes a

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid., p. 316.

societal responsibility towards the family itself. There might be some implication in the last "essential" that a sole wife is in more need of help than a sole husband, with a resultant discrimination against men.

On June 16, 1975, Pope Paul VI sent an apostolic letter on "The Church and Women's Rights"<sup>42</sup>, to the World Conference for the International Women's Year held in Mexico City from June 19 to July 2. He expresses the full sympathy of the Church with the triple theme of International Women's Year - equality, development, and peace - and sees the Conference as creating "a truly new step forward" in the creation of conditions "for a life marked by great justice and human dignity"<sup>43</sup>. The Pope then recognized the serious problems facing women and expressed a hope that women themselves would rally to the call of the triple theme:

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<sup>42</sup> Pope Paul VI, "The Church and Women's Rights", in The Pope Speaks, 20(1975-1976), p. 180-183.

<sup>43</sup> Ibid., p. 180.

In the course of history, women have found, and still find, themselves relegated to a position of inferiority in relation to men and made the victims, more often than men, of the scourges of underdevelopment and war. On the other hand, as We pointed out in connection with the objectives of the International Year, we must also assure, in a concrete way, the full integration of women into the worldwide effort at development, and acknowledge and further their contribution to the strengthening of peace. How hopeful the prospect for mankind would be if, through the concerted efforts of all people of good will, the hundreds of millions of women all over the world could at last serve these great causes, as well as the cause of "reconciliation in family and society", not only with their numerical strength but also with their gifts of mind and heart for which there is no substitute.<sup>44</sup>

The hope is also expressed by the Pope that the advancement of women will be in accord with Christian principles. This should not be restrictive

... since it is in the light of the faith that the true equality of man and woman emerges, each of them being endowed, in the way proper to him or her, with the dignity of the human person, each being created in the image of God.<sup>45</sup>

In analysing Pope Paul's pronouncements on the vocation of women, there seems to be a marked difference in emphasis, no doubt necessitated by the particular circumstances of the various addresses. In some communications, such as those concerned with the right to birth, the references to the role of women in the family seem to make this familial role the key to the fundamental position of the Church on women. This is

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<sup>44</sup> Ibid., p. 180-181.

<sup>45</sup> Ibid., p. 181.

succinctly stated in such concepts as "woman's vocation is to be a mother". In communications dealing specifically with women's place in contemporary society, the emphasis is on the need to recognize women's equality with men in all civil rights; to accord equality of opportunity to women and men in the professional, social, and political spheres in accord with individual capacity; and to show respect and protection of women's "special" prerogatives in the family and society.

Within recent years, Pope Paul VI has spoken on several occasions on the position of the Church in the key issue of ordination of women to the pastoral ministry. On this issue, perhaps more than on any other, the thinking of the magisterium as it relates to women is most clearly discernible.

On April 18, 1975, Pope Paul spoke to the Committee for the International Women's Year<sup>46</sup>. The address, perhaps somewhat surprisingly, centered mainly on the question of the ordination of women.

If women do not receive the same call to the apostolate that was given to the Twelve and thereby to ordained ministers, they are nonetheless invited to follow Christ as disciples and co-workers... We cannot change either our Lord's actions or his call to women.<sup>47</sup>

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<sup>46</sup> Pope Paul VI, "Women in the Life and Mission of the Church", in The Pope Speaks, 20(1975-1976), p. 37-40.

<sup>47</sup> Ibid., p. 39.

The terms of reference used by the Committee were to be based on the complementarity principle rather than an equality of rights between men and women:

Nothing is accomplished by talking of equalization of rights, since the problem goes far deeper. The aim must be a complementarity in which men and women contribute their respective resources and energies to the building of a world which is not leveled into uniformity but is harmoniously organized and unified in accordance with the plan of the Creator.<sup>48</sup>

This is perhaps the clearest statement made by Pope Paul endorsing the bi-polarity concept of humanity: a polarity of the sexes with the resultant complementarity of functions and roles. A woman's complementary role is depicted as founded on specific "feminine" virtues or qualities:

Yes, Christian women, civil society and the ecclesial community expect much in the future from your sensitivity and capacity for understanding, your gentleness and perseverance, your generosity and humility. These virtues, which harmonize so well with the psychological makeup of women and were so splendidly developed in the Blessed Virgin, are also the fruits of the Holy Spirit.<sup>49</sup>

The elaboration of women's expanding role within society and the Church is thus set by Pope Paul within the framework of a dualistic view of human nature.

The ecumenical ramifications of ordaining women to the priesthood were pointed out in a series of letters

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48 Ibid., p. 39.

49 Ibid., p. 40.

(July 9, 1975 to March 23, 1976) between Pope Paul VI and Anglican Archbishop Donald Coggan of Canterbury<sup>50</sup>.

The correspondence was released by the Anglican primate during a general synod of the Church of England, held in July at York, England. The series began when Archbishop Coggan wrote to Pope Paul as well as to Orthodox and Old Catholic leaders to inform them "of the slow but steady growth" of a consensus within the Anglican Communion that there are "no fundamental objections in principle to the ordination of women to the priesthood"<sup>51</sup>.

In his reply, Pope Paul stated that the position of the Catholic Church is "that it is not admissible to ordain women to the priesthood for very fundamental reasons", and these reasons include:

1. The example of Christ who chose his apostles only from among men.
2. The constant practice of the Church has imitated Christ in choosing only men.
3. The living teaching authority in the Church has consistently held that the exclusion of women from the priesthood is

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<sup>50</sup> Pope Paul VI, "Women's Ordination: Letters exchanged by Pope and Anglican Leader", in Origins, 6(1976-1977), p. 129-132.

<sup>51</sup> Ibid., p. 129.

in accord with God's plan for his Church<sup>52</sup>.

The letter ends with Pope Paul expressing appreciation that "the fundamental theological importance" of the question is mutually acknowledged.

Archbishop Coggan, in his reply, reiterated his adherence to "the goal which we jointly seek", which is "that visible unity of the Church for which Christ prayed". He then states, that we "believe this unity will be manifested within a diversity of legitimate traditions because the Holy Spirit has never ceased to be active within the local churches throughout the world"<sup>53</sup>. The response of Pope Paul on March 23, recalled the ardent hopes that had been experienced in the past, that the Holy Spirit "would lead us along the path of reconciliation", and "this must be the measure of the sadness with which we encounter so grave a new obstacle and threat on that path"<sup>54</sup>.

From this correspondence, it would appear that in the mind of Pope Paul, the question of the ordination of women is of such grave moment that the great advances towards reconciliation between the Anglican and the Catholic Church are imperilled. It is also to be noted that the rationale given

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52 Ibid., cf. p. 131.

53 Ibid.

54 Ibid.

against the ordination of women by the Pope may be reduced to the imitation of Christ and the argument of God's will<sup>55</sup>.

The argument of bi-polarity of masculine and feminine roles did not appear in the correspondence, though it might be contained in "God's plan".

b) Vatican Commissions.- In 1967 there was an extensive reorganization and renewal of the Roman Curia. This came about at the direct request of the Council Fathers in Christus Dominus that the Curia be updated and internationalized according to the needs of the time. The decree recommended that the expertness of laymen be utilized<sup>56</sup>. After the motu proprio letter, Catholicam Christi Ecclesiam<sup>57</sup>, issued

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55 Ibid., p. 132. In the column notation, reference is made to a letter dated July 9, 1975, in which Archbishop Coggan told Cardinal Jan Willebrands, head of the Vatican Secretariat for the Promotion of Christian Unity, about results of a June 1975 meeting of the General Synod of the Church of England. A motion was passed to continue relationships with the Roman Catholic and Orthodox Churches, and to inform them that in the Anglican Churches "there are no fundamental objections to such ordinations; and 2. Invite those authorities to share in an urgent reexamination of the theological grounds for including women in the order of priesthood, with particular attention to the doctrine of man and the doctrine of creation."

56 See Vaticanum II, op. cit., C.D., n. 10, p. 284: "Denique perutile esse censent Concilii Patres si eadem Dicasteria laicos, virtute, scientia et experientia praestantes, magis audiant, ita ut et ipsi in rebus Ecclesiae partes sibi congruentes habeant."

57 Pope Paul VI, motu proprio "Catholicam Christi Ecclesiam", Jan. 6, 1967, in Acta Apostolicae Sedis (subsequently referred to as A.A.S.), 59(1967), p. 25-28; English translation in Canon Law Digest, 6, p. 299-302.

on January 6, 1967, and the apostolic constitution, Regimini Ecclesiae Universae of August 15, 1967<sup>58</sup>, several new departments were set up<sup>59</sup>, and two are of special import for the lay apostolate.

The Council for the Laity has for its aim, to work for the service and promotion of the lay apostolate, to advise pastors and laity, to conduct studies on the role of the laity, to gather information and prepare documentation on it<sup>60</sup>. The Pontifical Studies Commission on Justice and Peace has for its aim to arouse the People of God to full awareness of its mission at the present time, in order on the one hand, to promote the progress of poor nations and encourage international social justice; and on the other, to help underdeveloped nations to work for their own development<sup>61</sup>.

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58 Pope Paul VI, apostolic Constitution "Regimini Ecclesiae Universae", Aug. 15, 1967, in A.A.S., 59(1967), p. 885-928; English translation in Canon Law Digest, 6, p. 324-357.

59 See Daughters of St. Paul, eds., The Catechism of Modern Man, p. 313-322, on the departments of the Roman Curia. Among the twenty-five departments listed, the following may be singled out as having either a direct or indirect bearing on lay initiatives: the Council for the Laity, the Pontifical Studies Commission on Justice and Peace, the Secretariat for Promoting Christian Unity, the Secretariat for Non-Christians, the Secretariat for Non-Believers, the Sacred Congregation for Catholic Education, and the Sacred Congregation for the Evangelization of the Nations.

60 Ibid., cf. p. 319; cf. also Canon Law Digest, 6, p.300. In view of the publication of the motu proprio of December 10, 1976, on the Council of The Laity (cf. Origins, 6(1976-1977), p. 449-451), the references to the Council of the Laity should be updated.

61 Ibid., cf. p. 319-320; cf. also Canon Law Digest, 6, p. 300-301.

During the past ten years, the role of lay men and women in these and other special commissions has expanded. Speaking to the Council of the Laity on October 9, 1972, Pope Paul shows an awareness of women when speaking of the still changing terms of reference for the Council of the Laity itself:

(The Council) has already placed on its agenda certain major questions that have to do with important world issues. We mention, as examples, the questionings of young people; the evolution of the family cell; respect for life; woman's participation in society and in the Church; and the growing influence and conditioning impact of the mass media which affect religious life itself ... and the proper management of social, economic, and political structures.<sup>62</sup>

The whole address gives emphasis to the lay mission and lay responsibility; it shows an appreciation of women's social emergence; it expresses approval of changes in attitudes and structures to meet the new realities: "These broad lines are still shifting, but they underscore the essential place of lay men and women in the Church"<sup>63</sup>.

Many commission and congregational reports could be reviewed for changing attitudes towards women, but the study will be limited to four: the work of the Commission on the Role of Women in the Church and a text of the Pontifical Biblical Commission; the reports of the Pontifical Commission on Justice and Peace and of the Pastoral Commission of the

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62 Pope Paul VI, "The Laity's Mission in the Earthly City", in The Pope Speaks, 17(1972-1973), p. 253-257.

63 Ibid., p. 253.

Pontifical Commission of the Vatican Congregation for the Evangelization of Peoples.

On May 3, 1973, Pope Paul VI announced the creation of the new Vatican Commission for the Study of Women in Society and in the Church<sup>64</sup>. The head of the temporary Commission was Coadjutor Archbishop Enrico Bartoletti of Lucca, Italy; and of the twenty-five members, fourteen were women. A statement was made in the Vatican press hall by Miss Pilar Bellosillo, a member of the Commission. She explained that Pope Paul had established the Commission as a result of the recommendation of the 1971 Synod of Bishops' proposal in "Justice in the World"<sup>65</sup>.

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64 See Pope Paul VI, "The Woman's Place", in Origins, 2(1972-1973), p. 742-743.

65 See Synod of Bishops, The Synodal Document on the Justice in the World, St. Paul Editions, p. 15: "We also urge that women should have their own share of responsibility and participation in the community life of society and likewise of the Church. We propose that this matter be subjected to a serious study employing adequate means: for instance, a mixed commission of men and women, religious and lay people, of differing situations and competence." See also Edward J. Kilmartin, S.J., "Full Participation of Women in the Life of the Catholic Church". Paper presented at the Symposium on Women and Church Law, Rosemont, Pennsylvania, Oct. 9-11, 1976. The author, on p. 2, states that in the report of M.-T. van Lunen-Chenu ("La Commission pontificale de la femme: une occasion manquée", dans Etudes, 344(1976), p. 879-891), the action of establishing the Commission "was inspired by a discourse of Pius XII and the address to the women of the world given by Paul VI at the close of Vatican II." E. Kilmartin stressed this point, because the terms of reference for the Study Commission limited the research to the "role" of women in society and the Church, and not the study of the full participation of women in the life of the Church as seemed to be recommended by the 1971 Synod of Bishops.

The terms of reference for the Study Commission on Women may be reduced to five:

1. To study the specific function of women in society, and man-woman relations on the basis of their radical equality but also in the light of their diversity and complementarity.

2. To produce guidelines capable of making men and women more aware of the obstacles and the possibilities of raising woman's usefulness in the various social communities: family, profession, city, nation, and so forth.

3. To single out what can be changed in order to guarantee an authentic advancement of women, whether such changes be made in the outlook and structures of the various cultures, or in the various social ambiances.

4. To study and improve the position of women in the Church.

5. The study should be conducted in the light of the Christian conception of woman and in view of the Church's pastoral mission in this field<sup>66</sup>.

At the end of the text there is the reminder:

Baptism and confirmation constitute, of themselves, the essential sacramental bases which confer on the laity - men and women - the fullness of their Christian vocation and render both capable of participating as laypersons in the Church's apostolate.<sup>67</sup>

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<sup>66</sup> Cf. Pope Paul VI, "The Woman's Place", loc.cit., p. 741,743.

<sup>67</sup> Ibid., p. 743.

From the work of the Commission, "we can expect light to be cast upon the possibilities for the authentic furtherance of women in the various fields of the Church's life and mission"<sup>68</sup>.

From the terms of reference, the Commission's competence was the study of the role of women in society and in the Church, and not a study of the full participation of women in the life of the Church. The question of the ordination of women would not be discussed<sup>69</sup>, and the work of the Commission was oriented according to women's "authentic advancement". The terms of reference do not call for a research of presuppositions concerning the essential areas of "diversity and complementarity" nor how such areas affect "the radical equality" of men and women. The Commission's concern was the adaptation of the habitual role of women in Church and society rather than questioning that role directly and in depth.

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68 Ibid.

69 See E. Kilmartin, op. cit., concerning the competence of the Study Commission on p. 3-4: "One limitation of the Commission's competence was indicated on the occasion of its creation. When journalists asked whether the question of the priesthood of women would be discussed, the response was given that this subject pertained to the International Theological Commission... Thus the work of the Commission was orientated according to a presupposed "specifically feminine" role, although the scientific basis of this concept is not developed nor is any indication given to what extent this role determines woman's functions, nor, finally what "function" means... In the concrete it is affirmed that the priesthood lies outside woman's role."

The Study Commission on Women terminated its work on January 31, 1976, and on that occasion Pope Paul summarized the work accomplished and indicated future orientations<sup>70</sup>. The Pope told the Commission that instead of speaking of an end, "one should rather speak of a new point of departure", and the programs that had been drawn up, "must now be progressively realized in deeds"<sup>71</sup>. Pope Paul then states "the fundamental principle" of Christianity:

God created the human person, man and woman, in a single plan of love; he created the human being in his own image. Men and women are therefore equal before God: equal as persons, equal as children of God, equal in dignity, equal also in their rights.<sup>72</sup>

After giving a few suggestions for the realization of this "radical equality", the Holy Father states that it is

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70 See Pope Paul VI, "Women: Balancing Rights and Duties", in Origins, 5(1975-1976), p. 549-552. Pope Paul refers on p. 549, to the Commission's task, "to study the means of bringing about the effective promotion of the dignity and responsibility of women", and then summarizes (on p. 551) the work accomplished: "We are happy to know that after two years of work your Commission has drawn up an abundant dossier on these questions which will render service to the universal Church and to the local churches... Moreover, you have assembled important documentation on the participation of women in pastoral responsibilities in the Church; you have also made concrete proposals so that women may have a greater part in the Church's activity; and finally, at the 1974 Synod of Bishops, you put forward the desire that the participation of women in the work of evangelization should be increased."

71 Ibid., p. 551.

72 Ibid.

"also our wish that women should be encouraged and assisted in the role of prime importance which they take on for their families"; child care "should be the joint task of the father and mother", and "men should take their part in this task to a greater degree"; but it remains clear "that the role of the woman remains an essential one"<sup>73</sup>. In the Church itself, "women must contribute to an ever greater degree their specific talents, both human and spiritual"; and all must be on their guard that the "equalizing of rights must not degenerate into an egalitarian and impersonal leveling"; for egalitarianism "takes no notice of what is suitable and what is not suitable for women"<sup>74</sup>. The main concern today is in achieving a greater and closer collaboration between men and women in the Church and in society in order that all "will contribute their individual talents and dynamism to the building up of a world that will not be leveled down to uniformity but harmoniously unified"<sup>75</sup>.

While the Commission on Women was not authorized to consider the ordination of women, that issue was not neglected but was assigned to the Pontifical Theological Commission and the Pontifical Biblical Commission. To date, a text of the

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73 Ibid.

74 Ibid., p. 552.

75 Ibid.

Pontifical Biblical Commission, which began its work on April 8, 1975, has been obtained from unofficial sources<sup>76</sup>. The document deals primarily with the question of the ordination of women to the ministerial priesthood<sup>77</sup>. The conclusion of the report is that it "does not seem that the New Testament

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<sup>76</sup> See Pontifical Biblical Commission, "Can Women Be Priests?", in Origins, 6(1976-1977), p. 92-96. On p. 92 it is noted that "the Vatican's Doctrinal Congregation had asked the Biblical Commission to submit its advice on the question of women's ordination" and that the "Biblical Commission's report became public after a source unrelated to the Commission made it available to the press."

<sup>77</sup> Ibid.; a summary of part of the report follows: The "masculine character of the hierarchical order" which has structured the Church since its beginning, seems attested to by scripture. But the report questions, "Must we conclude that this rule must be valid forever in the Church?" And another question is raised: "What is the normative value which should be accorded to the practice of the Christian communities of the first centuries?" The report sees the prime role of the "leaders" of the communities in the New Testament in the field of "preaching and teaching". No biblical text defines the leaders' charge "in terms of a special power permitting them to carry out the eucharistic rite or to reconcile sinners." It is stated that the two texts (1 Cor. 14: 33-35 and 1 Tim. 2:11-15), "forbid women to speak and to teach in assemblies." However, the report continues, "without mentioning doubts raised by some about their Pauline authenticity, it is possible that they refer only to certain concrete situations and abuses." Thus it is possible that "certain other situations call on the Church to assign to women the role of teaching which these two passages deny them and which constitute a function belonging to the leadership." This raises the question: "Is it possible that certain circumstances can come about which call on the Church to entrust in the same way to certain women some sacramental ministries?" It is pointed out that this has already been the case in regard to baptism which, though entrusted to the apostles (Mt. 28:19 and Mk. 16:15 f.), can now be administered by women. Is a "similar evolution" possible for the ministry of the eucharist and reconciliation?

by itself alone will permit us to settle in a clear way and once for all, the problem of the possible accession of women to the presbyterate"<sup>78</sup>. The two outlooks that might stand in the way of the possibility of women's ordination are then given:

Some think that in the scriptures there are sufficient indications to exclude this possibility, considering that the sacraments of eucharist and reconciliation have a special link with the person of Christ and therefore with the male hierarchy as borne out by the New Testament.

The other questions,

... if the Church hierarchy, entrusted with the sacramental economy, would be able to entrust the ministries of eucharist and reconciliation to women in light of circumstances, without going against Christ's original intentions.<sup>79</sup>

This report of the Pontifical Biblical Commission will doubtless be used by any doctrinal congregation dealing with the issue of the ordination of women, within the framework of the scriptural findings themselves, of tradition, and of the official statements of the Church.

It was in October, 1975, that the Pontifical Commission on Justice and Peace issued a lengthy study paper on the Church and Human Rights<sup>80</sup>. Having espoused the cause of justice in

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<sup>78</sup> Ibid., p. 96.

<sup>79</sup> Ibid.

<sup>80</sup> Pontifical Commission on Justice and Peace, "The Church and Human Rights", in Origins, 5(1975-1976), p. 161-170.

the world, the Church is aware of what this mission means in her own institutions:

If her evangelical mission is to be effective, the Church must first and foremost stimulate in the world the recognition, observance, protection and promotion of the rights of the human person, beginning with an act of self-examination, a hard look at the manner and degree in which fundamental rights are observed and applied within her own organization.<sup>81</sup>

Recognition is also given to the fact that there is "a serious discrepancy between official declarations on human rights and their observance in practice"<sup>82</sup>.

The study paper recalls the main points in the Church's teaching on the dignity of the human person: "All persons are made in the image of God, the Father of all. They thus feel themselves and indeed truly are, brothers and sisters, equal in dignity and freedom"<sup>83</sup>.

Part One of the document deals with the teaching of the magisterium<sup>84</sup>, and contains the declaration that "in the

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<sup>81</sup> Ibid., p. 163. See the marginal note on p. 164 where Cardinal Maurice Roy, President of the Commission, says: "Today among the various signs of the times is the increasing attention focused on human rights throughout the world."

<sup>82</sup> Ibid., p. 166.

<sup>83</sup> Ibid., p. 168. The "study paper" format is of note: the text should not be regarded as a directive or legal document.

<sup>84</sup> See Pontifical Commission on Justice and Peace, "Human Rights Part I", in The Chelsea Journal, 2(1976), p. 94-96.

context of civil, political, economic, social and cultural rights", the magisterium of the Church throws light on some fundamental liberties: "rights of association, marriage and family, participation in public affairs, work, private property, education, and the development of peoples", and in this context:

Every human being has the right to choose freely the state of life which he prefers, and to found a family with equal rights and duties for husband and wife; or alternatively, the right to follow a vocation to the priesthood or the religious life.<sup>85</sup>

As this section begins with a strong assertion of non-discrimination because of sex, it is to be assumed that the above passage refers to women as well as to men.

Another norm speaks of offices and assumed responsibilities being acquired through merit and qualifications:

Every effort should be made to ensure that persons be enabled, on the basis of merit, to go on to higher studies so that they may occupy posts and take on responsibilities in accordance with their natural gifts and acquired skills.<sup>86</sup>

As applied to women (as well as to men), all such posts and responsibilities are "open" opportunities, limited only on the basis of merit, natural gifts and acquired skills.

While the Commission's working paper on human rights is not a legal document, nevertheless it should serve as an

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85 Ibid., p. 95.

86 Ibid.

incentive for study, reflection, and perhaps a reassessment of human rights as they are applied to women.

On October 19, 1975, the Pastoral Commission of the Vatican Congregation for the Evangelization of Peoples issued a report on "The Role of Women in Evangelization"<sup>87</sup>. Basic premises are contained in the first two paragraphs. The first premise affirms that by baptism all Christians, regardless of sex, are called to the work of evangelization:

The work of evangelization belongs to every Christian, regardless of sex, age or condition. By virtue of their baptism Christians are not only called and enabled to possess the faith, but also to radiate and transmit it.<sup>88</sup>

The second premise states that because of sex, there is a differentiation of role in the work of evangelization.

The motivations and forms of this work, which is basically the same for all, are differentiated according to groups and individuals, and one of these differentiations obviously derives from the nature, masculine or feminine, of the persons concerned.<sup>89</sup>

Men and women are said to have "features proper to each" which merit study; that Genesis indicates clearly "the complementary nature of the two sexes", which results in a

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<sup>87</sup> Pontifical Congregation for the Evangelization of Peoples, "Women's Role and Evangelization", in Origins, 5(1975-1976), p. 702-707.

<sup>88</sup> Ibid., p. 702.

<sup>89</sup> Ibid.

"likeness, difference, and convergence in every human enterprise", including evangelization<sup>90</sup>. Examples from the New Testament are used to portray the assistance-role of women, and "this role was maintained through the centuries", despite the restrictions encountered in practice. The document, then, is an attempt "to maintain and reinforce the contingents of women" already taking part in evangelization, and to urge those in authority "to question themselves more deeply on the specific role of women in evangelization"<sup>91</sup>.

The content of the report covers the areas of some specifically "feminine" qualities (such as intuition, patience, capacity for loving and for living in hope); the "functions" of women in evangelization (such as catechetical work, home visiting, counselling); women in parish activities (such as those "roughly" termed "administrative" works and pastoral activities which are not ministries in the strict sense); women in the liturgy and in ministries (such as initiatives which "are not of their nature" sacerdotal); the selection and preparation of women for evangelization (such as an intense spiritual life and a share in God's plan for the redemption of the world); forms and modalities of feminine involvement (such as forming communities with typically "feminine" characteristics

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90 Ibid.

91 Ibid., p. 703.

and giving witness)<sup>92</sup>.

At the end, it is stated that the perspectives suggested in the report would give women "wider practical responsibilities in evangelization, on an equal footing with men, given equivalent qualifications". Satisfaction is expressed for what has been done in the Church's "overall planning" in which women are given wider recognition<sup>93</sup>.

The report on women's role in evangelization seems to deal mainly with religious women. It also seems to endorse the second premise of the introduction, that the activities of women in evangelization are determined mainly by their sex (despite the claim at the end to an "equal footing" with men). On the one hand, the report might well serve as an encouragement to women for greater participation in the mission of the Church; on the other hand, it could be an official affirmation on the part of the Church of the polarity concept of sex roles in all spheres of missional activities.

## 2. Structural Changes.

Today it may be said that the movement for the liberation of women has begun to coincide with the basic aspirations of humanity for a more just and humane society.

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92 See ibid., p. 703-707.

93 Ibid., p. 707.

While rooted in many historic movements, some of the credit for the growing mutuality of male and female liberation may be attributed to the initiatives of the United Nations. Credit must also be given to the active support of such Christian leaders as Pope Paul VI. It may be a truism to state that pronouncements regarding the equality of men and women do not guarantee attitudinal or societal changes. It is one thing to study woman's situation, proclaim her equality, and make recommendations for change. It is quite another to actualize woman's equality through structural changes. To assess the factor of implementation for equality of men and women, a study will be made of certain institutional changes in the Catholic Church during the past decade which have affected women's position. The selection of data will be limited to the Synod of Bishops, the Roman Curia, and new diocesan and local councils.

By the motu proprio, Apostolica Sollicitudo, of September 15, 1965, the establishment of the Synod of Bishops was officially announced<sup>94</sup>. It was the Second Vatican Council itself which proposed the procedural expression of the collective responsibility on the part of the bishops for the

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<sup>94</sup> Cf. Pope Paul VI, motu proprio "Apostolica Sollicitudo", Sept. 15, 1965, in A.A.S., 57(1965), p. 775-780; English translation in Canon Law Digest, 6, p. 388-411.

"tasks of the entire Church"<sup>95</sup>.

Women, of course, have no direct involvement in the Synod of Bishops, but indirectly their position has been affected by the synodal documentation emanating from the various Synods. It may well be that the bishops of the world are more currently involved with world-wide issues affecting the status of women. At all events, it was the third Synod of Bishops, convoked for September 30, 1971, which dealt with two topics of interest to women: the ministerial priesthood and justice in the world. Under both topics, the laity (both men and women) were discussed in the total concept of ministry and justice. In the document, "The Ministerial Priesthood", when considering the difficulties which threaten celibacy today, a very positive approach is evident, without any warning against women<sup>96</sup>. The whole document shows an appreciation

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95 Cf. Vaticanum II, op. cit., C.D., n. 5, p. 281: "Episcopi e diversis orbis regionibus selecti, modis et rationibus a Romano Pontifice statutis vel statuendis, Supremo Ecclesiae Pastori validiorem praestant adiutricem operam in Consilio, quod proprio nomine 'Synodus Episcoporum' appellatur, quae quidem, utpote totius catholici Episcopatus partes agens, simul significat omnes Episcopos in hierarchica communione sollicitudinis universae Ecclesiae participes esse."

96 See Synod of Bishops, "Final Recommendations of the Synod", in The Pope Speaks, 17(1972-1973), p. 358-389. On p. 370, the difficulties of celibacy are mentioned, but priests "can overcome these difficulties if suitable conditions are fostered, namely: growth of the interior life through prayer, renunciation, fervent love for God and one's neighbor, and other aids to the spiritual life; human balance through well ordered integration into the fabric of social relationships..."

of the mandate of the whole People of God, of the relationships between the special missions of service among clergy, religious, and laity. Women are treated as responsible lay persons. It was in the second document, "Justice in the World", that concern was expressed about women's condition in society and in the Church; and the recommendation made that women have their own share of "responsibility and participation" in the community life of Church and society. This was followed by the proposal to subject this matter to serious study, in a mixed commission of men and women<sup>97</sup>.

In the 1974 Synod of Bishops, with "Evangelization" as its theme, pastoral consideration was given to the urgent need to help lay people fulfill their roles, and bishops and clergy were reminded that they "should promote the dignity and responsibility of the laity"<sup>98</sup>. Reporting on the Synod, Cardinal John Krol of Philadelphia, pointed out that "special attention, theological and pastoral, should be given to the role of women and ethnic minorities in the evangelizing apostolate of the Church"<sup>99</sup>.

Mention has been made of the extensive reorganization of the Roman Curia initiated in 1967. During the past ten

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97 Ibid., p. 384.

98 Cardinal John Krol, "Pastoral Consideration", in Origins, 4(1974-1975), p. 295.

99 Ibid., p. 296.

years, the Church has shown its interest in the advancement of women by quietly bringing women, both religious and lay, into its everyday tasks<sup>100</sup>. For lay men and women, perhaps some of the significance of participating in Vatican commissions and departments, has been expressed by Martin Work, a member of the Council of the Laity<sup>101</sup>. He feels that the Church has begun to recognize the laity, both men and women, as members of the People of God, and there is "a new romance beginning to develop in and around the Vatican on the role of women in life and society"<sup>102</sup>. He went on to claim that the establishment of the Council of the Laity was a "significant" step in opening opportunities to the laity for leadership and direction in the Church. "Women are beginning to appear", he said, "in high positions in the major Vatican congregations and commissions and in all discussions" in the Church.

At the diocesan and parochial level, the second Vatican Council envisaged a reform and or the establishment of

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<sup>100</sup> See Elizabeth Hudson, "The Church", in The Chelsea Journal, 1(1975), p. 252: "Since 1967 Australian-born Rosemary Goldie, formerly of the Committee for International Congresses of the Lay Apostolate, has been appointed an associate secretary of the Council of the Laity. Seven women, from five continents, have also been included in the Council. A Presentation Sister from San Francisco, California, Thaddea Kelly, has been made head of a department of the Sacred Congregation for Religious and Secular Institutes." (Note: In view of the publication of new legislation the departments mentioned above have been reorganized).

<sup>101</sup> See Martin Work, "On File", in Origins, 3(1973-1974), p. 2.

<sup>102</sup> Ibid.

structures that would better express the spirit of the Council<sup>103</sup>. Perhaps the two diocesan structures that are especially important for the inclusion of lay men and women are the diocesan synod and the pastoral council.

The Fathers of the Second Vatican Council spoke of diocesan synods and expressed the desire that the institution of synods and councils flourish with new vigor, so that faith will be spread and discipline preserved more fittingly and effectively in the various churches as the circumstances of the times might require<sup>104</sup>. The diocesan synod is a venerable institution in the Church and is found in the Codex Iuris Canonici, in the book De Personis, in the section, De Clericis, under the title, De potestate episcopali deque iis qui de eadem participant, in canons 356 to 362. From its position in the Code, it is clear that the diocesan synod did not envision lay attendance. The laity are not listed among those who have the right to attend, though canon 360 leaves the appointment to the preparatory committees to the bishop and conceivably a lay person could be appointed to help with the preparations. One great difference, then, between the institution described

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103 Cf. Abbott, op. cit., where the diocesan synod is mentioned in Christus Dominus, n. 36, p. 424; and the pastoral council in the same document, n. 27, p. 416.

104 See ibid.; also c. 360: "Episcopus, si id ipsi expedire videatur, opportuno ante Synodum tempore, unam vel plures e clero civitatis et dioecesis commissiones nominet, seu coetus virorum qui res in Synodo tractandas parent."

in the Code and the conciliar diocesan synod, is that the new synod is to represent the People of God.

The participation of clergy, religious, and laity in the diocesan synod is verified in the Directorium De Pastoralis Ministerio Episcoporum<sup>105</sup>, issued by the Sacred Congregation for Bishops in May, 1973, and containing a section on the diocesan synod. The Directorium presents the synod as a consultative assembly of clergy, religious, and laity, convoked ad normam iuris to discuss, propose, and advise on all matters of diocesan concern; with the bishops having the right of final decision. Besides its legislative and directive purpose, the synod is geared to educating the whole People of God about the kingdom of God<sup>106</sup>. While reserving the unicus legislator concept for the bishop, still all those at the synod share a co-responsibility for proclaiming and seeking the kingdom of God, and the bishop, should feel compelled by the teachings of Vatican II to arrive at his final decisions through consultation with the laity, the religious, and the clergy. The

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105 See Sacred Congregation for Bishops, Directory on the Pastoral Ministry of Bishops, May 31, 1973; published by the Canadian Catholic Conference. (To be cited Directorium.)

106 See ibid., p. 83: "The diocesan synod, which is convoked and moderated by the bishop and to which the clergy, religious and laity are summoned according to the norms of law, is the assembly in which the bishop - using the help of experts in theology, pastoral and law, and drawing upon the advice of the diocesan community's various associations - officially fulfills his function and ministry of feeding the flock entrusted to him..."

laity, invited by the bishop to share in the synod, have the same consultative vote as the clergy and religious whom the bishop invites<sup>107</sup>. The aggiornamento of the diocesan synod is seen as offering the best expression of the new concept of the Church as the People of God, for in a special way it includes the lay men and women in a co-responsible participation with clergy and religious in sharing with the bishop the priestly role of Christ.

One new structure recommended by Christus Dominus was the pastoral council<sup>108</sup>. This recommendation is found under the heading, Curia atque Concilia Dioecesana; and in regard to the diocesan curia, it was stated that priests and lay people who belong to it, should realize that they are making a helpful contribution to the pastoral ministry of the bishop<sup>109</sup>. Although the pastoral council is not mandatory, "it is highly recommended", and while it has only a consultative voice, nevertheless "the bishop has great respect for its recommendations, for they offer his apostolic office the serious and

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107 See ibid., p. 84.

108 See Vaticanum II, C.D., n. 27, p. 303: "Valde optandum est ut in unaquaque dioecesi peculiare instituaturs Consilium pastorale, cui Episcopus dioecesanus ipse praesit et in quo clerici, religiosi et laici, specialiter delecti, partes habeant. Huius Consilii erit, ea quae ad pastoralia opera spectant investigare, perpendere atque de eis practicas expromere conclusiones."

109 Ibid., C.D., n. 27, p. 302: "Sacerdotes et laici, qui ad Curiam dioecesanam pertinent, sciant se pastoralis Episcopi ministerio adiutricem operam praestare."

settled cooperation of the ecclesiastical community"<sup>110</sup>. A close relationship with parish pastoral councils is suggested, with a democratic selection of representatives<sup>111</sup>.

It appears that renewed and new structures have been strongly recommended not only at the Church universal level, but at the diocesan and the local levels: structures which include as essential components the mission of the People of God, and representatives from the clergy, the religious, and the laity. A non-discriminatory perspective in regard to sex may be assumed for there is no wording in the normative directives to suggest otherwise.

It is probably much too early to assess the actual impact of these structural changes, especially on lay women. However, it may be safely asserted that lay women and men are becoming aware of their role in transforming society in accord

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<sup>110</sup> Directorium, p. 105.

<sup>111</sup> Ibid., see p. 105 regarding democratic representation: "To make the council's work more effective, the bishop can order, if the good of the faithful requires it, that in every parish, among the other offices of the apostolate, parish pastoral councils be set up and that these be aligned with the diocesan council. These councils, grouped together according to areas, could choose their representatives to serve on the diocesan council, so that the whole diocesan community may feel that it is offering its cooperation to its bishop through the diocesan council."

with the mind of Christ<sup>112</sup>; or at least, that new options have been opened to them for shared responsibility and collaboration.

In a search for changing outlooks and structures affecting the position of women in Church and society, using Papal communications, reports from various Vatican commissions and ecclesial structures themselves as sources, several factors became evident. To begin with, changes were evident in all the areas under discussion. On the whole, the changes were not dramatic, but change was evident. Perhaps the most important factor observed was the official Catholic position on the dignity of the human person and the basic equality of men and women which was affirmed over and over again. Pope Paul VI may well be described as a champion of human rights. The doctrine that all men are equal in nobility, dignity and nature, without any distinction of sex, race or religion, and the corollaries that everyone has the same fundamental rights and duties, and that these rights are inviolable, inalienable, and universal, are firmly established as the official position of the Church.

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112 See Remi J. DeRoo, "Ten Years after Vatican II: Reflections on the Canadian Pastoral Scene", in The Chelsea Journal, 1(1975), p. 103, where the author has this to say: "Our limited experiments in involving lay people in the decision-making process have a long way to go before they make a substantial difference in those areas of the Church where real power lies. From this point of view the Canadian scene is disappointing. We have only token representation of the laity in most decision-making areas."

The position of the Church in regard to women must be seen against this framework of equivalence. In regard to women, the Church gives strong support to the emergence of women, but this emergence is depicted in terms of roles that are specifically different and yet complementary to the roles of men. A presupposition of complementary roles appears to be taken as a self-evident premise and no critical examination of the assumption appears to be under discussion. In the application of this perspective on women, such as in the area of evangelization, a valorization and clarification of the specific feminine role is examined with a view to utilizing woman's "feminine" characteristics and thus more fully define her specific function in society and in the Church. In the structures that were examined, women are beginning to take their place, along with their lay brothers.

## CHAPTER VI

### TRENDS IN POST-CONCILIAR LEGISLATION

On December 14, 1973, Pope Paul VI delivered an address to those attending the third renewal course in canon law at the Gregorian University in Rome<sup>1</sup>. The theme of the talk was the new orientations in canon law that have occurred over the past decade. To begin with, Pope Paul spoke of the renewal of canon law as a force in the "salutary drive to renew Christian living as the Second Vatican Council wished", and he considers this renewal as being "in accord with the new mental attitude introduced by the said Vatican Council"<sup>2</sup>. The Pope stated that the connection of canon law with the Mystery of the Church is to be found especially in the "sacramental character of the ecclesial society"<sup>3</sup>. He could thus state that the proper function of canon law in the Church,

... is to support and protect projects which are undertaken in order that the Christian life may be lived more faithfully and more constantly, in such wise there can be no really effective activity which is not founded on solid defense in the wise ordination of juridical statutes.<sup>4</sup>

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1 Pope Paul VI, "Canon Law and the Church's Pastoral Mission", Dec. 14, 1973, in Canon Law Digest, Supplement 1973, c. 8, p. 1.

2 Ibid.

3 Ibid., p. 2.

4 Ibid., p. 3.

In this address the ancillary role of canon law is stated: a role that is supportive of the mission of Christian life itself. It would seem that Pope Paul considers the orientations of canon law today to be educative (a force to renew Christian living), to be relevant (in accord with the perspectives of the Second Vatican Council), to be juridical (with duties defined and rights of the members made safe). The goal of these orientations is the Mystery of the Church, and the means to attain the goal will be found especially in the sacramental character of the ecclesial society. The function of canon law is to support and protect the activities that foster the Christian life and mission by a wise ordination of juridical statutes.

These orientations in canon law are discernible in the many modifications in the Church that have already taken place over the past decade. A number of legislative documents promulgated since the Council refer directly to women. For order and clarity, these documents will be reviewed under two headings: legislation affecting women, and the place of women in the revision of the Code.

#### 1. Legislation Affecting Women.

The criteria of assessment in this section will be the orientation factors of canon law as discerned by Pope Paul VI, especially the educative and juridical elements that

indicate the rights and duties of women as members of the People of God and their special roles as lay women in the Church. For order, the topical arrangement of the Codex will be followed: general norms, persons, things, procedures, crimes and penalties<sup>5</sup>.

a) General Norms (Canons 1-86).- On June 27, 1972, the Sacred Congregation for Oriental Churches granted certain faculties to religious of the Oriental rites<sup>6</sup> which have ramifications for canon 1 of the Codex Iuris Canonici. Most of these faculties had already been granted to religious of the Latin Rite in such decrees as Religionum Laicalium, Ad Instituenda, and Dum Canonice<sup>7</sup>.

Of note for religious women of Oriental rites is that, without prejudice to the religious discipline of the community,

... all religious women and novices, in order that they may enjoy due liberty in this matter, can validly and licitly make a sacramental confession to any priest who is approved for hearing confessions in that place.<sup>8</sup>

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<sup>5</sup> This order follows the sequence of the Codex Iuris Canonici and is used by James I. O'Connor, S.J., ed., in the format of The Canon Law Digest.

<sup>6</sup> S.C. Oriental Churches, decree "Faculties granted to Oriental-rite Religious", June 27, 1972, in A.A.S., 64(1972), p. 738-743; English translation in Canon Law Digest, 7, p. 19-24.

<sup>7</sup> Cf. Canon Law Digest, 7, c. 501, p. 482-483.

<sup>8</sup> Ibid., "Faculties granted....", n. 7(a), p. 21.

This norm also applies to the confessions of religious men in "lay communities of men insofar as they are applicable"<sup>9</sup>. The superiors general of orders of men, with the exception of monks, "can modify their own enclosure according to the norm of canon 150"<sup>10</sup>. A similar norm is not extended to superiors general of orders of women. The prohibition, "that religious women not go out of the house singly is suspended but the responsibility to take care that troubles do not arise therefrom remains (cf. c. 153)"<sup>11</sup>. The jurisdictional power of dismissal of members of temporary vows is granted to "superiors general of lay religious institutes of men and of women of pontifical law"<sup>12</sup>. The whole decree evidences a marked degree of equivalence for men and women in lay religious institutes.

Canon 2 deals with liturgical laws and their modifications. The Sacred Congregation of Divine Worship issued an instruction, Liturgicae Instaurationes, on September 5, 1970, concerning the implementation of the constitution Sacrosanctum Concilium<sup>13</sup>. After setting forth the many ways in which the

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9 Ibid., n. 8, p. 22.

10 Ibid., n. 19, p. 24.

11 Ibid., n. 20, p. 24.

12 Ibid., n. 21, p. 24.

13 S.C. Divine Worship, "Third Instruction on the Correct Implementation of the Constitution on the Liturgy", Sept. 5, 1970, in A.A.S., 62(1970), p. 692-704; English translation in Canon Law Digest, 7, p. 40-52.

faithful may participate more fully in the liturgy, and in which "other persons such as catechists" can be deputed by the bishop with the permission of the Apostolic See "to conduct the liturgy of the word and to distribute holy communion", the instruction directs that in accord

... with the traditional liturgical norms in the Church, women (girls, married women, religious) are prohibited from serving the priest at the altar, even in churches, houses, convents, colleges, institutes for women.<sup>14</sup>

Norm 7 then outlines in some detail how women are permitted to function within the prescribed laws:

- (a) Proclaim the readings with the exception of the gospel. They should discharge their function with the use of modern technical instruments so that they may be easily heard by all. The episcopal conferences can determine more precisely the appropriate place from which the women may proclaim the word of God in the liturgical assembly.
- (b) Announce the intentions of the prayer of the faithful.
- (c) Lead the singing of the liturgical assembly and play the organ or other permitted instruments.
- (d) Read the comments (or instructions) which are to help the faithful to a better understanding of the rite.
- (e) Perform in service to the congregation of the faithful, certain functions which in some places are also usually entrusted to women; e.g., receiving the faithful at the doors of the church, directing them to their appropriate places, arranging their processions, collecting the offerings in the church.<sup>15</sup>

By this instruction, lay women are not accorded the same participatory rights and privileges accorded to laymen in

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<sup>14</sup> Ibid., n. 7, p. 48.

<sup>15</sup> Ibid., n. 7, p. 48-49.

the liturgy.

In a private reply to John I. McEleney, Archbishop of Kingston, as president of the Episcopal Conference of the Antilles, the Conciliar Commission on the Liturgy, on December 4, 1968, stated that women could serve as lectors under the following conditions:

Where, in the judgment of the bishops, real need requires it, women who are well known and are of mature age and morals, and especially religious women, may read the lessons and the epistles at mass as well as direct the singing, but from a position outside the sanctuary.<sup>16</sup>

Similar conditions are not prescribed for laymen serving as lectors.

Canon 66 states that habitual faculties which are granted either perpetually, or for a definite period of time, or for a certain number of cases, are considered privileges. Ranking as "privileges" are certain extensions of faculties which had been already granted to superiors general of pontifical lay religious institutes. In a private reply of the Sacred Congregation of Propaganda, addressed to the Pontifical Institutes of Religious Women in mission territories<sup>17</sup>, many

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<sup>16</sup> Conc. Com. Liturgy, "Apostles' Creed at Mass; Women as Lectors", Dec. 4, 1968, Prot. N.A. 428-68; English translation in Canon Law Digest, 7, p. 34.

<sup>17</sup> S.C. Evangelization of the Nations, "Faculties of Pontifical Institutes of Religious Women in Mission Territories", Sept. 7, 1967, Prot. N. 3830/67; English translation in Canon Law Digest, 7, p. 72-74.

of the privileges of Religionum Laicalium are granted to missionary institutes<sup>18</sup>. The extension of these faculties to religious women has served to bring the privileges of men and women in lay institutes into greater accord.

b) Persons (Canons 87-725).- Canon 87 in the Codex refers to the man (homo) who, by baptism becomes a juridic person (persona) in the Church, with all the rights and duties of a Christian. The past decade has seen extensive research in the area of Christian rights<sup>19</sup> with a resultant growth of awareness of basic Christian rights and responsibilities for all men and women. Perhaps one evidence of this is that laity are being assigned as assistants and resource persons, as well as to jurisdictional positions on ecclesiastical tribunals, thus modifying such canons as 118 and 242. Examples of this have already been seen in the reorganization norms regarding the personnel of the Roman

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18 See S.C. Religious, decree "Religionum Laicalium", May 31, 1966, in A.A.S., 59(1967), p. 362-364; English translation in Canon Law Digest, 6, p. 153-156. Some of the faculties, in accord with norms, consist of: dispensation of candidates from impediment of illegitimacy, alienation of goods, permission to live outside a house of the community, permission for subjects of simple perpetual vows to give away goods belonging to their patrimony, permission to change a will, permission to transfer the location of the novitiate, permission for a third term for local superiors.

19 See Canon Law Digest, 7, p. 91. Various articles on Christian rights are listed under c. 87.

Curia which allow for lay consultors and experts<sup>20</sup>. In the special norms of government implementing the apostolic constitution, Regimini Ecclesiae Universae, provision was made for lay participation: for example, in the Supreme Tribunal of the Apostolic Signatura, "the couriers and marshalls of the tribunal seat are taken from good-living laymen"<sup>21</sup>, and among the papal legates representing the Holy See, "are ecclesiastics and laymen who, as heads or members, are part of a papal mission to international organizations or to conferences and congresses"<sup>22</sup>. In the motu proprio, Pontificalis Domus, describing the papal household regulations, it is stated that the chapel group is composed of "members of the People of God", and by this is meant, "bishops, priests, and laymen"<sup>23</sup>. The regulations make it clear that the pontifical family, "is

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20 Pope Paul VI, apostolic constitution "Regimini Ecclesiae Universae", Aug. 15, 1967, in A.A.S., 59(1967), p. 885-928; see English translation in Canon Law Digest, 6, n. 5(1), p. 325: "In all Departments there are Consultors chosen by the Supreme Pontiff from all over the world for five-year terms", and if the matter suggests it, among those chosen there are to be "laymen outstanding in virtue, knowledge, and experience..."

21 Apostolic Signatura, "Special Norms of Government", Mar. 25, 1968, in Periodica, 59(1970), p. 114-165; see English translation in Canon Law Digest, 7, n. 5, p. 247.

22 Pope Paul VI, motu proprio "Sollicitudo Omnium Ecclesiarum", June 24, 1969, in A.A.S., 61(1969), p. 473-484; see English translation in Canon Law Digest, 7, n. II(1), p. 278.

23 Pope Paul VI, motu proprio "Pontificalis Domus", Mar. 28, 1968, in A.A.S., 60(1968), p. 305-315; see English translation in Canon Law Digest, 7, n. I(2), p. 316.

composed of 'men', chosen from the ranks of ecclesiastics and laymen"<sup>24</sup>.

Canon 329 deals with episcopal jurisdiction. Among the faculties and privileges granted to local ordinaries by the apostolic letter Pastorale Munus is the bishop's right to "permit minor clerics, lay religious as well as pious women to perform even the first washing of palls, corporals, and purificators"<sup>25</sup>. A pious layman is not included. The bishop may also

... grant permission, even through other prudent and qualified men (viros), for individual members of the faithful subject to him to read and retain prohibited books and papers, not excepting those which professedly propagate heresy or schism or those which attempt to undermine the foundations of religion.<sup>26</sup>

Qualified women are not included as possible intermediaries.

Canons 487 to 681 cover the many norms dealing with religious. On December 8, 1965, the erection and statutes of the International Union of Superioresses General<sup>27</sup> were decreed, with some implications for canon 501. By this decree, the superioresses general of religious institutes and societies

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24 Ibid., n. I(3), p. 317.

25 Pope Paul VI, motu proprio "Pastorale Munus", Nov. 30, 1963, in A.A.S., 56(1963), p. 5-12; see English translation in Canon Law Digest, 6, n. 28, p. 375.

26 Ibid., n. 40, p. 376.

27 See S.C. Religious, decree "Erection and Statutes of the International Union of Superioresses General", Dec. 8, 1965, Prot. N. AG 2114/60; English translation in Canon Law Digest, 6, p. 448-455.

of common life throughout the world were brought together for plans and projects of common interest. The Roman Union of Superiors General could attest the importance of fraternal and efficacious collaboration among religious men; and now women religious also were called upon to share their experiences and propose plans of action. A different mode of communicating was used by the Sacred Congregation of Religious when suspending the obligation of quinquennial reports: the president of the Roman Union of Superiors General of Religious Men received the announcement; religious women received the notice from the United States Apostolic Delegate to the Conference of Major Superiors of Religious Women<sup>28</sup>.

On May 31, 1970, a new rite of consecration of virgins was promulgated<sup>29</sup>, whereby, in accord with the custom of consecrating virgins "in the early Christian Church", a solemn rite is established "whereby the virgin is constituted a sacred person ... an eschatological image of the heavenly bride and the future life"<sup>30</sup>. The rite seems to be reserved

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28 Cf. S.C. Religious, "Religious Men: Quinquennial Report Obligation Suspended...", Mar. 1, 1967, Prot. N.S.R. 1463/65; and "Religious Women: Quinquennial Report Obligation Suspended", Mar. 1, 1967, Prot. N. 1463/65; English translations in Canon Law Digest, 6, p. 479, 480.

29 Cf. S.C. Divine Worship, "New Rite of Consecration of Virgins", May 31, 1970, decree in A.A.S., 62(1970), p. 650; see English translation in Canon Law Digest, 7, p. 421-425.

30 Ibid., n. 1, p. 422.

for women, for "both nuns and women leading their life in the world can be admitted to the consecration of virgins"<sup>31</sup>. No similar rite has been established for men in the world.

In the Codex, one of the more significant differences between the norms for men and women religious was in regard to confession. This was rectified in 1970 in the decree Dum Canoniarum Legum<sup>32</sup>, in which the message given is that

... all religious women and novices, in order that they may enjoy due liberty in this matter, can validly and licitly make a sacramental confession to any priest who is approved for hearing confessions in that place and no special jurisdiction (canon 876) or designation is required for this action.<sup>33</sup>

To show equality of treatment, "the things which are prescribed in the preceding number apply also to lay communities of men insofar as they are applicable"<sup>34</sup>.

Differences in the treatment of men and women are still evident in such matters as the papal cloister. The superiors general of male religious orders (with the exception of monks), are allowed "to temper their own cloister" according to the norms<sup>35</sup>. In regard to laws regulating the papal cloister of

31 Ibid., n. 3, p. 423.

32 Cf. S.C. Religious and Secular Institutes, decree "Dum Canoniarum Legum", Dec. 8, 1970, in A.A.S., 63(1971), p. 318-319; English translation in Canon Law Digest, 7, p. 531-533.

33 Ibid., n. 4(a), p. 532.

34 Ibid., n. 5, p. 533.

35 S.C. Religious and Secular Institutes, declaration on "Papal Cloister in Male Religious Orders", June 4, 1970, in A.A.S., 62(1970), p. 548-549; English translation in Canon Law Digest, 7, p. 536.

nuns, norms are set up with detailed regulations concerning the cloister<sup>36</sup>.

In regard to the laity (canons 682 to 725), perhaps the legislation affecting the competency of the Roman Curia over associations of the faithful may prove significant for the lay apostolate<sup>37</sup>. Article 1 states that the Council of the Laity has competency over lay associations:

After the motu proprio letter of Pope Paul VI, Catholicam Christi Ecclesiam, issued on January 5, 1967, and the apostolic constitution, Regimini Ecclesiae Universae, issued on August 15, 1967, the Council for the Laity has competency over associations of the faithful...<sup>38</sup>

Several norms follow, which indicate the competent department in regard to associations with both clergy and laity<sup>39</sup>. The aim of the Council of the Laity is stated as promoting, fostering, and regulating "the apostolate of the laity in the individual nations" and as weaving it into "the universal apostolate of the Church"<sup>40</sup>.

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36 Cf. S.C. Religious and Secular Institutes, instruction "Venite Seorsum", Aug. 15, 1969, in A.A.S., 61(1969), p. 674-690; English translation in Canon Law Digest, 7, p. 536-541.

37 Apostolic Signatura, "Roman Curia: Competence over Associations of the Faithful", Nov. 1968, in Leges Ecclesiae, III, 1968, n. 3699; English translation in Canon Law Digest, 7, p. 176-178.

38 Ibid., n. 1, p. 177.

39 Ibid., n. 7 and 8, p. 178.

40 Ibid., n. 2, p. 177.

c) Things (Canons 726-1551).- By canon 738 the priest is the ordinary minister of solemn baptism and by canon 741 the deacon is the extraordinary minister; by canon 742, for a private baptism, lay men and women may baptize in accord with norms. In a letter of October 12, 1970 addressed to the President of the Union of Superiors General, the Sacred Congregation for Religious and Secular Institutes<sup>41</sup>, granted the following procedure for the celebration of baptism in accord with stated norms: "... in the habitual absence of the ordinary minister of baptism, lay religious men and women can administer the said sacrament..."<sup>42</sup>.

In this permission, no preference of the male religious over the female religious is expressed, and a mutuality of procedure for lay religious men and women is presented.

The ordinary minister of Holy Communion is the priest, and the extraordinary minister is the deacon, as stated by canon 845. By the year 1966, the question of lay ministers of the eucharist began to receive attention. In the instruction, Fidei Custos<sup>43</sup>, norms for the obtaining of the

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41 S.C. Religious and Secular Institutes, "Faculty for Lay Religious Men and Women to Administer Baptism", Oct. 12, 1970, in Com. pro Rel., 52(1971), p. 188-189; English translation in Canon Law Digest, 7, p. 591-592.

42 Ibid., p. 591.

43 S.C. Sacraments, "Fidei Custos", Mar. 10, 1966, private instruction; English translation in Canon Law Digest, 7, p. 645-648.

faculty and qualifications of the minister of eucharistic communion were issued. Among the norms it is stated that the recipients of the ministry "must be of the male sex"<sup>44</sup>, however, in urgent need "the superior or superioress" of a religious institute is permitted to distribute the eucharistic bread to his/her fellow religious and to the lay persons present<sup>45</sup>.

Within a short time, the episcopal conferences of several countries applied for the faculty, indicating in all cases that reputable lay "men" would receive the mandate<sup>46</sup>. However, in 1971, the President of the episcopal conference of the United States, broadened the petition and asked the faculty for "qualified persons"<sup>47</sup>. Though the word "women" is not used, the request is made that all "mature laity" be given the privilege. An affirmative answer was received from the Sacred Congregation of the Sacraments, with a few precautions added and the stipulation that "in other matters", the instruction Fidei Custos is to be followed. Two years later, in May of 1973,

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44 Ibid., n. 3, p. 647.

45 Ibid.

46 For example, see the reply of the S.C. Sacraments, "Laymen as Distributors of Communion", Nov. 28, 1967, Prot. N. 2199/67; English translation in Canon Law Digest, 7, p. 648-649. On p. 648 the permission is given to the Episcopal Conference of Germany, to "qualify worthy persons of the male sex" to help with the distribution of Holy Communion.

47 See S.C. Sacraments, "Lay Persons as Distributors of Holy Communion", Mar. 9, 1971, private rescript; English translation in Canon Law Digest, 7, p. 651-652.

revised guidelines were approved for the Archdiocese of Chicago by the Cardinal Archbishop of Chicago, and among other norms for extraordinary ministers it is stated that "candidates may be men or women and should be, in the judgment of the pastor and his staff, exemplary Catholics"<sup>48</sup>. This was in accord with the instruction Immensae Caritatis of January 1973, whereby the local ordinaries possess the faculty to "permit a qualified person, individually selected as an extraordinary minister", not only to feed himself and other members of the faithful, but under certain circumstances, "to bring it to the sick living at home"<sup>49</sup>.

It would seem that through a legitimate pastoral need and in accord with norms, laymen were first given the privilege to be extraordinary ministers. In time, the privilege was extended to lay women upon the request of the episcopal conference. Finally, the privilege was extended to lay men and women in Immensae Caritatis. The evolution of outlook in regard to women ministers, as it centers upon this privilege, might be instructive for future changes in the ministry of women. Even in Fidei Custos a superioress could obtain the privilege, so

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<sup>48</sup> Cardinal Archbishop of Chicago, "Extraordinary Minister of Holy Communion", May 1973, in Canon Law Digest, Supplement 1973, c. 845, p. 1.

<sup>49</sup> S.C. Sacraments, instruction "Immensae Caritatis", Jan. 29, 1973, in A.A.S., 65(1973), p. 264-271; see English translation in Canon Law Digest, Supplement 1973, c. 801, p. 2-3.

there is no question about a woman's "capacity" to serve, and the subordination principle is not evoked. The extension of the privilege might well be considered as an educative procedure.

Perhaps an even more significant development for women is in regard to the institution of lay ministries in the Church. Basically, the new norms affect some of the canons from 948 to 978. In the apostolic letter, Ministeria Quaedam<sup>50</sup>, issued August 15, 1972, Pope Paul VI suppressed the traditional orders of first tonsure, minor orders and the subdiaconate. As introduction to this change in a "long-standing discipline", reference was made to the fact that in ancient times certain functions of "sacred liturgy and charity", were entrusted to the "faithful"; although in time some of these functions came to be considered as preparatory steps for minor orders. In place of the suppressed orders, the letter established the lay ministries of lector and acolyte which now "can be entrusted to Christian lay persons with the result that they are not to be considered as reserved to candidates for the sacrament of orders"<sup>51</sup>. In addition, the "establishment of other lay ministries is left to the proposal of

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<sup>50</sup> Pope Paul VI, motu proprio "Ministeria Quaedam", Aug. 15, 1972, in A.A.S., 64(1972), p. 529-534; English translation in Canon Law Digest, 7, p. 690-695.

<sup>51</sup> Ibid., p. 693.

episcopal conferences"<sup>52</sup>. In the letter, several important distinctions are made between lay and clerical ministries. The conferral of lay ministries should not be called ordination, but "installation", and only those who receive the diaconate are considered clerics<sup>53</sup>. Then, after a detailed description of the ministries of lector and acolyte, the much-publicized norm 7 appears: "The installment of lector and acolyte, in accord with the venerable tradition of the Church, is reserved for men"<sup>54</sup>.

On the same date, the motu proprio, Ad Pascendum<sup>55</sup>, was promulgated, in which "some norms concerning the sacred order of the diaconate" were established in accord with the wishes pressed by Second Vatican Council and "implemented as regard the permanent diaconate in the motu proprio, Sacrum Diaconatus Ordinem, in 1967"<sup>56</sup>. In this letter there is no specific norm which states that the diaconate is reserved for men, yet "candidates for the diaconate, whether permanent or transitional, and for the priesthood, must receive the

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52 Ibid., p. 692.

53 Ibid., cf. p. 692.

54 Ibid., p. 694.

55 Pope Paul VI, motu proprio "Ad Pascendum", Aug. 15, 1972, in A.A.S., 64(1972), p. 534-540; English translation in Canon Law Digest, 7, p. 695-698.

56 Ibid., p. 695-696.

ministries of lector and acolyte"<sup>57</sup>. Therefore, norm 7 of Ministeria Quaedam applies, and women are excluded from the diaconate.

The fact that ministries can now be entrusted to Christian lay persons, and that such ministries are not to be considered as reserved to candidates for the sacrament of orders, is of great importance for women. It is also important that in addition to the offices common to the Latin Church (lector and acolyte), nothing prevents the various episcopal conferences from petitioning the Apostolic See for other needed ministries. Thus, despite the exclusion of women from the ministries of lector and acolyte, and with the diaconate and the priesthood reserved for men, the possibility of evolution in the area of official ministries for women can be perceived.

The legislation concerning the sacrament of marriage has gone on apace since the Second Vatican Council, and canons 1012 to 1143, as well as the canons on matrimonial cases, canons 1960 to 1993, have been variously affected. In the Codex Iuris Canonici the wife is seen in a subordinate status to the husband and has a surrogate authority in regard to the children. Any legislation that affects this position is of significance to women. The nature of marriage itself has

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57 Ibid., p. 697.

received attention; and the impact of the conciliar teaching that matrimony is an "intimate partnership of married life and love"<sup>58</sup> seems to be considerable. The norms on mixed marriages in Matrimonia Mixta<sup>59</sup>, specifically provide for recognition of respect for the liberty of the consciences of both parties in the marriage and the mutual responsibilities of husband and wife in the education of children<sup>60</sup>.

Some development has occurred in regard to the interpretation of canon 1098, section 2, which is of import to lay men and women. On December 7, 1971, the Sacred Congregation for the Discipline of the Sacraments, issued an instruction to local ordinaries on the topic, "Marriage before Witnesses Only"<sup>61</sup>. This instruction was in reply to requests that the faculty be granted for validly celebrating a marriage before a member of the Catholic faithful (delegated by the local ordinary or the pastor) and two witnesses. The permission was not granted, but there was a recommendation to consider

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<sup>58</sup> W. Abbott, The Documents of Vatican II, G.S., n. 48, p. 250.

<sup>59</sup> Pope Paul VI, motu proprio "Matrimonia Mixta", Mar. 31, 1970, in A.A.S., 62(1970), p. 257-263; English translation in Canon Law Digest, 7, p. 711-718.

<sup>60</sup> Ibid., cf. n. 4 and n. 5, p. 715.

<sup>61</sup> S.C. Sacraments, "On the Canonical Celebration of Marriage before Witnesses alone in Particular Cases", Dec. 7, 1971, private instruction; English translation in Canon Law Digest, 7, p. 753-756.

the existing possibilities in canon 1098<sup>62</sup> with wider pastoral application:

In those places where the enormous size either of the total diocese or of individual parishes so indicates, together with the daily increasing dearth of priests and deacons ... ordinaries should attentively investigate whether it can be lawfully declared that the faithful who are resident there, may validly and licitly use canon 1098.<sup>63</sup>

The instruction goes on to propose that the ordinaries should take care to train lay persons to help with the implementation of canon 1098. Such lay persons would give the catechesis prior to the celebration of marriage and should be available to assist at the celebration itself, taking care not to prejudice "the right of the spouses to contract marriage validly in the presence of any witnesses whatever in accord with canon 1098"<sup>64</sup>. In the qualifications for the lay person, efficiency and maturity are stressed. It may be presumed that women can be selected.

A few years later, on May 15, 1974, the Sacred Congregation of the Sacraments issued the instruction,

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62 c. 1098: "Si haberi vel adiri nequeat sine gravi incommodo parochus vel ordinarius vel sacerdos delegatus qui matrimonio assistant ad normam canonum 1095, 1096: (1) In mortis periculo validum et licitum est matrimonium contractum coram solis testibus; et etiam extra mortis periculum, dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam..."

63 Canon Law Digest, 7, op. cit., p. 754.

64 Ibid., p. 755.

Sacramentalem Indolem<sup>65</sup>, on the same topic of lay persons as official witnesses at marriages. By the instruction, the current discipline of the Codex remains in effect, but in accord with the stated norms the following right is granted:

However, for their respective territories, the Sacred Congregations are granted the power to permit local ordinaries who have obtained a favorable vote of their episcopal conference and who have presented a request, to accord to a Catholic who has been personally selected, the function of official witness at the canonical celebration of marriage.<sup>66</sup>

In describing the qualifications of the "selected lay person", the normative-masculine pronouns such as "he" are used; however, there is no stated preference for "laymen", so it may be presumed that women can act as official witnesses in accord with the norms.

Under certain circumstances, lay men and women may also officiate at funerals. The revised funeral ritual was promulgated by the Ordo Exsequiarum of August 15, 1969<sup>67</sup>. In regard to lay persons officiating at funerals, the bishops of France, at their request, were granted the following faculty:

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65 S.C. Sacraments, "Sacramentalem Indolem", May 15, 1974, private instruction; English translation in Canon Law Digest, Supplement 1974, c. 1094, p. 1-3.

66 Ibid., p. 2.

67 S.C. Divine Worship, "Ordo Exsequiarum", Aug. 15, 1969, in Notitiae, 5(1969), p. 431-435; English translation in Canon Law Digest, 7, p. 777-778.

If a competent minister is not had, lay persons deputed by the episcopal conference because of pastoral need, may perform the burial rite in accord with n. 19 of the praenotanda of the Ordo Exsequiarum.<sup>68</sup>

The same faculty was granted to the bishops of Mexico on April 25, 1972. In these permissions, "lay persons" are designated and presumably include women<sup>69</sup>.

The ecumenical developments hold great promise for women. Canon 1258, forbidding the faithful to assist in any active manner or to take part in the services of non-Catholics, and other such canons de cultu divino, are affected by such documents as the ecumenical "Directory"<sup>70</sup> of May 14, 1967, the "Dialogue with Non-Believers"<sup>71</sup> of August 28, 1968, and the "Directory on Ecumenism in Higher Education"<sup>72</sup>, April 16, 1970. Throughout the documents, lay women and men are accorded equal responsibilities and rights.

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68 Ibid., p. 778. The reference affects c. 1230.

69 Ibid.

70 Sec. Christian Unity, "Ecumenism: Guidelines or Directory", May 14, 1967, in A.A.S., 59(1967), p. 574-592; English translation in Canon Law Digest, 6, p. 716-734.

71 Sec. Non-Believers, "Dialogue with Non-Believers", Aug. 28, 1968, in A.A.S., 60(1968), p. 692-704; English translation in Canon Law Digest, 7, p. 780-794.

72 Sec. Christian Unity, "Directory on Ecumenism in Higher Education", Apr. 16, 1970, in A.A.S., 62(1970), p. 705-724; English translation in Canon Law Digest, 7, p. 801-819.

In order to discharge the ecumenical responsibility by which she is bound, the Church must have at her disposal an appropriate number of persons from the clergy, the religious, and the lay men and women who are experts in ecumenical matters.<sup>73</sup>

By canon 1274, exposition of the Blessed Sacrament is limited to priests and deacons. On December 9, 1970, the Sacred Congregation of Divine Worship<sup>74</sup> granted the following faculty to a number of communities of religious women:

In the judgment of the local ordinary, if a competent minister is not available, the superioress of the religious house or another religious woman delegated by her, may open and close the door of the tabernacle where the Blessed Sacrament is reserved, so that adoration by the community can be carried on.<sup>75</sup>

By canon 1342 all laymen, even religious, are forbidden to preach in church. However, on November 20, 1973, the Sacred Congregation of Clergy, in reply to the bishops of the German Federal Republic<sup>76</sup>, and in accord with norms, allowed experimentation for lay persons to preach in the church and in extraordinary cases, to give the homily at Mass<sup>77</sup>. The

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73 Ibid., p. 811.

74 S.C. Divine Worship, "Tabernacle Door: Religious Women", Dec. 9, 1970, in Notitiae, 7(1971), p. 57; English translation in Canon Law Digest, 7, p. 830-831.

75 Ibid., p. 831.

76 S.C. Clergy, "Preaching by Lay Persons", Nov. 20, 1973, private letter; English translation in Canon Law Digest, Supplement 1974, c. 1342, p. 1-4.

77 Ibid., p. 3.

designation throughout the document is for "lay persons", so women are included.

d) Procedures, Crimes and Penalties (Canons 1552-2414).- By canon 1574 only priests can be synodal judges. However, in reply to a request from a local ordinary, the Apostolic Signatura on July 11, 1968<sup>78</sup>, replied that after "the report was made to His Holiness, Pope Paul VI, in the audience granted to the Cardinal Prefect on 11 July, 1968, His Holiness graciously approved and confirmed the resolution" that the ordinary be allowed to appoint "a lay man, qualified and and suitable, as presiding judge, defender of the bond, promoter of justice, consultant assessor in cases where the sole judge wishes to call in two consultant assessors"<sup>79</sup>. In 1971, the motu proprio, Causas Matrimoniales<sup>80</sup>, established norms for the more expeditious handling of matrimonial processes, and among the norms are changes in personnel requirements:

If a panel of three clerical judges cannot be formed either in the diocesan tribunal or in the regional tribunal, where one has been erected, the episcopal conference is given the faculty to permit the constitution of a panel made up of two clerics and one lay man in the first and second instance.<sup>81</sup>

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<sup>78</sup> Apostolic Signatura, "Lay Persons on Ecclesiastical Tribunal", July 11, 1968, private resolution; English translation in Canon Law Digest, 7, p. 929-930.

<sup>79</sup> Ibid., p. 930.

<sup>80</sup> Pope Paul VI, motu proprio "Causas Matrimoniales", Mar. 28, 1971, in A.A.S., 63(1971), p. 441-446; English translation in Canon Law Digest, 7, p. 969-974.

<sup>81</sup> Ibid., p. 971.

And another norm states that "for the office of assessor and auditor in tribunals on any level, laymen can be called; on the other hand, for the office of notary either men or women can be taken"<sup>82</sup>.

In non-consummation cases (cf. canon 1963), the instruction Dispensationis Matrimonii<sup>83</sup> of March 7, 1972, emended some of the procedures. There is still reference to the physical examination of women, but they are now free to refuse to undergo this procedure. Indeed, "the inspection is not to be urged"<sup>84</sup>.

Finally, in the instruction Venite Seorsum<sup>85</sup>, the penalties established for violators of the cloister of nuns (see canon 2342), are "without force until the promulgation of the new code of canon law"<sup>86</sup>.

To summarize the changes in the post-conciliar legislation affecting women it is possible to observe a number of interesting trends. To begin with, as a general statement,

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82 Ibid., p. 972.

83 S.C. Sacraments, instruction "Dispensationis Matrimonii", Mar. 7, 1972, in A.A.S., 64(1972), p. 244-252; English translation in Canon Law Digest, 7, p. 988-997.

84 Ibid., p. 994.

85 S.C. Religious and Secular Institutes, instruction "Venite Seorsum", Aug. 15, 1969, in A.A.S., 61(1969), p. 674-690; English translation in Canon Law Digest, 7, p. 536-543.

86 Ibid., p. 541.

it does not seem that the Conciliar doctrine of the equality of men and women as the People of God and as members of the laity, has been clearly given a juridic force that would be normative throughout all legislation. However, in documents dealing with social responsibilities, such as ecumenism, both men and women are mutually designated for service. The legislation on marriage and on the religious life is strongly oriented towards mutuality and equivalence of men and women. As regards the lay ministry in the Church, though both women and men are mutually responsible, the opportunity to perform such ministry is frequently curtailed for women. Women are still excluded from certain personnel offices in the Church which are now open to laymen. However, one outstanding factor is evident: the assumption of the subordination of women has been removed from legislation. The participation of women in various aspects of the lay apostolate has been gradually broadened. In many instances, the broad general norms enunciated by the Roman Congregations were adapted to the pastoral needs of particular countries through the various episcopal conferences.

## 2. The Revision of the Code.

It may be assumed that much of the legislation effected in the post-conciliar era will be codified in the new code of canon law. A Pontifical Commission for the Revision of the

Code was established by Pope John XXIII on March 28, 1963, and has pursued its work progressively since that date. The main function of the Commission is to prepare, "especially in the light of the decrees of the Second Vatican Ecumenical Council, the revision of the Code of Canon Law (promulgated on 27 May, 1917)"<sup>87</sup>. Moreover, the Commission has a consultative function, consisting in furnishing to the departments of the Roman Curia, "technical information and opinion of a provisional character on forthcoming concrete inquiries of a juridical character as they are submitted"<sup>88</sup>. A third function was assigned to the Commission on November 20, 1965, when Pope Paul VI suggested to the members and consultors of the Pontifical Code Revision Commission the possibility of formulating one basic schema of norms which could be considered as a constitution for the whole Church<sup>89</sup>.

Since the new Code has not yet been promulgated, the sources used in this study will be the Commission reports in the periodical Communicationes and the draft schemata already

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<sup>87</sup> See Papal Secretariat, "Functions: Commission for Revision of Code", Mar. 25, 1968, in Communicationes, 1(1969), p. 5; English translation in Canon Law Digest, 7, p. 63.

<sup>88</sup> Ibid.

<sup>89</sup> Cf. Pope Paul VI, "Revision of the Code of Canon Law", Nov. 20, 1965, in A.A.S., 57(1965), p. 985-989; English translation in Canon Law Digest, 6, p. 141-146. See p. 145: "The question arises whether it would be better to establish a common and fundamental Code containing the constitutional law of the Church."

distributed as a guide. It will be sufficient to outline some general orientations, realizing that until the promulgation of the new Code itself, even the trends may be taken as conjectures.

While extensive work has been accomplished by the Commission in almost every area of Church law, this study will be limited to the norms and orientations of the Revision itself; to the Lex Fundamentalis, the fundamental law of the Church; to the work on De Personis, especially the laity and the religious; and a brief review of the work accomplished on the sacraments, and on procedures and penalties. All these areas will be further limited to those norms that have special significance for women as members of the laity.

The guiding principles for the revision of the Code were approved by the first Synod of Bishops in 1967<sup>90</sup>. The ten principles assure the juridic character of the Code as directed towards the determination of the rights and obligations of each person both as an individual and as a member of the Church. Perhaps the principle on the protection of the rights of persons (De Tutela Iurium Personarum), is of special interest, for it implies that a common juridical status of

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90 See Pont. Com. Revision of Code, "Principia Quae Codicis Iuris Canonici Recognitionem Dirigant", in Communications, 1(1969), p. 77-85; especially p. 77, footnote n. 1.

all members of the Church will be drawn up<sup>91</sup>. For women, this could mean the end of separate status because of sex. Perhaps the format of the Code, referring to the three munera or functions of the Church, seems to be more clerically inclined, relating the functions of sanctifying, teaching, and governing to those in the hierarchy, not to the priestly, prophetic, and kingly powers of the People of God as a whole<sup>92</sup>.

The response to Pope Paul's questions to the Pontifical Commission for the Revision of the Code in 1965, concerning a common and fundamental constitutional law for the Church, was in the form of the proposed Lex Fundamentalis. A draft text of the Lex Fundamentalis, distributed in 1971<sup>93</sup>,

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91 Ibid., n. 6, p. 82-83: "Et quoniam non omnes eamdem functionem in Ecclesia habent, neque idem statutum omnibus convenit, merito proponitur ut in futuro Codice ob radicalem aequalitatem quae inter omnes christifideles vigere debet, tum ob humanam dignitatem tum ob receptum baptisma, statutum iuridicum omnibus commune condatur, antequam iura et officia recenseantur quae ad diversas ecclesiasticas functiones pertinent."

92 Cf. Pont. Com. Revision of Code, "De Ordinatione Systematica Novi Codicis Iuris Canonici", in Communicationes, 1(1969), p. 101-113. See outline on p. 111, "Legislatio de tribus muneribus Ecclesiae."

93 Pont. Com. Revision of Code, Schema Legis Ecclesiae Fundamentalis, (Textus Emendatus cum Relatione de ipso Schemate deque Emendationibus Receptis), 1971, 159 p. (subsequently referred to as Schema L.E.F.); English translation from "The Lex Debate: The Amended Text" (subsequently referred to as Lex... Amended Text), in Origins, 1(1971-1972), p. 171, 180-189. On p. 171 it is stated that the official text is marked "reservatum", and that on "March 15, 1971, the Bologna fortnightly 'Il Regno' published an unofficial Italian translation of the 1970 amended text. Below is an N. C. News translation of that text."

caused considerable discussion and controversy. The format of the draft text includes a preamble and three chapters: the Church of the People of God, Offices of the Church, and the Church in the World. In each chapter, the integrating functions of the whole People of God are presented and the pneumatic oneness of the Church is highlighted. While it may be true that the pastors are still depicted as the main active ingredient in the mission of the Church<sup>94</sup>, still the faithful in general are accorded a primacy of place throughout the document<sup>95</sup>, and the laity have a participatory role in the presentation of the three munera of teaching<sup>96</sup>, sanctifying<sup>97</sup>, and

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94 See Schema L.E.F., p. 21-22, c. 30: "Christifideles laici...missionem participant salvificam Ecclesiae, cuius in muneribus exercendis propriam habent partem, ab ecclesiastica auctoritate quoque pressius determinandam et ab eadem moderandam." See also p. 52, c. 84(2): "Principia quae ab Ecclesiae pastoribus proponuntur christifideles observent in aestimandis et ordinandis relationibus Ecclesiam inter et hominum consortia temporales fines prosequantia..."

95 Ibid. In Caput I (p. 9-32), for example, Articulus 1 deals with the faithful in general, including basic rights and duties of the faithful, and diversity of the faithful by reason of their state; Articulus 2 deals with the hierarchy of the Church: the supreme pontiff, the bishops, the college of bishops, individual bishops, presbyters and deacons.

96 See ibid., p. 39, c. 62: "Cunctis christifidelibus officium est adlaborandi ut nuntius evangelicus diffundatur; ut tamen quis ministerium verbi Dei nomine Ecclesiae exercere possit, missionem a competenti auctoritate accipere debet..."

97 See ibid., p. 45, c. 73(2): "Christifideles cuncti, quippe qui per regenerationem et Spiritus Sancti unctionem in regale sacerdotium consecrantur, vocantur ut orationibus suis, sacrificiis et praesertim caritatis operibus ad mundi salutem conferant et ad Regnum Christi in animis radicandum et roborandum adiuvent..."

governing<sup>98</sup>, and a significant role in the mission of the Church in the world<sup>99</sup>. The lay participatory role, however, is dominantly passive in character. The principle of non-discrimination on the grounds of sex is affirmed in canon 10:

While some through the will of Christ are constituted doctors, dispensers of mysteries and pastors in charge of others, there exists among all the faithful, by divine condescension brothers in Christ, a true equality in dignity and in action, whereby each cooperates according to his own state in the building up of the Body of Christ (Eph 4:12); neither is there among them any inequality by reason of tribe or nation or social condition or sex (Gal 3:27-28).<sup>100</sup>

As canons 26 to 28 deal with the diversity of the faithful by reason of their "state", and clerics, laity, and religious are mentioned, it is safe to assume that sex is not to be treated as a special state. This assumption seems verified in canon 22, whereby all "the faithful have the right to choose their state in life freely, immune from any constriction"<sup>101</sup>. As most of the basic rights of the faithful

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98 See *ibid.*, p. 51, c. 83: "Christifideles laici, utpote baptismate suo modo munerum Christi participes effecti, et ipsi vocantur ut Episcopo in populo regendo praestent operam, omnia sibi concredita quoque implendo quae, debita competentia et praestantia si gaudeant, laicis committi possunt ad normam sacrorum canonum."

99 See *ibid.*, p. 53, c. 85(2): "...christifideles quidem, prae aliis laici, iuxta propriam vocationem...curent ut secundum Deum ordinentur res terrenae atque ipsae consortiones temporales."

100 *Lex...Amended Text*, p. 181.

101 *Ibid.*, p. 182.

in canons 10 to 25 have a qualifying clause (according to his state, for example), it is important for women that sex is not considered as a special state.

On the whole, the draft of the Lex Fundamentalis embodies the basic principles of Second Vatican Council encompassing the Mystery of the Church and the dignity of the human person. While there is a declaration of non-discrimination for reasons of sex in the Lex, there are many qualifying clauses attached to the basic rights of the faithful, so that the possibility of different norms for men and women remains.

The proposed new law on persons, not distributed to the bishops, but published in the National Catholic Reporter of December 19, 1971<sup>102</sup>, presents the same positive aspects as the draft Lex Fundamentalis. The proposed draft on the laity is in two sections; the first containing norms for the juridical status of all the faithful and the juridical status of laymen; the second section deals with various associations of the faithful.

The first topic, "The Juridical Status of all the Faithful", comprises 24 canons. The first canon reads:

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102 Pont. Com. Revision of the Code, "Canon Law Draft for Revised Section on Laity", in National Catholic Reporter, Dec. 17, 1971, p. 6, 15. See also Communicationes, 2(1970), p. 89-90.

By the term "faithful" is understood all those persons who through incorporation in Christ by baptism have been constituted the People of God and, as a result, as partakers in the priestly, prophetic, and royal office of Christ, are called, each one according to his own juridical status, to exercise that mission which Christ entrusted to his Church for fulfillment in the world.<sup>103</sup>

By this canon, the exercise of the Christian mission, received from Christ himself, does not seem to carry with it universal rights and duties, but is regulated by each individual's "juridical status". In spite of this, in canon 4 under the second topic, "The Juridical Status of Laymen", all laymen and indeed all the faithful are through baptism, "deputed by God to the apostolate, that is, to participate in the saving mission of the Church", and they are bound by a general obligation to labor for the spread "of the divine message of salvation"<sup>104</sup>. This last canon has no limitations by state or condition, and could be of great significance in the ministry of women.

Under the topic of the general status of all the faithful, canon 2 states that the "obligations and rights which are determined in the canons that follow belong to all the faithful, be they clerical or lay, without distinction of their birth, nationality, social standing or sex"<sup>105</sup>. Canon 3 establishes

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103 Ibid., p. 6, c. 1.

104 Ibid., p. 6, c. 4.

105 Ibid., p. 6, c. 2(1).

an equality among the members of the faithful, for although

... the offices and duties of the faithful in the Church of Christ are diverse, all are obliged to acknowledge a true equality in common dignity and activity which exists among them by reason of their common baptism, as well as observe the brotherhood by which, for the same reason, they are mutually bound.<sup>106</sup>

By canon 10, the faithful "can and should follow the rite proper to them" and reference is made to the norms of canon 98 in the Codex Iuris Canonici<sup>107</sup>. As it is by canon 98(4), that a wife (but not a husband) is given permission to change rite, the differential treatment for women could remain. It is, however, without qualification that canon 15 states that all "the faithful enjoy the right to choose a state of life freely and without any compulsion"<sup>108</sup>. This would seem to imply that women and men have a right to choose among the states in the Church: clergy, laity, religious.

In the section on the juridical status of laymen, men and women seem to be accorded equal status by canon 1:

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106 Ibid., p. 6, c. 3(1).

107 Ibid., p. 6, c. 10.

108 Ibid., p. 6, c. 15.

... Assuredly the faithful, whether men or women, who live in the world and share the secular life, exercise the salvific mission of the Church according to their role, likewise to be determined by the canons, namely sharing in the divine life of the Church and professing and propagating in word and work the faith which they have received from God through the Church, especially rendering witness to Christ while pursuing their temporal affairs and fulfilling their secular duties.<sup>109</sup>

Here, the mutuality of men and women is qualified "according to their role". This could be interpreted as meaning "in accord with their role as laity in the Church". However, if roles are considered in terms of sex, it could be sex that determines how a person exercises "the salvific mission of the Church".

By canon 6, it is by reason of their baptism that laymen, like all the faithful,

... have the duty and right to participate fully, knowledgeably, and actively in liturgical celebrations and they have the privilege of performing the offices of server, lector, commentator, chanter, and other definite ministries according to the rules of law.<sup>110</sup>

According to the present rules of law, the lay ministries of lector and acolyte are reserved for men, and under the proposed canon, the same situation could prevail.

It would seem that many of the proposed canons on persons would still generally be qualified by role, condition,

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109 Ibid., p. 6, c. 1(2).

110 Ibid., p. 6, c. 6(1).

or law. Thus, while none of the proposed canons are specifically discriminatory against women (as many in the Codex Iuris Canonici are found to be) the legal loopholes for differential treatment are written into the canons themselves. At first sight, this "qualification" approach so evident in the proposed new canons, might even be considered a more subtle form of discrimination than is found, for instance, in the Codex. The new approach, however, could well be a forward-looking step. The "qualifications" could vary according to the thinking of the time and development can be envisaged in the application of the norms.

In the proposed new law for religious<sup>111</sup>, all distinctions between masculine and feminine institutes and their members would be dropped<sup>112</sup>. In this area, the equivalence of women and men religious seems to be firmly established. Distinctions are fittingly made between clerical institutes

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111 See Pont. Com. Revision of Code, "De Institutis Perfectionis", in Communicationes, 2(1970), p. 168-181; 5(1973), p. 47-69.

112 Cf. ibid., p. 176: "Praeter principia directiva supra exposita, aliud adiungi potest quod constanter in mente Consultorum fuit: illud nempe vitandi quamlibet discriminationem in statuendis normis inter instituta perfectionis virorum et mulierum." Also, Pont. Com. Revision of Code, Schema "De Institutis Perfectionis", p. 5, c. 6: "Quae de Institutorum perfectionis sodalibus statuuntur pari iure de utroque sexu valent, nisi ex contextu sermonis vel ex rei natura aliud constet."

and laical institutes<sup>113</sup>. It would appear from the first schema that the cloister is retained in a special form only for nuns<sup>114</sup>. On the whole, the general norms that apply to all institutes, and the special norms for various categories of religious life, allow for subsidiarity and flexibility.

There have been many changes and revisions in the field of sacramental canon law during the past decade and many of these are expressed in the proposed revision of the Code. To show the general tenor of the sacramental law revision, only a few examples (of significance for women) will be used. These examples will be taken from the proposed norms for baptism, the eucharist, marriage, and orders.

The ordinary ministers of baptism in the revised law would be the bishop, the priest and the deacon. New norms are proposed concerning the role of catechists as extraordinary ministers. In case of necessity, any man or woman (homo) may

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113 See ibid., p. 52: "Canon quintus praebet notionem instituti clericalis et iuris pontificii et, per oppositionem, instituti laicalis et iuris dioecesanii, quia, praeter monastica, instituta sunt vel clericalia vel laicalia. Criterium tamen distinctionis non est praecise illud in can. 488, 4<sup>o</sup>, Codicis vigentis statutum." Also, in Schema "De Institutis Perfectionis", p. 5, c. 5(1): "Institutum clericale dicitur quod, vi iuris particularis, exercitium ordinis sacri assumit et uti tale ab Ecclesiae auctoritate agnoscitur."

114 See ibid., p. 175. The outline includes the papal cloister for nuns. See also, Schema "De Institutis Perfectionis", p. 28, c. 108(1): "Clausura papalis in monasteriis monialium quae unice vitae contemplativae vacante servanda est." There is no similar norm under "De monachis".

baptize<sup>115</sup>.

The revision seems centered on the eucharist taken in its two aspects: as the sacrifice of the mass and as the sacrament of communion. Speaking of the eucharist as the sacrament of communion, major changes are centered on the person who may distribute the sacrament. The ordinary ministers are the priests and deacons; and any member of the faithful, in accord with norms, may be an extraordinary minister<sup>116</sup>.

Following the teaching of Second Vatican Council, no distinction will be made among the ends of marriage, and the new legal notion of the intimate partnership of married life,

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115 See Pont. Com. Revision of Code, "De Sacramentis", in Communicationes, 3(1971), p. 199: "His inspectis documentis, ministri ordinarii baptismi sunt episcopus, presbyter et diaconus. Absente autem vel impedito sacerdote et diacono, huius sacramenti minister est catechista, immo, in casu necessitatis, quilibet homo." Also, Pont. Com. Revision of Code, Schema Documenti Pontificii Quo Disciplina Canonica De Sacramentis Recognoscitur (subsequently referred to as Schema...De Sacramentis), p. 22, c. 10(1) and (2): "Minister ordinarius baptismi est sacerdos aut diaconus, salvo quidem iure parochorum. Absente aut impedito sacerdote et diacono, licite baptismum confert catechista, immo in casu necessitatis quilibet homo."

116 See Pont. Com. Revision of Code, "De Sacramentis", in Communicationes, 4(1972), p. 53: "Minister sacrae communionis determinatur: ordinarius minister est sacerdos et diaconus; extraordinarius est alius christifidelis, sive clericus sive etiam laicus, in casibus vero necessitatis pastoralis tantum et servatis loci Ordinarii praescriptis." Also, Schema...De Sacramentis, p. 34, c. 70(1) and (2): "Minister ordinarius sacrae Communionis est sacerdos et diaconus. Extraordinarius sacrae Communionis minister, in casibus nempe in quibus necessitas pastoralis id requirat, est acolythus necnon, servatis loci Ordinarii praescriptis, alius christifidelis."

often called the consortium vitae coniugalis will be incorporated in the new Code<sup>117</sup>. Under "De Personis Physicis et Iuridicis", the wife's ability to acquire a voluntary domicile and a quasi-domicile may be attested, but the wife may still be presumed to have the same domicile or quasi-domicile as the husband<sup>118</sup>. The wife may also enter the husband's rite without having the same privilege accorded to the husband<sup>119</sup>.

A very substantial revision of the legislation governing the sacrament of orders has taken place in recent years. It was noted that of particular interest to women was the reservation of the term "ordination" to bishops, priests, and deacons, and the establishment of lay ministers. All the lay

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117 See Schema...De Sacramentis, p. 82, c. 295(2): "Consensus matrimonialis est actus voluntatis quo vir et mulier foedere inter se constituunt consortium vitae coniugalis, perpetuum et exclusivum, indole sua naturali ad prolem generandam et educandam ordinatum."

118 Cf. Pont. Com. Revision of Code, "De Personis Physicis", in Communicationes, 6(1974), p. 96: "... Secundum propositum ius recognitum, uxor potest proprium voluntarium domicilium et quasi-domicilium acquirere. Attamen, ratione debitae inter coniuges vitae communis, communi quidem ut plurimum consensu ordinandae, praesumitur uxor habere domicilium et quasi-domicilium viri sui. Domicilium quod ita acquirere uxor praesumitur, est domicilium, minime legale seu necessarium, sed voluntarium seu libere ab uxore electum. Praesumptio vero ita introducta est iuris tantum, et potest habere uxor domicilium sicut et quasi-domicilium proprium."

119 See ibid., p. 97-98, concerning a change of rite in c. 98(2), where it is recalled that "mulier quae in matrimonio ineundo vel eo durante, ad Ritus viri se transire declaraverit; matrimonio autem soluto, libere potest Ritus, cui ad normam (1) adscripta erat reassumere (Cod. I.C., can. 98, (4))." No change seems to be proposed.

ministries, however, are not equally open to lay women and men, for the services of lector and acolyte are reserved for men. As all candidates advancing to ordination must receive the ministries of lector and acolyte, the inclusion of women in any form of ordained ministry has not been envisaged in post-conciliar legislation. This stance might well be incorporated in the Code revision, although the full plans for the proposed changes have not yet been made public. However, it seems evident from a recent report from the committee De Sacra Hierarchia that the declericalization of either orders or jurisdiction is not under discussion, though recognition is given to the shortage of priests in many areas and the need for new service structures in the Church<sup>120</sup>.

The general procedural norms of the Revision Commission as reported in 1970, state that procedural law should be administered quickly and efficiently and that all the faithful

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120 See Pont. Com. Revision of Code, "De Paroeciis et de Parochis", in Communicationes, 8(1976), p. 23 and 24 where the shortage of priests and new structures are mentioned. "Hodiernis tamen in adiunctis, cum in non paucis regionibus penuria sit sacerdotum, haberi potest impossibilitas ut singulis paroeciis nominetur parochus. Hisce in casibus animarum curae alio modo providendum est... Immo, si talis sit penuria ut nec hoc fieri possit, haberi potest necessitas ut quaedam participatio in exercitio curae pastoralis concedatur alicui personae quae sacerdotali caractere non sit insignita aut alicui communitati personarum." The sacred ministry, however, is still reserved to men in Schema...De Sacramentis, p. 61, c. 206(1): "Sacram ordinationem valide recipit solus vir baptizatus."

should be able to defend their rights by means of a simplified procedure<sup>121</sup>. Only a few changes will be noted to ascertain any possible trends concerning women in the area of procedural law. To begin with, concerning judgments in general, it is proposed that lay persons have official functions in the courts as notaries (except in criminal cases involving clerics), assessors, auditors, collegiate judges<sup>122</sup>. In contentious cases, a woman may be the advocate of the parties<sup>123</sup>. Even the possibility of women serving as judges is under

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121 See Pont. Com. Revision of Code, Schema Canonum de Modo Procedendi pro Tutela Iurium seu de Processibus (subsequently referred to as Schema...de Processibus), p. v: "Ius processuale, ut optatis omnium respondeat, hoc praestare debet, quod nempe iustitia tuto et celeriter administretur, quod unusquisque de populo Dei fidere possit tuitioni suorum iurium per procedurale systema citatum et perspicuum."

122 See Pont. Com. Revision of Code, "De Iure Processuali Recognoscendo", in Communicationes, 2(1970), p. 184; and Schema...de Processibus, p. VI, n. 5. In accord with norms, the laity may serve as judges, assessors, auditors. However, c. 20, p. 6, reads: "In dioecesi constituentur ab Episcopo iudices dioecesani qui sint clerici. Necessitate suadente potest Conferentia Episcopalis permittere ut collegium iudicans constet ex uno viro laico et ceteris clericis." It is also lay "men" who may, in accord with norms, serve as auditors (p. 8, c. 27, 2<sup>o</sup>), as prosecutors and defenders of the bond (p. 10, c. 35, 1<sup>o</sup>).

123 Ibid., p. 185: "Mulier potest patrocinium exercere. Hodie mulieres incumbunt studio iuris canonici et nulla praetiosa ratio adduci potest ad eas excludendas ab officio advocati: imo, praesertim in causis matrimonialibus, uxores possunt magis fidere patrono sui sexus."

discussion<sup>124</sup>.

Little need be said about the revision of the Code in regard to crimes and penalties. The new canons will reflect the spirit of the Second Vatican Council<sup>125</sup>. Penalties are to be applied sparingly. Penal laws will be limited to the external forum. The use of censures is to be moderate. The Ordinary is to show paternal consideration for those who are sanctioned. The judge will be authorized to apply other penalties than the ones prescribed if they will be better for the good of the delinquent, or the judge may even absolve the

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124 See Pont. Com. Revision of Code, "De Procedure Administrativa", in Communicationes, 5(1973), concerning the composition of an administrative tribunal, p. 242-243: "De diaconis vel laicis admittendis haec animadversa sunt (nonnulla autem inter se pugnant): (a) ut admittatur etiam collegium quod constet ex sacerdote et duobus diaconis vel laicis, vel ex iudice unico sacerdote cum duobus assessoribus laicis;... (d) ut mulier quoque possit esse iudex..." Also, Pont. Com. Revision of Code, Schema Canonum de Procedura Administrativa, p. 15, c. 22, 4<sup>o</sup>: "Iudices et Promotor Iustitiae sint idonei sacerdotes...necessitate suadente potest unus ex tribunalis collegialis iudicibus esse idoneus diaconus, vel etiam laicus..." The word "vir" is not used.

125 See Pont. Com. Revision of Code, "De Iure Poenali Recognoscendo", in Communicationes, 2(1970), p. 101: "In schemate autem de iure poenali hoc praecipuum fuit propositum ut canones poenales in primis Concilii Vaticani II spiritum saperent. Non solum igitur effectum est ut canones nulli omnino recentis Concilii Oecumenici documento contradicant, verum etiam ut Patrum praecepta et mentem quam fidelissime exprimant."

delinquent if it is found preferable<sup>126</sup>. Crimes and penalties will be applied without discrimination.

On the whole, the proposed new law, as distributed to date, as well as the post-conciliar legislation which will be integrated into the new Code, have little discriminatory content. In fact, the theory of the fundamental equality of all believers in dignity and mission, the presence of gifts of the Holy Spirit in all the members of the People of God, the importance of ministries exercised in consultation with the rest of the Church with respect to common goals, these are all principles that find expression among the guiding principles of the many sub-commissions engaged in the monumental task of

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126 See *ibid.*, p. 101-102: "Itaque totum ius poenale ad externum tantum forum limitatum est, christianae misericordiae maximus datus est locus, pastorales rationes summopere promotae sunt atque totis viribus curatum ut punitio iis numquam noceat, et ut humanae personae dignitas et iurium tuitio omnino observentur... Maximi sunt momenti eae schematis normae quae eo tendunt ut parcus sit poenarum usus in Ecclesia, et alia potius instrumenta, pastoralia vel etiam iuridica, adhibeantur, antequam ad poenas deveniatur: gravissimas enim poenas lege particulari vel praecepto constitui non posse statuitur (cann. 7, 2<sup>o</sup>; 11, 1<sup>o</sup>); proponitur autem ut 'Ordinarius poenas irrogandas vel declarandas tum tantum curet, cum perspexerit neque fraterna correctione neque correptione neque aliis pastoralis sollicitudinis viis satis posse scandalum reparari, iustitiam restitui, reum emendari, idque praevideat poenis efficacius posse obtineri' (can. 43); ... item curatum est ut multo parcior sit censurarum usus et ut in delicta generali lege punita aliam poenam lex particularis vel praeceptum non constituat, nisi ex gravissima necessitate." See also, Pont. Com. Revision of Code, Schema Documenti quo Disciplina Sanctionum seu Poenarum in Ecclesia Latina Denuo Ordinatur, p. 11-15.

revision. There has been a progressive awareness of the seriousness of the issue of women's emergence and the impact is seen in all spheres of juridic competency. In most areas of law the equivalence of men and women as collaborators in the mission of the Church is attested. However, there still remains a vestige of a former concept of women's subordination and inferiority in some norms. In such norms there is a differential treatment accorded to men and women that seems unrelated to a realistic concept of masculine and feminine differences. Most of these differential norms are in the area of ministry and sacred cult. As these two spheres are perhaps the most important aspect of the ecclesiastical Church, the differential treatment of men and women in these areas is apt to remain a major issue in the Church.

## CONCLUSIONS AND OBSERVATIONS

This thesis has been a study directed towards a clarification of the juridic condition of women in the contemporary Roman Catholic Church. The study has been undertaken at a time in history when women are beginning to question the attitudes and institutions of a male-oriented society and to reject the roles expected of them by traditional stereotypes. Women today are insisting on self delineation based on their own personhood and are no longer content with accepting the male-determined concepts of their natures and roles. These concepts have portrayed the male as the norm, the female as the "other".

Women today are aware that important changes have already taken place in the nature of the relationships between men and women. Women now openly discuss and/or complain about inequalities they perceive in the way they are treated as persons, as members of society, as spouses, and as members of the Church community. Where women in the past have largely accepted their condition, many are now protesting perceived sexist discrimination in every sphere of life. This change comes about as women increasingly reject the assumption that women are subordinate or inferior because of their sex and that passivity is their natural and feminine characteristic. They seek for an equality with men in fact and in law.

Men, too, have become sensitized to the sex-role issues and have been led to analyze their own attitudes. Both men and women are looking at the influences of institutions in all this, and the part that juridic norms play in the liberation and/or fostering of improved relationship patterns between men and women. While such developments have already effected many societal adjustments in civic societies, changes are also discernible within the Church. It was deemed important to find out just what has been done within the Church to either foster, and/or to hinder the emergence of women as self-delineating persons within the Church community.

To research the issue on the status of women in the post-conciliar Church, it was seen that several preliminary investigations had to be made and these investigations were posed in the form of questions in the Introduction: What socio-juridic factors are effecting changes in the position of women in the Church and in society? How are these factors influencing the ecclesial structures and the juridic condition of women in the Church? What is the impact of such changes on the mission of Christian women in the modern world? This study has been an attempt to answer at least some of these questions. We are now in a position to proffer a few summations and conclusions from the research itself.

## 1. Conclusions.

a) What socio-juridic factors are effecting changes in the position of women in the Church and in society?- To ascertain the factors that are effecting changes in the position of women, it was found necessary to inquire into the probable sources of certain socio-juridic perspectives on women. To this end, historic attitudes that may have contributed to outlooks that have persisted over the centuries were explored. Women's status in the Codex Iuris Canonici was then reviewed to establish the juridic condition of women as portrayed in the Code. For an overview of changing perspectives in the contemporary Church, attention was paid to the teachings of the Second Vatican Council that had a bearing on women's position. From this, the main socio-juridic factors that are effecting changes in the position of women may be deduced.

Many perduring perspectives on women were shaped in the ancient cultures reviewed, but here only six of these outlooks will be recalled; four may be considered as negative perspectives, two are positive. The negative factors are the Aristotelean concept of woman's function in generation; the Jewish concept of male superiority; the Augustinian theory of the natural inferiority of the female sex to the male sex; and the teaching of Thomas Aquinas that the female sex belonged to a subordinate order in the plan of creation. The positive

factors were the treatment of women as equivalent with men in dignity and worth by Jesus Christ; and St. Paul's theology of the "new creation" in which all are one in Christ.

The key to Aristotle's concept of male superiority was the overwhelming importance he attached to the male principle in generation. For Aristotle, the male principle represented form, activity, and motion, while the female principle was equated with matter and potentiality. The male sperm was seen as the "seed", and woman supplied the matter fit for shaping. Man was the begetter of life, woman the bearer of life. The male stood for the effective and the active, and the female stood for the passive receptacle. The active/passive differentiation of male and female is extended by Aristotle to every sphere of life as a polarity of roles. The male is seen as apt for commanding; the female, for obeying.

In the Hebrew culture, it was the male, signed with circumcision, who bore the mark of the covenant with God. The legal position of the Hebrew woman was much inferior to that of women in the Mesopotamian societies. In its positive aspect, the ancient Jewish attitude led to a high regard for family life, and women were esteemed for maternal and domestic virtues. The valiant woman, at home, would free her husband for his religious and civic duties outside the home. Women emerged as having a "proper" role in life, well defined along traditional sociological lines as caring for husband, children

and home, yet always dependent upon a man, be it father, husband or son for satisfaction for her needs. Women were closely connected with sexual morality. If a man felt endangered by sex, women could be rationalized as the cause. Inevitably there was the double standard. The Jewish woman was seen as subordinate and "naturally" inferior to the male.

In his relationships with women, Christ is recorded as treating women with the respect accorded a person. His teachings, his miracles, his parables, show a sensitivity and an awareness of women as persons. His message denotes that women as well as men were included in the Kingdom and no precedence was indicated. By his actions he disregarded confining social practices that sustained the status quo of women's inferiority. He entrusted women with important works and services and included them, along with men, in the establishment of the Kingdom.

A review of Paul's attitudes towards women revealed principles that could have revolutionized the position of women in Church and society and these principles were presented as an integral part of the integrity of the Christian message itself. Only with the removal of barriers of racism, status, and sexism, can there be unity in Christ through the "new creation". Paul held up celibacy as a preferred option to married life, and thus presented another alternative than the functional role of motherhood to women. Early influences on

Christianity led to an interpretation of the "new creation" in Christ by limiting it to the spiritual equality of women with men, but denying to women any theological affirmations for the transformation of the social mores of the old dispensation into the promise of a Christian society distinguished by an equivalence and mutuality of male-female relationships in all areas of life and mission.

St. Augustine described man as created to the image of God in his reason and understanding and as set over all creatures. But as there is one power which rules by directing, so there is another power made subject to it in obedience; and it was for this reason that the woman was made for the man. While woman has a rational nature, by the sex of her body she is subject to the sex of her husband. While women may attain a spiritual equality with men, the female sex remains inferior to the male sex.

St. Thomas Aquinas seemed to assume the biological inferiority of women and he accepted the Aristotelean concept of woman as the passive element in generation, the male as the sole possessor of "seed" and the active and directive force. Aquinas thus reasons to the "subordinate" status of women, a status which of its nature is "incapable" of rising through the various "orders" of the hierarchy in accord with the plan of God.

In brief, the negative concepts of female passivity, inferiority, subjection, and subordination entered into the mainstream of Christian life and praxis through laws and attitudes. The positive concepts of woman's personal dignity and her equality with man in the "new creation" remained in the Christian tradition (albeit somewhat obscured at times).

In a review of the Codex Iuris Canonici, elements of all historic perspectives on women were found, though the negative factors dominated the norms that applied to women. There was no canon which stated that sex per se could render a woman either naturally or juridically or consistently "incapable" of functioning fully as a person with the totality of Christian rights and duties within the Church. However, in a study of De Personis, sex was treated as a juridic fact and woman was considered mainly in her roles and/or functions with a separate status from the normative male. Some of the canons affecting women were culturally oriented and depicted social customs of a past age; others were protective of women; while still others denoted an exclusion from the official public sector of the Church in accord with a theological outlook and a concept of men and women as essentially different with a polarity of roles and functions. The status of women in the Codex Iuris Canonici is that of a lay person; within the lay status, women were subordinate to men and in some canons women were not only subordinate, but even inferior to men. The

subordination of women was seen as a presumption and an assumption of law in the Codex Iuris Canonici.

For an insight into changing factors that are currently influencing the position of women, a review was made of the documents of the Second Vatican Council. The theological and canonical implications of the mystery of the Church as the People of God, the dignity of the person, and the person in the lay state were reviewed in some detail; and attention was paid to the specific references made to women throughout the documents. It was evident that the doctrinal teaching of the Council proclaimed an end to the assumptions of the subordination and inferiority of women. Lumen Gentium proclaimed the dignity, the freedom, and the equality of the People of God; Gaudium et Spes made the doctrine of equality more specific. Men and women, in accord with the dignity of the human person, were viewed as having all things related to them as their center and crown. Neither women nor men should be made subservient to institutions no matter how venerable. Neither women nor men should be viewed as static in their nature or functions but as capable of self determination and transcendence. Woman's (and man's) rational nature and the quests of her mind should be respected. Just as for man, the primacy of a woman's conscience should be honored and not shaped unduly by objective norms formulated by preconceived attitudes. Women should be accorded the same interdependence accorded men, the same

liberty, the same opportunities for personal development and the same options in life as are available for men. Women and men should be accorded a mutuality and equivalence of rights, duties, and responsibilities in the order of the "new creation", the life and mission of the Church. Women can no longer be assigned to roles of subordination, dependency, or inferiority merely because of their sex.

Gaudium et Spes also establishes that even in marriage the equal personal dignity of wife and husband has been firmly established in the Lord, and that with respect to the fundamental rights of the person, every type of discrimination based on sex is to be overcome and eradicated as contrary to God's intent. As the people of God, the Council envisages men and women in equivalence and collaboration and invites them to see in their mission that they are participating in the work of Christ himself and contributing by their life and work to the realization of the divine plan in history. Without discrimination on the basis of sex, universal recognition and implementation should be given to the right of all persons to a human and civic culture favorable to personal growth and dignity. The doctrine of the equality of men and women established as the "new creation" in Christ is solemnly proclaimed by the Second Vatican Council.

From this summary some of the main socio-juridic factors that are currently effecting changes in the position

of women may be deduced:

1. The basic and equivalent rights and duties of all members of the People of God;
2. The dignity and centrality of the human person;
3. The equality of men and women in fact and in law;
4. The basic and equivalent rights and duties of laymen and lay women in their task of consecrating the world to Christ.

b) How are these factors influencing the ecclesial structures and the juridic condition of women in the Church?— To assess how the new socio-juridic factors are effecting changes in the juridic condition of women and the ecclesial structures in the Church, certain criteria were applied to post-conciliar outlooks, structures, and legislation. The criteria selected were deemed basic in facilitating the implementation of the conciliar teaching on persons into ecclesial law and structures. These criteria relate to status, juridic personality, authority patterns and lay participation.

In the words of the Second Vatican Council, the Catholic Church has affirmed the dignity of the human person. Thus, through baptism, every Christian possesses the freedom of God, and is equal in dignity, rights, and duties. These principles emphasize the common status of women and men rather than a separate status for each sex. On this base of common status, the life and mission of the community of the People of God can be mutually experienced and established in the Lord. This would

mean that sex would not be a determinant of status. This non-status privilege is enjoyed by men in the Codex Iuris Canonici, and male status is attained by state of life, office, merit or qualifications. The criterium of common status must be extended to women to effect equality in dignity, rights, and duties for women and men.

In law the common status will effect an equality of juridic personality for women and men. A juridic person presently acquires status through such juridic facts as legitimacy of birth, age, place of origin, domicile, marital state, consanguinity, affinity, and rite. In the Codex Iuris Canonici many of these elements are specifically referred to the male and are in some cases (such as origin, domicile, legitimacy of birth, rite) related in a different modality to women (the wife's domicile for instance). The criterium of common juridic personality must be extended to women to effect equality in dignity, rights, and duties for women and men.

The Second Vatican Council has described the Church as the Mystery of the People of God in which the principle of hierarchic communion is seen as an authority of service within the community. This service pattern of ecclesial authority is depicted as supportive of the rights and duties of all members of the People of God. It is a concept at variance with a concept of Church as "perfect society", in which superiors command and inferiors obey. All structures within the Church established

on the concept of automatic male authority, whether in the family, the religious life, or the Church community itself, may still be "hierarchical" by function, but the assignment of men to the leadership roles on account of their sex is not tenable when authority resides as God's gift within the community. A community of equals requires relationships between coordinates, hence the relationship between authority and the membership must be a coordinated relationship. Coordination requires participation of all members (women and men), in the dialogical decision-making process and in the collaborative fulfillment of the Christian mission. The criterium of participation in the authority of service must be extended to women to effect equality in dignity, rights, and duties for women and men.

The equality of laymen and lay women was emphasized in the conciliar documents, and men and women were seen as collaborators in the mandate to mission given by Christ himself. In matters referring to the apostolate, women should no longer be excluded from anything that pertains to the life and mission of the Church solely on account of their female sex. In practice this would mean that lay participation in mission is determined by individual charism, by merit and qualifications, and thus there could be no "proper" roles differentiated by sex. The criterium of equality of laymen and lay women must be extended to women to effect equality in dignity, rights, and

duties for women and men.

In Part Three of the thesis, these various criteria were applied in an assessment of Papal communications and Pontifical Commissions as they pertained to women in the post-conciliar Church, and to the legislation affecting women especially in the revision of the Code of Canon Law.

In the communications of Pope Paul VI it appeared that the Pontiff has a deep awareness of the implications of human rights. On many occasions this awareness embraced the affirmation of the fundamental equality of men and women and of the need to express this equality in practice. In many communications, however, it seemed that equality in the realm of dignity and worth was meant, and that a woman's role in life was still seen as determined by sex. Woman's functional role of motherhood seemed to be the determinant of role differentiation. However, when writing on the issue of the ordination of women, Pope Paul did not refer to the exclusion of women from orders because of their sex, but as rooted in Christ's choice of male apostles, the tradition of the Church, and the plan of God. The reports from the various Pontifical Commissions that were reviewed tended to have the same outlook, although those dealing with social responsibilities designated both men and women for service. In dealing with evangelization, diversity of roles were assigned to men and women because of maleness and femaleness, not through a

role diversification based on human merit and qualifications. It was found that even with sex diversification of roles, the tasks assigned for women were of the supportive types of work that women have traditionally been allowed to perform.

On the diocesan and pastoral levels, significant recognition has been shown to women through their participation in the various pastoral councils established to further the mission of the Church. In the Roman Curia itself women are beginning to appear in some departments. In the diocesan synods, those who share in the synod, laity, clergy and religious have the same consultative vote and lay women have the same opportunity as laymen to be chosen for synodal participation.

In a review of post-conciliar legislation affecting women, it must be concluded concerning the over-all legislation, that the Conciliar doctrine of the equality of men and women as the People of God and as members of the laity, has not been given clear juridic force. The two areas in which equality of men and women is more nearly attained are in the partnership of marriage and in laical institutes of religious men and women. In the important area of lay ministry, while both men and women are seen as mutually responsible for mission, the right to perform this ministry is curtailed for women. The lay ministry of lector, designed for the service of the Word, and the lay ministry of acolyte, designed for the service of the altar, are reserved for men. There is a possibility,

however, of other lay ministries being opened up to both men and women. While legislation has allowed laymen to act as judges, and other personnel offices have been opened to them, women are still largely excluded. On the positive side, the assumption of the subordination of women has been removed from legislation, and woman's participation in various aspects of the lay apostolate has been gradually broadened in response to needs and the instigation of episcopal conferences.

On the whole, the post-conciliar legislation of the Church will be codified in the proposed Lex Fundamentalis and the revised Code of canon law. The revised law will probably not reflect a common status for men and women, a common juridic personality, a declericalization of authority and mission as regards equality of opportunity for lay women and men in regency, worship and cult. The revision, moreover, may still manifest the same negative features concerning the "role" of women in the Church. The theory of non-discrimination on the grounds of sex may be incorporated into law, but rights, duties, and responsibilities will be effective in accord with "their own state", with their "condition", and in view of prevailing legislation. The legislative, executive and juridical powers, or the three munera or functions of the Church, will be posited in hierarchical structure and clerically inclined. Orders or jurisdiction give little evidence of declericalization.

In the proposed laws, the exercise of the Christian mission does not carry with it universal rights and duties but is regulated by each individual's juridic state. In spite of this, there may be canons that will be of great significance for women, such as the statement that all lay persons are deputed by God to the apostolate through a participation in the saving mission of the Church; or the statement that each individual has the right to choose a state of life. However, most rights, duties, and responsibilities would still generally be qualified by role, condition, or law. While none of the norms may be specifically discriminatory against women, the legal loopholes for discrimination may be found in the canons themselves. There is a possibility that the general use of the "qualification" principle may be used to maintain the subordinate status quo of women, but it may also be open to development as the interpretation of "qualifications" may vary according to the thinking of the times.

In the revision of the Code, the state of persons in the law may show a greater equality between men and women in the areas of age requirements, origin, domicile, relationships and rite, but vestiges of male orientation may be retained in such areas as the wife following the husband's domicile and rite. In some of these areas the civic norms may become the criteria.

In the proposed new laws for religious, all distinctions between masculine and feminine institutes would be dropped with the exception of a few protective laws such as cloister, and the distinctions between laical and clerical institutes.

As far as the sacramental law is concerned, the culturally oriented laws, legislating on women's dress and behaviour will be dropped and most participatory norms will apply equally to men and women. The sacrament of orders with its pivotal importance in the sacramental and ecclesiastical structure of the Church will be available only to men. The participation of women in the liturgy will continue to be determined by the liturgical norms of the Church; that is, there may be limits set to her liturgical participation based on her exclusion from sacerdotal ministry.

In canonical processes and in penal norms, the law in substance will be generally the same for men and women. Applications of the law may continue to differentiate wherever the terminology of the canons restrict lay judicial functions to men. In the new penal legislation, there are still prescriptions against priests living in concubinage and crimes that refer only to men or clerics and the crimes against women are punishable by canonical penalties. Such norms will continue to place women in a privileged legal position, a position not in harmony with equality of juridic personality.

In spite of a significant number of positive elements in the revision of the Code, in the reports in Communicationes and the schemata proposals, especially the principles of basic equality and non-discrimination of sex, the limitation and control of rights and duties for women remain a legal possibility.

c) What is the impact of the new orientations of law on the mission of Christian women in the modern world?- While the new orientations of law certainly show a more comprehensive and integrated awareness of the lay apostolate and woman's role in mission, there is still a preoccupation with her role as mother which leads to obscuring the issue of her struggle for mutuality of human rights with men based on merit and qualifications rather than sex. The basic exclusion from orders has many implications for women's mission. Women would still be excluded from mediating the sanctifying graces of Christianity in an official capacity. The exclusion of women from the diaconate of service, would render even the charismatic gifts of her many works an unofficial participation in mission. Excluded even from the lay ministry of lector and acolyte, women are still unable to witness to the Word and to the service of the altar as officially installed members.

While it is true that more and more women will be encouraged and will actually participate in evangelization, their involvement will continue to be supportive and even

peripheral to the official mission of the Church in sanctifying and redeeming mankind. Such restrictions would seem to limit the mandate to mission received by each woman in baptism and confirmation. Because of the link between orders and jurisdiction, women's participation in the decision-making organs of the Church will remain limited. The dialogical communication may be extended through pastoral councils and a few Pontifical Commissions, but an equal participatory role for women is not yet envisaged.

## 2. The Status of Women in the Post-Conciliar Church.

Based on the above summations and the conclusions of this study, the status of women in the post-conciliar Church is seen as juridically different but structurally the same as presented in the Codex Iuris Canonici. In brief, the status of women in the Church of today is that of a lay person. Structurally this may be seen as similar to woman's status in the Codex. Juridically it is somewhat different because it is based on a different assumption. The Codex assumption was based on the subordination of women; the current legislation is based on the equality of men and women. Because of the many qualifications of rights and duties and the practice of role differentiation for reasons of sex in current legislation, women may still be said to have a different status than that enjoyed by men in the Church.

### 3. Observations.

The many restrictions and controls which still define the juridic condition of women in the Church should not obscure the tremendous change effected in the past decade: the change from the assumption of women's subordination to one of equality with men. On the new foundation of equality there is hope and promise of an ever more meaningful and practical implementation of the principle of equality in the future.

On the other hand, the codification of law at this particular time in history may have some special disadvantages for women. Women themselves have not yet become fully aware of the meaning of self delineation and the voices of women have not yet been fully heard or expressed in the Church. It is true that while the objective criticisms of ecclesiastical norms for women may have increased, still the dialogical participation of women in decision-making bodies of Church legislation is still void. Women are still silent in the Church, and the truism that a law that applies to all should be formed by all, is not considered valid for women.

In closing this study, a few observations might be made. These observations may not speak as eloquently as the actual facts of the juridic condition of women, but they may help to deepen an awareness of women's position. These observations will be limited to four issues: the concept of man, the meaning

of sex equality, the role of law, and the orientation of the Church conceived as the "new creation".

a) The Concept of Man.- Christian revelation presents a view of humanity that affirms the primacy of the person and the resultant mutuality and collaboration of men and women. The modern western anthropology of man which has established the equality of male and female mutuality in the reproductive process and discountenanced the theory of "natural" male superiority is inherently consistent with the Christian revelation. The community of men and women is seen as dynamic and adaptive to changing needs. The roles of persons within society can change with new circumstances. As the Christian message is directed toward the liberation of persons, Christianity itself will have much to say in adjusting institutions for the fuller expression of personhood. In some Christian theologies, however, and underlying some outlooks on women in the laws of the contemporary Church, there is evidence of the old Aristotelean dichotomy of masculine and feminine resulting in essential differentiation not only in generation but in every sphere and role of life. Such a concept may continue to present a polarity of roles and a theory of complementarity that could work to the disadvantage of women.

b) The Meaning of Sex Equality.- On many occasions, Pope Paul VI has warned against an egalitarian concept of men and women. The warning is timely. The meaning of equality for

men and women must be interpreted in the light of the Pope's warning. However, the adoption of such axioms as "equal but different", or "equality with diversity" is not necessarily the answer, and might even be the wrong response. It would seem that there are at least three types of equality patterns which could be structured. In the first place equality could be patterned on a pluralistic theory. In such a pattern, women will continue to be viewed from the male viewpoint. In such a view, women are seen as mainly supportive or dependent on the male, childbearing is seen as their main function in life, and the family system is seen as the supportive handmaid of the economic and political system which is male oriented. Women may be conceded to be equal, but it is an equality of honor. Women may occasionally participate in the non-familial areas of the system, but it is not "natural" for them to do so. This pluralistic model of equality is the one that is most evident throughout society and in some Church circles today. It is, however, a concept of equality that in reality maintains the subordination and inferiority of women.

Perhaps another pattern of equality may be termed the egalitarian pattern of equality. Such a pattern would assimilate men and women in equal numbers, and with equal treatment, into the fabric of society without differentiation of any kind. In such a concept, women would be urged to accept the goals and values of the dominant male group and

expected to compete in structures and institutions mainly oriented toward the neutralization of men and women.

A third pattern of equalization is possible, and it is perhaps more in accord with the Christian view of humanity: a dimorphic pattern of equality in which structures and institutions would be geared to the fulfillment of individual human needs for the creativity and fellowship of men and women. It may indeed be true that a dimorphic, or hybrid model of equality, envisages a new mutuality of men and women and a new vision of the future. It would grant a common status to men and women, but a status which recognizes generative differences and these differentiations themselves would be mutually determined by men and women. Values and characteristics and qualities would not be labelled "masculine" or "feminine"; and offices, roles, and functions would be open to merit and qualifications and personal choice. Such a dimorphic pattern of equality might well be as great a need for men as it is for women.

c) The Role of Law.- The change in the values and attitudes of men and women cannot be insured through laws. It is also true, that laws often reflect the present condition, and are not fully designed to speak for the future. Laws, however, have a real role in preparing for the future. At the present time, as emphasis shifts from institutions to persons, the law of the Church must acknowledge and implement women's

rights and express her equality with man. Law can also attempt to address itself more fully to both men and women and thus break with the custom of the male-norm. It will be the jurists who can best discern the implementation of common status and the common juridic concepts for men and women. It is perhaps the canonists of the Church who are in a privileged position to improve the proposed revision of canon law in respect to perceived inadequacies in the application of the doctrine of the equality of men and women in law.

d) The Church as the "New Creation".- At the present time, many countries are endeavouring to establish at least a pluralistic pattern of equality for men and women. The Church, too, seems to be striving to incorporate human rights into its own message and into its structures with an ever-increasing awareness. It may well be, however, that only the Church is in a position to take the lead in the radical implementation of equality for men and women. The Church is dedicated to bringing about the "new creation" in Christ. The new creation seems to call for the establishment of the real dimorphic equality of men and women. Only in such a community can men and women develop their human potentialities and spiritual charisms freely, without sex-related restrictions. This may indeed result in a healthier sexuality development than is now possible in a system largely structured on woman's sexual functions and her familial role. It may even be that in the

"new creation", motherhood and fatherhood may more nearly reflect the purpose of God. In the "new creation", men and women as sharers in the new humanity of Christ, may no longer seek to dominate, to control, to use the other, but may truly learn to love one another in Christ.

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