

A CHRISTIAN PERSPECTIVE ON GENDER EQUALITY

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Gender equality in American jurisprudence is an important objective. The Supreme Court of the United States has tried to remedy gender disparity in education by affording women a quality military education,¹ and the United States Congress has funded protecting women from violence,² yet inequitable treatment of women persists.³ Gender equality and religion have both been important to the law, as evident by the effective transformation of law by women of faith in the suffrage movement.⁴ Christianity motivated these women

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1. *United States v. Virginia*, 518 U.S. 515, 519 (1996) (holding that “the Constitution’s equal protection guarantee precludes Virginia from reserving exclusively to men the unique educational opportunities VMI affords.”).

2. Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1902 (1994).

3. *For Women, Equal Pay? No Way*, TIME, May 7, 2007, available at 2007 WLNR 7902764 (describing the conditions of unequal pay for women today). In FY 2006, the federal Equal Opportunity Employment Commission resolved 23,364 charges of sex discrimination in the workforce and recovered \$99.1 million in benefits for aggrieved individuals, not including benefits obtained via litigation. *Sex-Based Charges: FY 1997 – FY 2006*, U.S. EQUAL OPPORTUNITY EMPLOYMENT COMMISSION, Jan. 31, 2007, <http://www.eeoc.gov/stats/sex.html>. This figure does not represent a notable improvement from FY 1997, when, although 32,836 charges were resolved, only \$72.5 million in benefits were recovered by the EEOC. *Id.* Class-action litigation has been another vessel for women to recover financially from major retail employers who engage in gender discriminatory hiring and promotion practices. In 1997, Home Depot spent \$104 million to settle four pending gender-discrimination lawsuits, one that covered more than 25,000 women. *See, e.g.*, Cyrus Afzali, *Home Depot Settles Lawsuit*, CNNMONEY, Sept. 19, 1997, http://money.cnn.com/1997/09/19/companies/home_depot/?loc=interstitialskip. In 2001, a class-action lawsuit was filed against Wal-Mart on behalf of 1.6 million women alleging wide disparities in pay and unequal promotion practices. *See, e.g.*, Lisa Takeuchi Cullen/Wilson, *Wal-Mart’s Gender Gap; What a landmark lawsuit aims to prove about how the No. 1 retailer pays its female workers*, TIME, July 5, 2004, at 44. The suit is the largest civil rights case of its kind in U.S. history. *Id.*; Cora Daniels, *Wal-Mart’s Women Problem*, FORTUNE, July 12, 2004, at 28.

4. *See e.g.* MARY WOLLSTONECRAFT, VINDICATION OF THE RIGHTS OF WOMEN 25 (1792) (arguing from a Christian perspective for education to be available to men and women to “enjoy a more Godlike portion of happiness,” which laid a firm foundation for the eventual rights of women to vote). Wollstonecraft did argue, as many early suffragists did, from a kind of Victorian Christian perspective: that is women are more religious, pure, and moral than men; therefore they can bring a civilizing role, a moral voice, to the public arena if given the vote. However, many suffragists,

and influenced the debate on the right of women to vote, an important factor in any election year.⁵ The paramount question, therefore, is not whether Christianity influences gender equality, but to what extent. This article will highlight Christianity's rigorous impact on gender equality with the understanding that law is based on inherent principles and inalienable rights, and will thereby examine and offer a Christian perspective on gender equality.

The late Professor Harold Berman focused his scholarship on the law and Christianity because "Christianity has had such an important influence on the origin and development of our legal institutions."⁶ Noting the significance of moral philosophy in law in an academy devoted to legal pragmatism, Professor Berman advances the need to consider "the weightier matters of the law"⁷ - what is right and just - as well as the "the technical subject matter of legal practice that helps to maintain order in society."⁸ But he also notes that Christians have been reluctant to integrate their faith with their study of the law.

With rare exceptions, American legal scholars of Christian faith have not, during the past century, attempted to explain law in terms of that faith. Indeed, in the vast majority of scholarly writings on the vast majority of legal subjects, and in almost all classroom teaching of those subjects, Christianity is not mentioned. Is this because most contemporary American legal scholars see no connection between law and Christianity? Or is it because Christianity has been a taboo subject in twentieth-century American legal education?⁹

Wollstonecraft included, argued as much or even more from an Enlightenment perspective: women are human beings; all human beings are created with rationality and equal rights; therefore, women deserve to vote. It was primarily an issue of equality. *Id.* This important stream of thought was foundational to Wollstonecraft's arguments and is ultimately based in Christian freedom, which this article will discuss at length in Section III.

5. See e.g. Liz Hunt, *Obama's wife is a formidable asset and she shows it*, DAILY TELEGRAPH, Jan. 28, 2008, also available at 2008 WLNR 1656513 (discussing the importance of courting women voters).

6. Harold J. Berman, *Foreword* to CHRISTIAN PERSPECTIVES IN LEGAL THOUGHT xii (Michael W. McConnell, Robert F. Cochran, Jr. & Angela C. Carmella eds., 2001). The late highly esteemed and honorable scholar, Harold Berman, may single handedly be responsible for explaining the relevance of religion to the law in the twentieth century legal academy, having had the insight and the courage to link his faith with his scholarship. He revealed his wish to impart that courage to his colleagues in his foreword for the book. See *id.* at xii. This article is dedicated to his courageous spirit.

Professor Berman notes that he presented a request for a course in Law and Christianity when he was an assistant law professor in 1951 at Harvard. The Dean's reply was "Well, perhaps it could be an extracurricular seminar, not for credit." *Id.* He also mentions the circumstances of gifting copies of his then newly published book, THE INTERACTION OF LAW AND RELIGION, to a few of his colleagues. "It was simply an embarrassment to them for a colleague to link law with religion, and especially with Christianity." *Id.* His experiences nearly sixty years ago heighten my esteem for the Duke Journal of Gender and the Law which should be commended for its desire to present balance in this issue on gender and religion by including an article written from a Christian perspective.

7. *Matthew 23:23* (New International Version)(NIV)("Woe to you lawyers, for you tithe mint and dill and cummin but neglect the weightier matters of the law, which are justice and mercy and good faith." All references to Scripture in this Article are in the NIV.

8. Berman, *supra* note 6, at xiii.

9. *Id.*

Within the legal academy, law and gender are both considered social constructs.¹⁰ Feminist theorists call direct opposition to treating gender as a social construct the “naturalist” error.¹¹ “Within critical legal perspectives, to commit the naturalist error is to assume the existence of certain inherent or natural principles, rather than socially constructed ones, on which law is, or should be, based.”¹² Those inherent or natural principles, however, are customarily dismissed to the immense detriment of gender equality. A Christian perspective examines how this “higher law”¹³ influences our legal system, including legal aspects relating to gender.

An examination of gender equality from a Christian, rather than a constructionist feminist, perspective reveals whether our positive law reflects Christian beliefs and values based on transcendent principles, or the notion of law as a social construct. This article considers the history and ideas presented by Christian scholars and their foundation in the revolutionary treatment of women by Jesus Christ.

Some may doubt that Christian scholarship has any merit,¹⁴ as “[r]evivalism, fundamentalism, and evangelicalism have long been plagued by accusations of anti-intellectualism.”¹⁵ The fact that Christian women scholars are generally not included among meritorious Christian scholarship particularly reflects gender inequality in scholarship. “More recent historians largely have discredited this thesis [of Christians as anti-intellectual], but not in regard to women in American evangelicalism, who have been depicted as the bulwark of the church because of their activism and piety not because of their intellectual contributions.”¹⁶ And some may question whether Christianity and Christian women have had, or may have, any positive effect on gender equality. However, “the history of evangelical feminism reveals a surprising theological

10. KATHARINE T. BARTLETT, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 871 (1993).

11. *Id.* at 871.

12. *Id.* “This error is replicated by feminists, some say, when they treat ‘women’ as a self-explanatory, natural category and when they assume that the removal of unnatural, man-made social constructions will make women’s basic commonality, or oppression, more apparent and, once removed, allow women’s ‘true identity’ to emerge.” *Id.*

13. See generally JEFFREY A. BRAUCH, *IS HIGHER LAW COMMON LAW* (1999) (setting forth the nature of law and legal thinking based on the law of God, noting this basis for biblically integrated law).

14. See generally STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* (1993) (offering a description of how legal academia and current politics trivializes religion in history and culture).

15. PAMELA D. H. COCHRAN, *EVANGELICAL FEMINISM – A HISTORY* 195 (2005) (detailing the women, ideas and events of evangelical feminist thought and organization from the 1970s to the early 2000s). Cochran adds: “For an early argument of this kind, see, for example, Sidney Mead’s *The Lively Experiment: The Shaping of Christianity in America* (1963).” *Id.*

16. *Id.* at 4 (noting an exception to this kind of depiction of American women in CATHERINE A. BREKUS, *STRANGER AND PILGRIMS: FEMALE PREACHING IN AMERICA, 1740-1845* (1998)). Indeed, where is the female C.S. Lewis? or the female apologist? It is unclear without further exploration whether they have been the target of discriminatory treatment in academia or simply do not exist, but such study, though important, is beyond the scope of this article.

rigor among, for example, conservative Protestant women, that has not previously been recognized.”¹⁷

This article will examine and offer a Christian perspective on gender equality. It will consider both secular and Christian influences on women's equality, dignity and value by comparing the fragmented feminist theory based in social construct against a moral philosophy embodied in a Christian perspective. Section I discusses the wider historical effect of Christianity on the law. Section II analyzes why gender inequality persists in light of feminist presuppositions of law as social construct. Then contrasting that approach to an evangelical perspective on equality, this section reveals how evangelical feminism has fragmented over different approaches to biblical authority. Section III then offers the application of Christianity to women's lives based in the person of Jesus Christ and His revolutionary treatment of women. It presents personal examples of women whose lives were transformed not by uncovering the social construction of gender roles, but by knowing Jesus Christ. It illuminates the impact those women have had on the law and women's lives as a result of their personal Christian transformation. This Section will show that Christianity and Christian women have rigorously advanced gender equality with surprising effectiveness.

Considering the ideology of gender as a social construct of normative law in contrast to law being based on transcendent principles, this article reveals that gender equality transcends civil law and can be accomplished by the transformative power of Christianity.

I. A BRIEF HISTORY OF CHRISTIANITY AND THE LAW

A Judeo-Christian perspective has a foundation of law rooted (or based) in the Ten Commandments —directives from a transcendent authority¹⁸— and Christianity holds that law is fulfilled in the person of Jesus Christ.¹⁹ Christ brought freedom for humanity from sin, regardless of gender, status or national origin.²⁰ He offered true liberty, and women especially have appreciated this liberation.²¹ “It is understandable why many Roman women were drawn to

17. *Id.* In contrast, however, see NANCY A. HARDESTY, *YOUR DAUGHTERS SHALL PROPHECY: REVIVALISM AND FEMINISM IN THE AGE OF FINNEY* (1991) (detailing how Christian revivalism in the time of Charles Finney motivated numerous women toward social change); and NANCY A. HEWITT, *WOMEN'S ACTIVISM AND SOCIAL CHANGE* (1984) (demonstrating the positive social changes effected by women motivated by Christianity).

18. “. . . [T]here are some moral truths that we all really know – truths which a normal human being is unable *not* to know.” J. BUDZISZEWSKI, *WHAT WE CAN'T NOT KNOW* 19 (2003). See also generally KENNETH SCOTT LATOURETTE, *A HISTORY OF CHRISTIANITY* Vol.1 (1953).

19. MICHAEL P. SCHUTT, *REDEEMING LAW: CHRISTIAN CALLING AND THE LEGAL PROFESSION* 104 (2007) (discussing the nature of the Kingdom of God).

20. See *id.*, as Christ came to seek and to save that which was lost. Luke 19:10.

21. See RENA D. PEDERSON, *THE LOST APOSTLE* (2006) (investigating what happened to the female founders of the early church, particularly Junia the female apostle noted in Romans 16:7 in particular).

Under Roman law, a woman remained under the legal authority (*patria potestas*) of her father until he placed control of her into the hand (*manus*) of a husband. Under a

Christianity before their spouses were. The Jesus movement offered women a seat at the table and a place in the church.”²² As a result of such social effects, the early church experienced persecution because Christians were seen as subverting the social order.²³

With the conversion of Roman emperor Constantine in 313 A.D., Christianity became the state religion for most of the Western world, which resulted in many changes to the law, including the privileged status of the male priesthood.²⁴ Such changes continued old patterns of male dominance and seemed to undermine and compromise the liberty Christ brought for women.²⁵

Though these male-privileging patterns deepened throughout the early church and into the Middle Ages,²⁶ Christianity continued to effect major changes in the law and society, promoting women’s liberty throughout the European Protestant Reformation.²⁷ These changes brought particular equity to women in marriage and sexuality,²⁸ but forms of patriarchy persisted in child custody and other areas of family law into the beginnings of the American colonies.²⁹ The male-centered culture of the time blinded many of the church’s fathers to the equal human status of women.³⁰

“The continuing bias against women well into the twentieth century shows what a countercultural move it was for Jesus and Paul to include women in their

husband’s manus, the wife ranked only as a daughter of her husband’s family, no better than a child. . . Upon marriage, a woman was supposed to renounce her family’s gods and accept her husband’s gods. . . because a family’s religion was passed through the males. . . women were drawn to Christianity because it brought a different kind of freedom. Jesus’ teaching was remarkable in that it advised men they had obligations to care for their wives, that marriage had mutual responsibilities. A moral element was introduced to the concept of divorce. *Id.* at 94-95.

22. *Id.* at 95.

23. D. J. Good, *Early Extracanonical Writings*, WOMEN’S BIBLE COMMENTARY.

24. J. L. HURLBUT, *THE STORY OF THE CHRISTIAN CHURCH* (1982)..

25. DINESH D’SOUZA, WHAT’S SO GREAT ABOUT CHRISTIANITY 69 (2007) (discussing the uniqueness of Christianity and how it impacts culture). D’Souza uses the rhetoric “old patriarchal patterns.” *Id.* Not all old patterns were part of early church establishment. For example, even in the midst of his own personal sexual conflicts, Augustine’s rules for women in the Augustine order were almost identical to those for the men. PEDERSON, *supra* note 21, at 113. This was a significant development toward gender equality for the time.

26. See PEDERSON, *supra* note 21, at 110–15 discussing Augustine’s and Chrysostom’s views on women in the church in conflict with the notions of equality and liberty for women set by Christ.

27. See generally BRAUCH, *supra* note 13, at 1–57 discussing Christianity’s effect on the law, and 69–116 discussing the fundamental shift in legal thinking toward legal relativism; see also JOHN WITTE, JR., FROM SACRAMENT TO CONTRACT: MARRIAGE, RELIGION AND THE LAW IN WESTERN TRADITION (1997) (detailing the various Christian traditions and their influence on family law).

28. See PEDERSON, *supra* note 21, at 86, noting how “the teaching of Jesus Christ came with astringent clarity. Marriage was for life. Dalliances and divorces were not valid escape clauses. Christianity set a new standard for ‘holy matrimony.’ Augustus had tried to enforce fidelity with laws. Jesus wrote it on the hearts of couples that they should be faithful, period.”

29. See generally MARY ANN MASON, FROM FATHER’S PROPERTY TO CHILDREN’S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES (1994).

30. PEDERSON, *supra* note 21, at 77 (quoting Origen’s views of women) and 121 (noting Chrysostom and Augustine).

missions at the outset.”³¹ Christianity was indeed revolutionary in many socio-cultural ways. These events have become important to the body of scholarship on the integration of law and religion. “Over the past thirty years, a new historical awareness not only of the importance of religion to Western history, but, more importantly, a new awareness of how religion has affected that history has gained currency.”³²

The Christian framework emphasizes the role of a single decisive voice through the idea that God as the ultimate Lawgiver is transcendent above the state, the law and culture.³³ For the Christian, the natural moral law is a judgment of reason absolutely dependent upon the divine intellect and the divine will.³⁴ The modern concept of freedom is derived from foundational Christian principle:

Christianity emphasizes the fact that we are moral agents. God has freely created us in His own image, and He has given us the power to take part in His sublime act of creation by being architects of our own lives. But God has also granted to other human beings the same freedom. This means that in general we should be free to live our lives without interference from others as long as we extend to others the same freedom.³⁵

These principles of inalienable freedom gave a firm foundation to Enlightenment thought.³⁶ The Enlightenment conception of liberty compared to John Stuart Mill’s influential doctrine of liberty, reveals a direct inheritance of Christian thought.³⁷

Christian thought has influenced the development of American jurisprudence as well. As a significant part of the foundation of American law, Puritan theologians used the power of religious images to motivate early colonists to create a “city on a hill” to enlighten other nations with biblical

31. *Id.* at 121.

32. C. Scott Pryor and Glenn M. Hoshauer, *Puritan Revolution and the Law of Contracts*, 11 TEX. WESLEYAN L. REV. 291, 296 (2005) (describing the unique developments in contract law which were informed by the distinctively English tradition of Protestant Christianity). Pryor and Hoshauer note the important work of HAROLD J. BERMAN, *LAW AND REVOLUTION, II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION* (2003); PHILIP S. GORSKI, *THE DISCIPLINARY REVOLUTION: CALVINISM AND THE RISE OF THE STATE IN EARLY MODERN EUROPE* (2003); STEVEN OZMENT, *THE AGE OF REFORM 1250-1550: AN INTELLECTUAL AND RELIGIOUS HISTORY OF LATE MEDIEVAL AND REFORMATION EUROPE* (1980); and JOHN WITTE, JR., *LAW AND PROTESTANTISM: THE LEGAL TEACHINGS OF THE LUTHERAN REFORMATION* (2002), among others.

33. HEINRICH A. ROMMEN, *HISTORY OF THE IDEA OF NATURAL LAW* 30 (1998).

34. *Id.* at 57-8.

35. D’SOUZA, *supra* note 24, at 77.

36. CARTER, *supra* note 14, at 215, noting the “connection to Christian theology that the Enlightenment theorists preserved. . . .” Carter asserts that “today’s theorists of the liberal tradition” have rejected this connection. *Id.*

37. *Id.* “It is no use responding that Mill was a product of the Enlightenment understanding of human freedom and equality. That notion was itself a product of Christianity. Where else do you think the Enlightenment thinkers got it?”

values.³⁸ The ideal of liberty from religious values was included in the fundamental principles of the American republic,³⁹ and Christianity also shaped early American cultural values.

Surely, though, there is this truth in the consensus histories: In America's past, although other faiths existed alongside evangelicalism, it is the latter that wielded the dominant influence on American society, and pluralism was defined as the toleration of a wide diversity of religious faiths. Since America's earliest days, religion – particularly that historical strain called evangelicalism, which can be traced from the Puritans through revivalism to modern evangelicalism – has played an influential role in the expression and shaping of American cultural values.⁴⁰

Christian religious awakenings⁴¹ influenced American culture so pervasively that historians have opined that revivalism and evangelicalism were the established religion of America until the contemporary era.⁴²

In thirty years of teaching Christian ethics at Yale Divinity School, H. Richard Niebuhr greatly influenced Christian leaders of the twentieth century and understood Christianity's significant impact on culture. Niebuhr has found that "[a] many-sided debate about the relations of Christianity and civilization is being carried on in our time."⁴³

An analysis of feminist and Christian scholarship, including how each explores gender and gender equality, is a necessary background where religion, specifically Christianity, has so influenced gender law.

II. ANALYSIS OF THE GENDER EQUALITY DILEMMA

Feminism, feminist legal theory and critical legal studies have generally perceived law and gender as a social construct.⁴⁴ In one of the most comprehensive casebooks on the topic, *GENDER AND LAW: THEORY, DOCTRINE AND COMMENTARY*, Professor Katherine Bartlett sets out the various scholarship based on that approach.

38. Referring to John Winthrop's words to the Puritans settling the Massachusetts Bay Colony as the world watched in his speech "A Model of Christian Charity," *reprinted in* ROBERT C. WINTHROP, *LIFE AND LETTERS OF JOHN WINTHROP 19 (1867) (1630)*.

39. *See generally* NATHAN HATCH, *THE SACRED CAUSE OF LIBERTY (1977)*.

40. COCHRAN, *supra* note 15, at 192. *See also generally* MARK NOLL, *AMERICA'S GOD (Oxford U. Press 2002)* (illustrating Christianity's influence on American culture).

41. *See* WILLIAM G. MCLOUGHLIN, *REVIVALS, AWAKENINGS, AND REFORM: AN ESSAY ON RELIGION AND SOCIAL CHANGE IN AMERICA, 1607-1977 (1978)*.

42. *See generally* SYDNEY AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE (1972)*; and DANIEL WALKER HOWE, *WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815-1848 (Oxford U. Press 2002)*, each tracing Christianity's role in American history.

43. H. RICHARD NIEBUHR, *CHRIST & CULTURE 1 (Harper Collins 2001) (1951)*.

44. *See* BARTLETT, *supra* note 10, at 871. The term "social construct" is not defined here, but can fairly be taken to mean the positivist notion of law and legal construction ordering persons into classes "regarding their societal interactions." BRYAN A. GARNER, *A DICTIONARY OF MODERN LEGAL USAGE 2d 814 (1995)* (defining "social" at 814, and "construct" at 209).

Constructing gender, however, has birthed several problems, including fragmenting feminism by women's differences,⁴⁵ the law's objectification of women,⁴⁶ universalizing generalizations about women⁴⁷ and about essentialism.⁴⁸ Feminism's embrace of essentialism as the realities of women's lives has led to overgeneralizations and the problem of false universalism,⁴⁹ even a form of exclusion.⁵⁰ Professor Bartlett sets out a critique of these concerns, concluding, as her Chapter 7 title suggests, that feminists ought to practice non-essentialism, and resist various forms of essentialism.⁵¹

A concern for feminist critiques of law is the "naturalist" error.⁵² Defining this again is important. "Within critical legal perspectives, to commit the naturalist error is to assume the existence of certain inherent or natural principles, rather than socially constructed ones, on which law is, or should be, based."⁵³ Gender law theorists admit that feminist gender theory is somewhat self-contradictory.⁵⁴ Gender law as a social construct presents the problem that the law reflects the power of those who make it. "Feminists question assertions of knowledge that owe their effectiveness to the power wielded by those making the assertions By urging the corrective of women's perspective, or even a feminist standpoint, feminists may jeopardize our challenge to simplifications, essentialism, and stereotypes."⁵⁵ Other feminist scholars criticize feminist legal theory as protecting only the dominant culture, rather than women of all races.⁵⁶

45. See *id.* at 589-670 ("Women's Different Voices," setting out the ideas of Carol Gilligan and her "ethic of care.").

46. See generally Robin West, *Jurisprudence and Gender*, 55 U. CHI. REV. 1, 60 (1988) (arguing that all modern law is masculine, thereby objectifying women).

47. BARTLETT, *supra* note 10, at 946.

48. *Id.* at 871. Essentialism might be defined as all women's experiences as women independent of other facets of experience, tending to generalize the experiences of all women as similar. *Id.* at 883.

49. *Id.* Universalism might be defined as a common reference point implicitly attributed to all members of a group. A false universalism over generalizes attributes of dominant individuals in a group to each individual in the entire group. *Id.* Universalism can also refer to the concept of women and men living together in complementarity. See generally Lynne Marie Kohm, *The New Paradigm for the Feminine Mystique: The Authentic Women's Perspective*, 2 LIBERTY, LIFE & FAMILY 259 (June 1996) (noting the importance of men to women and women to men, recognizing this as the concept of universalism).

50. BARTLETT, *supra* note 10, at 883.

51. *Id.* at 945.

52. *Id.* at 871.

53. *Id.* ("This error is replicated by feminists, some say, when they treat 'women' as a self-explanatory, natural category and when they assume that the removal of unnatural, man-made social constructions will make women's basic commonality, or oppression, more apparent and, once removed, allow women's 'true identity' to emerge.").

54. *Id.* at 872.

55. Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. OF LEGAL EDUC. 47, 51 (1988). "Like the systems of politics, law, and empiricism feminists criticize for enthroning an unstated male norm, feminist critiques tend to establish a new norm that also seeks to fix experience and deny its multiplicity." *Id.* at 56.

56. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588 (1990) (describing how feminist changes in the law sadly have not protected race and gender together, as evidenced by the historic discriminatory treatment of black women by the law).

Indeed, Catherine MacKinnon has argued that the “subordination of women to men is socially institutionalized” when law is viewed as a social construct.⁵⁷ Viewing the law and gender as social constructs has allowed a male-dominated system to construct “women.”⁵⁸ Nonetheless, feminists presume that gender theory, as all law, is a social construct.⁵⁹ That presumption has resulted in the disintegration of feminist gender theory, a “specter of infinite fragmentation,” and the concern of whether the deconstruction of feminist theory can be restrained, or even inhibited.⁶⁰ Indeed, what is socially constructed can likewise be socially deconstructed,⁶¹ and the results of deconstruction can be deconstructed... an infinite loop. Scholars have accordingly viewed this social construct as a false relativism, and as a Christian gender theorist points out,

Liberal feminists are correct in asserting that women and men are of equal dignity. They also are correct in their claims that women often are unjustly excluded from aspects of the political, economic, and social life of the community by barriers constructed for no greater purpose than the personal comfort and advantage of particular men or a class of men. The error of contemporary liberal feminism lies not in these claims but in the attempt to achieve equality through a false relativism, and freedom through denial of human relationships and the mutual dependence of men and women.⁶²

Teresa Stanton Collett offers a Christian response to liberal feminism that focuses on the feminist claim for equality grounded in individualism and independence, rather than the universalism of interdependence.⁶³ Professor

57. Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?* 4 YALE J. L. FEMINISM 13, 15 (1991) (being a woman is a social assignment, constructed by society).

58. Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515, 530 (1982) (arguing that women who don't fit society's version of a typical woman, or women with ambition that are considered by society as male characteristics are defined as “lesser women”).

59. See generally ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988), as reviewed by and discussed in Jennifer Nedelsky in *The Challenges of Multiplicity*, 89 MICH. L. REV. 1591, 1596 (1991) (“We would have to believe that the factors that are part of the social construction of gender – patterns of child-raising, messages about sexuality, independence or interconnectedness, dominance, competence, physical beauty and capacity – are not significantly different for blacks and whites.”).

60. *Id.* Nedelsky calls the disintegration of feminist gender theory “this specter of infinite fragmentation,” and considers whether such deconstruction of feminist theory can be contained. *Id.*

61. Professor Bartlett mentions that feminist theory has allowed women to essentialize men, evidenced in the context of the rise of a legal movement to protect the rights of men, particularly as fathers, noting “What destructive, or constructive, impact might such a movement have on the role of gender in this society?” BARTLETT, *supra* note 10, at 885. See also generally, Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989).

62. Teresa Stanton Collette, *Independence or Interdependence? A Christian Response to Liberal Feminists*, in CHRISTIAN PERSPECTIVES IN LEGAL THOUGHT 178 (Michael W. McConnell, Robert F. Cochran, Jr., & Angela C. Carmella eds., Yale Univ. Press 2001). Collette suggests that liberal feminists “seemingly demand no greater opportunity than the opportunity to make the same egotistic mistakes that men have made in the abuse of their freedom.” *Id.* at 192.

63. *Id.* at 186-88. As a Christian scholar, Professor Collett refers to feminism as “liberal feminism.” *Id.* Another Christian scholar uses the term “secular feminism” to refer to the same

Collett discusses the conflict between relational feminism and liberal feminism and the struggle of both for essentialism in the law,⁶⁴ noting the ways each falls short, while offering a solution in Christianity:

Yet absent an affirmative intellectual agenda, feminism risks becoming captive to hedonism, radical individualism, shallow egoism, or political opportunism. None of these approaches has contributed to the creation of a just society when pursued by men, and there is no evidence that a different outcome will be achieved if they are pursued by women. Christianity offers the affirmative vision of women's participation in the world needed by contemporary liberal feminism.⁶⁵

Offering a strong Christian defense of the moral equality of the sexes, including equal dignity, community rights and responsibilities in marriage, Professor Collett concludes by explaining the divine plan that men and women find their "mutual fulfillment in communion with one another."⁶⁶ Christianity grounds claims for equality of the sexes in complementarity (men and women in community) and personalism (understanding the human person in relation to God).⁶⁷ "What the Christian account of human nature and community offers liberal feminists is an affirmation of the equal dignity of all human persons, and a truer foundation for crafting authentic equality between the sexes."⁶⁸

In her historical and theological account of evangelical feminism, Pamela D.H. Cochran has comprehensively analyzed how biblical feminist organizations have sought to apply these equality principles.⁶⁹ "Biblical feminism was distinct from the rest of (neo)-evangelicalism, however, because of its social progressivism on the issue of women's equality, and at the same time it distinguished itself from secular feminism 'by its insistence on the centrality of biblical authority on the issue of women in church and society.'"⁷⁰

At the center of Professor Cochran's study are the two leading biblical feminist organizations – the Evangelical Women's Caucus (EWC) and Christians

ideology, particularly to point out its contrast with "biblical feminism." See generally COCHRAN, *supra* note 15.

64. *Id.* at 178-79, citing West, *supra* note 46, and Sylvia A Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955 (1984), as well as Martha Minow, *Introduction: Finding Our Paradoxes, Affirming Our Beyond*, 24 HARV. C.R.-C.I. L. REV. 1 (1989).

65. Collette, *supra* note 62, at 180.

66. *Id.* at 186.

67. *Id.* at 188-89. "The first and primary relations for every person is his or her relationship with God. Through this relationship we learn who we are, that we are valued, and that the proper form of relationships is mutual love." *Id.* (citing JACQUES MARITAIN, *THE PERSON AND THE COMMON GOOD* (1946) as an example of theological and philosophical literature referring to this concept as "personalism."). The concept of complementarity is also discussed at length in JOHN PIPER, *A Vision of Biblical Complementarity: Manhood and Womanhood Defined According to the Bible*, in *RECOVERING BIBLICAL MANHOOD & WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM* 31 (John Piper & Wayne Grudem eds., 1991).

68. *Id.* at 192.

69. See generally COCHRAN, *supra* note 15.

70. *Id.* at 9 (citing RICHARD QUEBEDEAUX, *We're on Our Way, Lord!: The Rise of 'Evangelical Feminism' in Modern American Christianity*, in *WOMEN IN THE WORLD'S RELIGIONS, PAST AND PRESENT* 141 (Ursula King ed., 1987)).

for Biblical Equality (CBE).⁷¹ Organizational changes within the biblical feminism movement adversely affected the influence of the concept of biblical feminism in culture. Professor Cochran traces the birth and early years of biblical feminism, including the strong evangelical⁷² roots of Nancy Hardesty, editor of *Eternity*, a Christian magazine, and Letha Scanzoni,⁷³ a writer who challenged traditional evangelical views of women's roles.⁷⁴ Professor Cochran also discusses the work of Virginia Mollenkott, who attempted to distinguish her writings from that of secular feminism, but used liberal feminist interpretations of scripture.⁷⁵ Each of these women desired to impact American and evangelical culture with a message of equality for women and men, but the presence of different approaches to biblical authority led to a crisis in biblical feminism.⁷⁶

The Evangelical Women's Caucus (EWC) changed its name to the Evangelical and Ecumenical Women's Caucus in 1990,⁷⁷ after its 1986 Fresno conference at which it adopted a resolution that, to many members, "indicated that it was taking an unbiblical stance on homosexuality and failing to support women in evangelical churches."⁷⁸ The resulting effect was greater diversity of sexuality within the EWC, greater theological diversity,⁷⁹ and a near collapse of the organization resulting in an identity crisis.⁸⁰ As traditional evangelical

71. *Id.*

72. Cochran defines evangelical using the Marsden sociological definition of evangelicals "as those who are consciously evangelical, that is, that community or coalition rooted in a commitment to a transdenominational infrastructure of institutions," and in a new-evangelical sense those "concerned with making evangelicalism a theologically conservative movement that would apply faith to a broad range of social issues affecting American life." COCHRAN, *supra* note 15, at 8, citing to JON R. STONE, ON THE BOUNDARIES OF AMERICAN EVANGELICALISM: THE POST-WAR EVANGELICAL COALITION (1997) and GEORGE MARSDEN, REFORMING FUNDAMENTALISM: FULLER SEMINARY AND THE NEW EVANGELICALISM (1987).

73. See Letha Scanzoni, *The Feminists and the Bible*, CHRISTIANITY TODAY, Feb. 1973, at 10–15; *Woman's Place: Silence or Service*, 17 ETERNITY 14 (1996).

74. COCHRAN, *supra* note 15, at 11. Scanzoni's influence is discussed throughout Cochran's text at pages 11–76 as well.

75. *Id.* at 58–60. See generally VIRGINIA RAMEY MOLLENKOTT, WOMEN, MEN & THE BIBLE (1977) (a groundbreaking book on human equality and biblical doctrine that called for "mutual submission" between the genders). For a comparison of secular feminism with the EWC, see COCHRAN, *supra* note 15, at 103–06 (noting how the secular feminist movement also split in two as a result of what's come to be known as "the Lavender Menace," where the secular feminist movement split into liberal feminism on the one hand, and radical feminism on the other.). See generally ALICE ECHOLS, DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967–75 (U. Minn. Press 1989).

76. COCHRAN, *supra* note 15, at 74–76. It was not only women who held the view that equality was not a reality in the church. Donald Drayton argues that women's equality was based in scripture. See Donald W. Drayton, *Dialogue on Women, Hierarchy and Equality: An Egalitarian View*, POST-AMERICAN, May 1975, at 8 (discussing the scriptural foundation for the early women's movement in America and evangelical feminism, and the influence of Neoplatonism on gender inequality).

77. COCHRAN, *supra* note 15, at 196 n.17.

78. *Id.* at 172.

79. *Id.* at 175.

80. See *id.* at 169–76 (discussing in detail how the inclusivity of homosexuality altered the organization forever).

women drifted away from the organization, the embrace of it increasing sexual, theological, and political diversity eviscerated the group's evangelical roots because some newer members did not "wish to be identified with fundamentalist interpretations of scripture and a right-wing social/political agenda."⁸¹ The group amended its statement of faith from a belief in the infallibility of the Bible to accommodate inclusiveness toward homosexuality, desiring to "affirm the multiplicity of perspectives that our membership represents."⁸² These changes reflected an organizational desire to "hold a more liberal view of biblical authority and the interpretation of scripture,"⁸³ acclaiming sexuality and gender not as transcendent, but as rooted in personal revelation and experience.⁸⁴

This progressive view was reflected by feminist scholars who espoused equality using the Bible as a liberating text,⁸⁵ but also saw the need to liberate the Bible from itself.⁸⁶ "Against this reality, feminists in religion are developing new methods for liberating their faith from patriarchal patterns. Feminists are seeking alternative interpretive frameworks for biblical, historical, and theological work."⁸⁷ These feminist theologians clearly left behind the transcendent reference point of Christianity. It seems the EWC retained "evangelical" in its name in recognition of its heritage rather than as a descriptive title.⁸⁸ In contrast, the progressive biblical feminists asserted they were no longer evangelical, with an inclusivity focused on lesbian Christians, free of adherence to biblical inerrancy.⁸⁹

In many ways the EWC is a microcosm of the shift from sexuality and gender as rooted in transcendent principle, to gender as a social construct. Because sexuality is no longer defined by a higher law, it is pliable, based on personal experience rather than transcendent authority. This somewhat echoes the problems inherent in essentialism. "Initially, primarily one organization, the

81. *Id.* at 176 (quoting EWC leader Letha Scanzoni, writing in the Council Memos column, *Are We Evangelical or Ecumenical? EWC in Stage II*, 12 UPDATE 9 (fall 1988)).

82. COCHRAN, *supra* note 15, at 176.

83. *Id.* at 177.

84. *Id.* at 179. VIRGINIA RAMEY MOLLENKOTT, *OMNIGENDER: A TRANS-RELIGIOUS APPROACH* (2001) uses multiple religions and their sources to argue for all forms of sexuality; Cochran notes that this "exemplifies the importance of text and methodology to the conclusions reached." *Id.* at 179. Cochran discusses Mollenkott's desire to remain within the evangelical church as desirous of changing its culture from within, a term which she herself uses to describe her choice is "subversive." *Id.* at 181-82.

85. See generally LETTY M. RUSSELL, *THE LIBERATING WORD: A GUIDE TO NONSEXIST INTERPRETATION OF THE BIBLE* (1976) (liberating the Bible from sexist interpretations).

86. See *FEMINIST INTERPRETATION OF THE BIBLE* 11 (Letty M. Russell ed., 1985).

87. *Id.* at 28.

88. COCHRAN, *supra* note 15, at 172-83.

89. *Id.* at 183. See also James A. Borland, *Women in the Life and Teachings of Jesus*, in *RECOVERING BIBLICAL MANHOOD AND WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM* (John Piper & Wayne Grudem eds., 2006), also available at <http://www.leaderu.com/orgs/cbmw/rbmw/chapter4.html>. "Radical Christian feminists stand apart from evangelicals. . .they reject Biblical authority based on their subjective experiences which produce a women's theology of liberation." *Id.* at *13 n.2.

Evangelical Women's Caucus, represented those in the biblical feminist movement. However, as the issue of lesbianism arose in the group, the contested nature of biblical authority became evident and led to the creation of a second organization, the Christians for Biblical Equality.⁹⁰

The other half of evangelical feminism outlined in Cochran's history is reflected in Christians for Biblical Equality (CBE), an organization of evangelical men and women founded in the late 1980s that gained recognition as a result of its publication of *Men, Women and Biblical Equality*.⁹¹ Signed by leading Christian scholars,⁹² this declaration adhered to biblical inerrancy in gender equality.⁹³ It advocated gender equality and the relationship between the sexes as "higher law," transcendent of civil code, or even church doctrine, and the changes have led to a wider acceptance of an egalitarian model within Christian families and culture.⁹⁴

CBE stands apart from the EWC in an understanding that biblical equality is committed to biblical authority.⁹⁵ Based on human equality rooted in women and men being made in God's image, as well as equal responsibility of husband and wife in marriage, a Christian ethic of love requires mutual submission as love in action.⁹⁶ C.S. Lewis noted this concept by explaining how a right working of the sexual impulse is exemplified by devotion to the total union.⁹⁷

The biblical equality movement was not without its opponents in evangelicalism,⁹⁸ but on the whole, this movement and others within evangelicalism have espoused a Christian view of gender equality, researching Christ's revolutionary treatment of women, and how that attitude and transcendent code has been traced, or lost, throughout church history.

90. COCHRAN, *supra* note 15, at 191.

91. *Men, Women and Biblical Equality*, CHRISTIANITY TODAY, Apr. 9, 1990.

92. See Cochran at 154, citing *Men, Women and Biblical Equality*, *supra* note 91 (noting that signers of the statement included the president of Fuller Theological Seminar, David Hubbard; founding pastor of Willow Creek Community Church, Bill Hybels; and key faculty members from Calvin College, Trinity College, and Fuller Theological Seminary, and later endorsements came from faculty at Eastern Seminary.). CBE conferences were held at evangelical colleges including Bethel College, Wheaton College, and Gordon-Conwell. *Id.*

93. COCHRAN, *supra* note 15, at 157.

94. *Id.* at 161–62.

95. Alan G. Padgett, *What is Biblical Equality? A simple definition needs further discussion, not least because of misunderstanding*, 16 PRISCILLA PAPERS 22 (2002).

96. *Id.* at 24. Mutual submission involves carrying out the second great commandment, loving thy neighbor as thyself, exemplified by Christ's statement in Mark 10:45 that he did not come to be served, but to serve, and to give His life as a ransom for many.

97. C.S. LEWIS, *MERE CHRISTIANITY* 80-96 (Barbour and Co. 1973) (1943).

98. See discussion in COCHRAN, *supra* note 15, at 157–62 detailing opposition to biblical feminism.

III. JESUS CHRIST'S REVOLUTIONARY TREATMENT OF WOMEN

The revolutionary foundation Jesus established for women's equality is revealed in the gospel narratives.⁹⁹ This equality was so contrary to Jewish law and custom of the time¹⁰⁰ that it shocked Jesus' contemporaries.¹⁰¹ In one simple encounter with a Samaritan woman, Jesus Christ's respect for her, regardless of her gender, religion or marital status, and his message of new life transformed an entire town.¹⁰²

His emphasis on treating others in accord with a transcendent code contrasted starkly with contemporary Jewish practice,¹⁰³ and the secular world at that time.¹⁰⁴ From his life-altering discussion with the Samaritan woman at the well,¹⁰⁵ to his treatment of the woman caught in adultery, "realizing the injustice of persecuting the woman while no punishment was directed toward her male

99. I realize that the historical reliability of the gospels is a point that many readers do not accept. However, for clear support of the gospel narratives as factually based, see CRAIG L. BLOMBERG, *THE HISTORICAL RELIABILITY OF THE GOSPELS* (1987) (discussing the methods and approaches to studies on gospel reliability, answering seeming contradictions and problems with archeological finds, scientific and chronological facts, ancient texts, and other extra-biblical sources).

100. Under Jewish law women were "acquired" rather than respected as independent human beings. MICHAEL HILTON AND GORDON MARSHALL, *THE GOSPELS & RABBINIC JUDAISM: A STUDY GUIDE* 128 (1988) (discussing the law on divorce comparing and contrasting the Gospels with rabbinic teachings).

101. For example, in the fourth chapter of the Gospel of John Jesus' disciples were stunned to find him speaking with a woman. "Just then his disciples returned and were surprised to find him talking with a woman." John 4:17. The woman in this narrative was probably even more surprised than they were, as indicated by the passage in John 7:7-10.

"When a Samaritan woman came to draw water Jesus said to her, 'Will you give me a drink.' (His disciples had gone into the town to buy food.) The Samaritan woman said to him, 'You are a Jew and I am a Samaritan woman. How can you ask me for a drink?' (For Jews do not associate with Samaritans.) Jesus answered her, 'If you knew the gift of God and who it is that asks you for a drink, you would have asked him and he would have given you living water.'"

Theologians agree that this broke Jewish custom. "Men tended to avoid public encounters with women, which explains why Jesus' disciples were dumbfounded when they found him talking with the Samaritan woman." CAROLYN CUSTIS JAMES, *LOST WOMEN OF THE BIBLE* 189 (2005).

102. "Many of the Samaritans from that town believed in him because of the woman's testimony. . . . So when the Samaritans came to him they urged him to stay with them and he stayed two days. And because of his words many more became believers." John 4:39-41.

103. See HILTON AND MARSHALL, *supra* note 100, at 102. This fact is also apparent in Jesus' rebuke of the religious leaders in John 7:22-24, where the leaders made allowances for circumcision under Jewish law, but Christ's healing of a man's body was forbidden. Traditional Jewish practice was concerned with tradition and perception when Christ was concerned with what is right and true.

104. "The Christian doctrine was revolutionary stuff. Throw away your old gods. Associate with the lowly. Hate what is evil. Serve the poor. Make love not war. Honor marriage. Forget about class distinctions, gender differences, and family power structures. Take the high road. Pray for those who persecute you. Seen in the context of the times, the Christian message was in stark contrast with the secular world. It still is. The secular world worshiped the pursuit of happiness and power. The Christian world honored the pursuit of integrity and humility." PEDERSON, *supra* note 21, at 122.

105. See John 4: 1-42 detailing how Jesus' discussion with the woman and her personal testimony of believing him to be the Christ led to conversion of many in the town.

sexual partner,”¹⁰⁶ to his teaching about equality in marriage¹⁰⁷ and sexuality,¹⁰⁸ to his desire to educate women personally,¹⁰⁹ Jesus was revolutionary in his view toward and treatment of women.

Christ conferred equal dignity and personhood on women in a culture and time when they were not considered worthy of such treatment.¹¹⁰ In response, women recognized Christ’s treatment of them as genuine liberty, to be

106. Monnica Terwilliger, *Christianity Requires Gender Equality and a Respect for Life*, CHRISTIANS FOR BIBLICAL EQUALITY, <http://www.fnsa.org/fall98/terwilliger.html> (last accessed Jan. 25, 2008) (considering the link between women’s inequality in the law and the feminist emphasis on abortion, deducing that this ill treatment of women toward themselves and their children in the use of abortion exacerbates the lack of equality for all women, referring to John 8:3–11).

107. Jesus has a discussion with some leaders of the Jewish law regarding divorce in Matthew 19:1–12 which highlights the contrast between Jewish law’s treatment of divorce and Christ’s view of divorce. Rena Pederson illuminates that contrast with some details about laws of the time.

In the first century, it was quite easy for a husband to divorce a wife for an “impediment” to the marriage. Hebrew law (Deut. 24:1) allowed a husband to divorce his wife if she found “no favor in his eyes” because he had discovered something shameful about her, such as adultery, immodesty, or disobedience; or he could divorce her for burning a meal or if he found a fairer substitute. Barrenness was also grounds for divorce. Infertility generally was considered the fault of the wife. Only on the rarest of occasions could a Jewish woman divorce her husband. It’s easy to see how Jesus’ outright rejection of divorce would have alarmed many of the males of his day. . . .

The forced marriages of young girls before they had reached puberty may well have been one of the reasons that so many Roman women embraced Christianity. While nearly half the pagan brides were under fifteen in the first century, nearly half of the Christian brides were eighteen and over. . .

. . . the teaching of Jesus Christ came with an astringent clarity. Marriage was for life. Dalliances and divorces were not valid escape clauses. Christianity set a new standard for “holy matrimony.” Augustus had tried to enforce fidelity with laws. Jesus wrote it on the hearts of couples that they should be faithful, period.

PEDERSON, *supra* note 21, at 83, 86.

108. The Apostle Paul articulates this revolutionary perspective on equality in marital sexuality in 1 *Cor.* 7:3: “The husband should fulfill his marital duty to his wife, and likewise the wife to her husband. The wife’s body does not belong to her alone but also to her husband. In the same way, the husband’s body does not belong to him alone but also to his wife.” Christianity supported radical freedom and pleasure in marital sexuality, directing the husband to be sexually pleasing to his wife, satisfying her sexual desires, making such a duty at least equally important as that of satisfying his own sexual pleasure.

109. See J. Lyle Story, *The Discipleship of Women – from Jesus’ Birth to the Empty Tomb*, THE PRISCILLA PAPERS *9 (Winter 2007). See also JAMES, *supra* note 101, at 189.

110. Carolyn Custis James details this contrast well.

“Our twenty-first century perspective makes it harder to detect the drastic changes Jesus was introducing to women’s lives. Within the first-century patriarchal culture, women led more sheltered lives and moved in a separate, more confined sphere than men. . . . education was a male privilege. . . women never studied under rabbis. . . it would be unheard of for a woman to travel with a rabbi. . . In these matters, and many others, Rabbi Jesus radically broke with tradition. He didn’t isolate himself from women like other rabbis. He taught them openly, engaged their minds, recruited them as his disciples, and counted on them in weighty matters. He gave his male disciples a lot to think about when they heard him teaching women the same deep theology he taught them.

JAMES, *supra* note 101, at 189–90.

individuals in relationship to God, though the church has struggled with a Christlike application of his example.¹¹¹

An encounter with Christ also transformed the Apostle Paul,¹¹² leading him to proclaim the revolutionary example of gender equality set by Christ with resounding clarity: “There is neither Jew nor Greek, slave nor free, *male nor female, for you are all one in Christ Jesus.*”¹¹³ In this higher moral law, men and women are not to be unequal in law, society or religion. “In other words, we are not to identify ourselves by gender, race, or class. Male domination was a curse, but all are equal in Christ.”¹¹⁴

In ancient Greece and Rome, and in the Jewish tradition, women held a very low social status.¹¹⁵ “But Jesus broke the taboos. From society’s point of view and even from some of his male disciples’ point of view, Jesus scandalously permitted women (even of low social status) to travel with him and be part of his circle of friends and confidantes.”¹¹⁶

Theology Professor J. Lyle Story has researched and written at length about Jesus’ affirmation of women.¹¹⁷ “The gospel writers narrate various stories of dramatic encounters of women and men with Jesus.”¹¹⁸ Christ presented educational opportunities to women, referring to “the better part,”¹¹⁹ and commissioned them as credible witnesses at a time when women were not legally recognized as legitimate witnesses in a court or on any matter.¹²⁰ Jesus

111. See Terwilliger, *supra* note 106. Referring to 1 Peter 3:19, suffering for conscience’s sake, “Unfortunately, many have distorted this scripture as a platitude for women to endure senseless abuse for the sake of Christ” *id.* (citing to S. Dowd, “1 Peter,” *Women’s Bible Commentary*, and adding, “When abuse occurs, the church must step forward to protect the abused party and take strong measures regarding the abuser. If the abuser refuses or fails in attempts at repentance, this may be grounds for separation [referring to 1 Cor. 7:15].”) And further, regarding sexual harassment: “The New Testament gives explicit rules for preventing the mistreatment of women, even addressing the issue of sexual harassment. In the Letter to Timothy, the Apostle Paul writes, ‘Treat younger men as brothers, older women as mothers, and younger women as sisters, with absolute purity’ [referring to 1 Tim. 5:1b-2].” *Id.*

112. Paul’s conversion is recorded in Acts 9:1-22.

113. *Galatians* 3:28 (emphasis added). There are Pauline passages of particular gender concern that many have viewed as indicative of Christian gender inequality. For a fair and balanced discussion of this concern, see SARAH SUMNER, MEN AND WOMEN IN THE CHURCH 207-33 (InterVarsity Press 2003) (regarding women in the church); *id.* at 182-90 (regarding headship in marriage). Pederson notes the gender equality Paul held for husband-wife apostle teams, Prisca and Aquila, and Andronicas and Junia in Romans 16. PEDERSON, *supra* note 21, at 82-83.

114. Terwilliger, *supra* note 106.

115. D’SOUZA, *supra* note 25, at 69. D’Souza notes that this remains the fact for women today in many cultures, notably in the Muslim world. *Id.*

116. *Id.* at 69. See also JAMES, *supra* note 101, at 187-89 detailing women disciples following, learning from, and traveling with Jesus.

117. E.g., J. Lyle Story, *Jesus’ Affirmation of Women* (2008) (manuscript on file with author).

118. Story, *supra* note 109, at *1.

119. See *id.*, at *9 (referring to Mary of Bethany, the sister of Martha and Lazarus, and her desire to learn from and know God, as set out in Luke 10:38-42).

120. “[W]omen didn’t have a voice in legal matters and were not accepted as credible witnesses in a court of law. . . . instead of dismissing women as legal witnesses, Jesus affirmed them as key witnesses to the most crucial events of human history – his own death, burial, and resurrection.” JAMES, *supra* note 101, at 189.

trusted women with the good news of his resurrection,¹²¹ and they offered testimony of his identity to an entire village.¹²²

When this Christian liberty was reflected in law, it meant serious positive changes for women, particularly married women.

Unlike Judaism and Islam, which treated men and women unequally in matters of divorce, Christian rules on the matter were identical for women and men. So dignified was the position of the woman in Christian marriage that women predominated in the early Christian church, as in some respects they do even today. As a result, the Romans scorned Christianity as a religion for women."¹²³

A personal relationship with Jesus Christ transformed the lives of women in the New Testament, in the early church and in contemporary life. This revolution for women was not necessarily embraced by church doctrine.¹²⁴

Two hundred years of persecution ended in 313 C.E. with the conversion of Roman emperor Constantine, but as Christianity became the state religion, many changes came about for both good and bad. By this time women's roles in the Church had become limited, and ministers were soon regarded a privileged class. . . . Issues of women's equality and status have often been overlooked by the Church, forcing women's movements to begin in secular circles.¹²⁵

The idea of gender equality in Christian marriage, however, was part of the early law and theology regarding marriage found in the seven ecumenical councils from 325 to 451.¹²⁶ Professor John Witte sets out the formulation of marriage law in each of the faith models.¹²⁷ In the Lutheran Reformation model it was incumbent on all church members "to hold out a model of spiritual freedom, love, care and equality in their own married lives,"¹²⁸ and husbands

121. *Id.* at 189, 195–196. "Why would he trust his history-altering revelation to a woman who, according to society's rules, wasn't even a credible witness? . . . Mary was a perfect choice for the supreme honor of being the first to see the risen Christ – fitting, strangely enough, because of her past and also because she was a woman." *Id.* at 196.

122. *See* Story, *supra* note 109, at *6 (referring to the Samaritan woman at the well in John 4:4-42). "The woman is the victim of racial, religious and gender prejudice, in an apartheid setting." *Id.* Jesus breaks open boundaries in his conversation with the Samaritan women, breaking the divide between male and female, Jews as 'chosen people' and Samaritans as 'rejected people,' even married status of a woman versus divorced and rejected. *Id.* (citing MARY ANN GETTY-SULLIVAN, *WOMEN IN THE NEW TESTAMENT* 24 (The Liturgical Press 2001)).

123. D'SOUZA, *supra* note 25, at 69–70. D'Souza continues this analysis of Christianity's effect on culture, particularly as between men and women, with a discussion of the development of courtly love in the Middle Ages, as the woman who was the object of a knight's love was elevated to a status above his own. "Courtesy, the habit of treating women with deference, was invented by Christianity." *Id.* at 70. Women were considered a valued and sought after part of social life, as indicated so clearly in the works of Chaucer, and other authors of the late Middle Ages. *Id.*

124. As a religion, "Christianity did not contest patriarchy, but it elevated the status of women within it." *Id.* at 69.

125. Terwilliger, *supra* note 106 (discussing gender equality in early Christianity)(citing HURLBUT, *supra* note 24).

126. WITTE, *supra* note 27, at 19.

127. *See generally id.*

128. *Id.* at 53.

and wives had equal rights to sue for divorce.¹²⁹ The Anglican model of marriage was proposed to Parliament in 1653 in a series of marriage law reforms that “reflected the new principles of liberty and equality within the household. . .” but were not adopted into law.¹³⁰

To exclude the example of Christ as creator, savior, and redeemer from an analysis of gender equality is to exclude true liberty in law regarding gender equality and equity, and to exclude true equality in Christianity. Yet women’s lives continued to be transformed and changed by Christ, and their work in the world changes culture as a result of their Christian transformation. The example noted earlier of Mary deserves a bit more discussion. The founding document for women’s rights, the Declaration of Sentiments, presented at the Seneca Falls Convention in Seneca Falls, New York, in July of 1848 announces the foundation for women’s formal equality is in “the laws of nature and of nature’s God. . . we hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights. . .”¹³¹ The efforts for women’s equality were significant in the call for equal treatment of all people, regardless of gender or race, and were closely linked with the abolition and suffrage movements,¹³² and led to significant social change.¹³³ Wollstonecraft’s deep personal faith is evident in her expressions of gratitude to God for giving her “sufficient strength of mind to dare to exert my own reason, till, becoming dependent only on him for the support of my virtue, I view with indignation, the mistaken notions that enslave my sex.”¹³⁴

The principle of equal rights for women, however, as Professor Bartlett has aptly noted, proved too radical for its time.¹³⁵ “[W]hen the right to suffrage was finally achieved, it was as much a recognition of women’s differences as it was of women’s fundamental equality with men. The tension between these two understandings of women’s positions vis-à-vis men persist to this day.”¹³⁶

129. *Id.* at 68. The Calvinist tradition in respect to some divorce cases, however, seemed less egalitarian in their treatment of husband and wife. *Id.* at 86. But, “[w]hen properly pled on grounds of adultery, Calvin believed, divorce actions had to be made equally available to husband and wife.” *Id.* at 101.

130. *Id.* at 132, noting that this shifted jurisdiction as well from church courts to local magistrates.

131. Declaration of Sentiments, Seneca Falls Convention, Seneca Falls, New York (July 1848) in 1 HISTORY OF WOMEN’S SUFFRAGE, 1848-1861, at 70–71 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., reprinted ed. 1985) (1881–1922). The Declaration mirrored the Declaration of Independence by design indicating a reliance on a transcendent law. *Id.*

132. Brandon G. Withrow, *A Forum of Sensible Voices: 19th century forerunners of evangelical egalitarianism*, 5 MUTUALITY, Winter 2007, available at www.cbeinternational.org (giving as an example Sojourner Trust, a former slave converted to Christianity who as a black abolitionist and a woman called for the equal treatment of all people regardless of race or gender in her famous speech, “Ain’t I a woman?”).

133. See generally HARDESTY, *supra* note 17, and HEWITT, *supra* note 17 (both detailing the outstanding contribution toward societal change by women).

134. CLAUDIA L. JOHNSON, THE CAMBRIDGE COMPANION TO MARY WOLLSTONECRAFT 100 (citing the Vindication of the Rights of Women 5–105).

135. BARTLETT, *supra* note 10, at 71.

136. *Id.* Fundamentally, it was Christianity that undergirded the arguments based on women’s difference from men; it was primarily the Enlightenment ideology that supported the argument for women’s equality based on their sameness to men. See generally NANCY L. COTT, THE GROUNDING OF

Still, examples of women transforming the world because of their personal faith abound. Pandita Ramabai (1858-1922) was a woman of India “who defined her culture with her egalitarian principles.”¹³⁷ Born to a wealthy Hindu family, Ramabai’s father parted with Hindu cultural expectations to teach Pandita and her mother, providing them personally with a scholar’s education like his own.¹³⁸ Although her father was thus ostracized for allegedly destroying the Indian family, his daughter followed his path and challenged class and gender norms of Hindu culture by working to protect women from the inhumane practice of *sati*, the practice of burning widows on funeral pyres with their deceased husbands.¹³⁹ “Her dissatisfaction with her own religion and the promise of justice Christ offered drove her conversion to Christianity. From her perspective, Christ’s willingness to lower himself and heal sinners identified him as the only solution for the ills of India and its caste system.”¹⁴⁰ Ramabai’s Christian transformation drove her life’s mission of protecting women, leading her to found the Ramabai Association in Boston in 1887, the Sarada Sadan in 1889 in India and the Mukti Mission in 1900, where widowed women could live and receive an education.¹⁴¹ She also translated and published the Bible in the Marathi vernacular.¹⁴² This one woman’s Christian faith revolutionarily affected her culture.

Educational opportunities opened up for women in the northeastern United States due to an evangelical influence, as indicated by another example, Mary Lyon (1791-1849).¹⁴³ Lyon, who founded Mount Holyoke College in South Hadley, Massachusetts in 1837 was “gifted with marvelous intellect and evangelical convictions,” and she trained women who were influential around the world.¹⁴⁴ Her personal faith was clear in her work, in that “[e]ven more than

MODERN FEMINISM (1987) (arguing that Christianity is one of three primary pillars of the modern feminist movement because of its comprehensive and foundation influence on the Enlightenment). Furthermore, it was not long before the women’s movement cut its ties with Christianity. The first Women’s Rights convention in 1848 passed the Declaration of Sentiments, but in 1852 and 1853 Antoinette Brown proposed a resolution stating that the Bible supported women’s rights. Both years that resolution was defeated by the women more informed by Enlightenment rationality and socialism than by Christianity as the basis for women’s rights. A good brief overview of the changes that occurred and the exclusion of Christianity from the women’s movement is contained in the Cott’s introduction. *Id.*

137. Withrow, *supra* note 132, at 6.

138. *Id.*

139. *Id.* “Given the large number of young women married to old men, this became the worst nightmare for many.” *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 7.

144. *Id.* “Through her school, Lyon was able to connect her students to the field of international missions. One Mount Holyoke student, Fidelia Fiske, remains a quintessential example of Lyon’s success. . . Fiske went to modern day Iran as a single female missionary to build a school for girls.” In a culture where women were devalued, particularly by their own fathers her cry was “Give me your daughters!” *Id.* Fiske “housed them, fed them, nursed them, and educated them. The result was the transformation of the lives of numerous young Iranian girls, and an example for the society she had left back home in America.” *Id.*

serving women, though, Mary Lyon devoted herself to Christ.”¹⁴⁵ Mary Lyon and the Christian women she educated demonstrated evangelical activism that profoundly influenced American culture and continues to influence American women today.

These women’s lives were transformed by Christ, and they worked to transform the law¹⁴⁶ from their positions as women truly liberated. Likewise, evangelical feminism is the story of “a group of marginalized yet significant women in the history of American religion. . . evangelicalism has been such a considerable force in American history.”¹⁴⁷ These women were transformed by Christ, and demonstrate a “theological rigor”¹⁴⁸ in approaching gender equality based not on gender as a social construct, but rather on transcendent law.

At the center of evangelical feminist theology is the question of biblical authority, its nature, meaning, and scope. From the beginning, biblical feminists addressed this issue because of a desire to convince their fellow evangelicals that the Bible, not just secular society or liberal philosophies, teaches the equality of men and women in the home, church, and society. To do this, they had to take the authority of the Bible seriously and show that those who taught women’s subordination had been misinterpreting scripture.¹⁴⁹

The authority of the Bible differentiates true gender equality from gender equality based on gender and law as a social construct. Cochran distinguishes these approaches to gender equality as a traditionalist on the one hand and a progressive on the other, based on competing conceptions of biblical authority.¹⁵⁰ The social construct theory is based on individual preference and pluralism, while authentic equality is based in scripture and a transcendent moral code.¹⁵¹

145. *Mary Lyon’s Vision for Christian Women: Opening College Doors for Females*, in *Glimpses of Christian History #166*, Christian History Institute, at 2 (March 2007), available at <http://chi.gospelcom.net/GLIMPSEP/Glimpses/glmps166.shtml>.

146. For examples of feminist scholars who disagree with this, see e.g. Mary E. Becker, *The Politics of Women’s Wrongs and the Bill of “Rights,” A Bicentennial Perspective*, 59 U. CHI. L. REV. 453 (1992) (discussing how the Bill of Rights has not achieved justice for women in the law, noting the part played by religion and patriarchy); Cheryl B. Preston, *Women in Traditional Religions: Refusing to Let Patriarchy (or Feminism) Separate Us from the Source of Our Liberation*, 22 MISS. C. L. REV. 185 (2002-03) (discussing the Western feminist critique of organized religion and the believer’s critique of Western feminism); Angela L. Padilla & Jennifer J. Winrich, *Christianity, Feminism, and the Law*, 1 COLUM. J. GENDER & L. 67 (1991) (showing how the law has been influenced negatively on behalf of women as evident in American legal opinions, and how the patriarchal Christian model of woman has infiltrated the legal system to the detriment of women and ought to be stripped from the law to obtain equality). *But see* Marie A. Failing, *Gender, Justice and the Left Hand of God: A Lutheran Perspective*, 9 S. CAL. REV. L & WOMEN’S STUD. 45 (1999) (discussing how Lutheran values and ways of thinking provide rich resources for an analysis of gender ethics).

147. COCHRAN, *supra* note 15, at 190.

148. *Id.*

149. *Id.* at 190.

150. *Id.* at 191.

151. *Id.* Furthermore, Cochran points out that this is the problem with religion as well, stating: “Instead of directing the actions and beliefs of its adherents, traditional religion becomes just one more alternative to serve the needs of the individual, and moral agency is determined by individual preference rather than by a transcendent point of reference.” *Id.*

A Christian perspective on gender equality demands an integrated analysis. Several of my colleagues on the Regent Law faculty have developed and published paradigms for biblical-theological integration into the law.¹⁵² “The skeleton of the paradigm consists of three perspectives from which we criticize, analyze, and apply elements of law: revelation, community, and self.”¹⁵³ Within that paradigm, the Bible is the clearest statement of God’s will on any matter, including the law – it is the standard against which all other truth claims are measured.¹⁵⁴ “We work out norms (through general and special revelation) in light of community (historical and present) existentially (in the context of our dignity as a human in the context of calling. . .).”¹⁵⁵ The paradigm is based in biblical authority, but also understands “the danger that we will distort the meaning [of biblical revelation] through our own ‘dirty lens’ unless we are careful to continue to allow Scripture to shape our efforts and perspectives even before we come to a specific text.”¹⁵⁶ Pryor and Schutt describe this as a dialogic model which implicates both the existential and the normative perspectives,¹⁵⁷ understanding the existential *I* in relationship to the scriptural norms. “Yet we interpret Scripture with Scripture, always careful to maintain some level of mistrust of our own perspectives. Moreover, as we participate in this dialogue, we must rely on the Holy Spirit to ‘awaken our understanding of the significance of God’s revelation.’”¹⁵⁸

The communal and historical understanding is a part of this paradigm. In this piece I have tried to indicate both of these aspects of the situational perspective in connection with the Christian understanding of gender equality. The Christian approach presented here allows the engagement of postmodern feminist legal theory “in a way that accepts its challenges and enters into its perspective”¹⁵⁹ but while analyzing its foundations as distinct from the biblical foundations of law.

This paradigm helps to reach an authentic understanding of gender equality, and reveals how that goal is a process in any society. For example, the text of Galatians 3:28 states that male and female are one in Christ, equal in Christ; and in the gospel accounts Jesus set a revolutionary example of a woman’s inherent dignity in how he respected and treated women.¹⁶⁰ Interpreting Scripture with Scripture, gender equality is more than possible with Christ stationed as the transcendent point of reference. Speaking from personal

152. See SCHUTT, *supra* note 19, at 234–45; see generally C. Scott Pryor, *Mission Impossible: A Paradigm for Analysis of Contractual Impossibility at Regent University*, 74 ST. JOHN’S L. REV. 691 (2000) [hereinafter Pryor, *Mission Impossible*], and C. Scott Pryor, *Consideration in the Common Law of Contracts: A Biblical-Theological Critique*, 18 REGENT U. L. REV. 1 (2005–06) [hereinafter Pryor, *Consideration*].

153. SCHUTT, *supra* note 19, at 236 (citing Pryor, *Mission Impossible*, *supra* note 152, at 694–98).

154. *Id.* at 236 (citing Pryor, *Consideration*, *supra* note 152).

155. SCHUTT, *supra* note 19, at 236.

156. *Id.* at 237.

157. *Id.*

158. *Id.* (quoting Pryor, *Mission Impossible*, *supra* note 152, at 702).

159. *Id.* at 240.

160. See *supra* section III.

experience, equal treatment is often, but not always, the case for me, for other women in the church or other female lawyers, but I see attempts both in the church¹⁶¹ and in the law¹⁶² to achieve equality, which prompts a continued search for understanding the significance of God's revelation. Professor Schutt reminds us that when Christians "bring a revelation-based perspective to our thinking about law, we safeguard our commitment to the truth. The integrated lawyer is grounded in serious and regular interaction with God's Word."¹⁶³

CONCLUSION

Christianity has profoundly influenced the law. A personal relationship with Jesus Christ has often transformed women's lives. Women transformed by Christ have used their gifts and talents to open up previously unavailable opportunities for women in religion, education, politics and society. As illustrated by Pamela D.H. Cochran's historical work on evangelical feminism, American Evangelical Christianity has uniquely influenced the quest for gender equality. Christianity is consistent with the goal of gender equality.

Some Christian women believe they can learn from feminism, and feminists can learn from them regarding both gender equality and the sanctity of life.¹⁶⁴ This reciprocal influence is unlikely, however, given differing presuppositions of each group. Feminists necessarily find their identity in gender and the deconstruction of its social construct, while Christians, including women who understand Christ's revolutionary view of gender equality, must necessarily find their identity in Christ. This creates cognitive dissonance for women who desire to embrace both faith in Christ and feminism. Nonetheless, many women of faith do identify themselves as biblical feminists drawing on the insights from feminism and Christianity.¹⁶⁵ The most significant attribute of

161. See generally SUMNER, *supra* note 113, on men and women making gender equality progress in the church, and COCHRAN, *supra* note 15, in the attempts toward gender equality in evangelical feminism.

162. See the attempts of the Supreme Court of the United States in gender equality in education in *United States v. Virginia*, 518 U.S. 515 (1996), and VAWA, *supra* note 2. See also Title VII of the Civil Rights Act of 1964 (prohibiting employment based discrimination based on sex, *inter alia*) as enforced by the federal courts and the EEOC. 42 U.S.C. § 2000e, et. seq

163. SCHUTT, *supra* note 19, at 238–89.

164. Terwilliger, *supra* note 106, at *4. "Contrary to the beliefs of some, being a Christian and a feminist is not a contradiction. . . . It is my sincere hope that Christians and feminists will attempt to learn from each other." Terwilliger trenchantly explains why women have looked to secular outlets rather than the church in their search for gender equality. "Although the Church continued to promote the value of women through the example of the Virgin Mary, this did not always translate into a better lot for women of the day. Issues of women's equality and status have often been overlooked by the Church, forcing women's movements to begin in secular circles. Finding equal if not worse oppression in the Church than in the rest of the community, many feminists have counted Christendom an enemy." *Id.*

165. Take, for instance, Cochran, who presents the Christian feminists as "biblical feminists," COCHRAN *supra* note 15, at 4, "traditionalist evangelical feminists," or "traditionalist biblical feminists," *id.* at 193, and more particularly as a movement of "Evangelical Feminism," as reflected by her book's title. *Id.* at 194. See also Leslie Griffin, *Citizen-Soldiers Are Like Priests: Feminism in Law and Theology*, in CHRISTIAN PERSPECTIVES, *supra* note 6, at 194 (discussing as a feminist Christian feminist theology in law).

a self-identified Christian or biblical feminist is her reliance on the authority of Scripture, rather than grounding her feminism on social constructs.

A Christian woman who does not identify herself as a feminist holds to the transcendent truths of Scripture to find gender equality, rather than look to feminism's reliance on gender constructs for answers.¹⁶⁶ Feminist Legal Theory promotes an existential essentialism that is focused on women and women's experiences, with law as a social construct, revealing clearly that feminism does not adhere to a transcendent point of reference, unlike authentic Christianity.¹⁶⁷ I have previously argued that feminism has cannibalized the movement for women's rights with sexuality and reproductive rights.¹⁶⁸ Professor Cochran's historical analysis makes a similar argument in sexual diversity dissecting, perhaps undermining, biblical feminism, removing it from its adherence to a transcendent reference point.

Professor Collett suggests that feminism and Christianity need not be mutually exclusive. "What the Christian account of human nature and community offers liberal feminists is an affirmation of the equal dignity of all human persons, and a truer foundation for crafting authentic equality between the sexes."¹⁶⁹ However, Christians do not have to be feminists to believe in social justice or gender equality. Feminism is not something that needs to be added to Christianity in order for the church to honor women. Rather, Jesus Christ was revolutionary in His view of, value for and treatment of women. The Gospel is pro-women.¹⁷⁰ It is as unnecessary for a Christian to be a feminist as it is for a

166. I am a Christian, not a feminist. As a Christian, I am a believer and follower of Jesus Christ, rather than a believer of feminism (*Matt. 16:24*). I confess and profess that Jesus is Lord and believe in my heart that God raised Him from the dead (*Romans 10:9*). My calling is to become like Christ (*Romans 8:29*), and to do that I must love, serve and worship Him foremost. (*Matt. 22:37*). If I were a feminist, my focus would be on women and equality and power. Since I am a Christian, however, my focus is on Christ, and His truth and grace and power (*John 1:17*), which allows men and women to submit to one another in love, in full submission to Christ (*Eph. 5:21*). As a Christian, I do not embrace a feminist paradigm. On the contrary, I function in a biblical paradigm that holds truth as transcendent - a Christian paradigm. I am not a feminist because I am a Christian, indwelt by the living God who died for me, offering me life by His loving grace. My identity is in Christ, and the power of His resurrection. I am created by God as a woman, equal in personhood and potential and possibility for all He's called me to in this life and for eternity. Though I understand others may disagree with my perspective, I listen to their views with respect and love, as demanded by my Christian perspective, rooted in a true and transcendent equality based not in women's power, but in the power of Jesus Christ.

167. See Failinger, *supra* note 146, at 76, directly addressing this problem within feminism, and the tendency for theologians to rely on experience alone rather than to view that experience with a transcendent point of reference. "As with the feminist critique, one of the major contributions of Lutheran theology to the task of creating and critiquing law is to name the complexity of the human experience and to resist efforts to construct legal edifices that depend on essentializing and oversimplifying that experience." *Id.*

168. See Lynne Marie Kohm and Colleen M. Holmes, *The Rise and Fall of Women's Rights: Have Sexuality and Reproductive Freedom Forfeited Victory?* 6 WM & MARY J. WOMEN AND L. 381 (Winter 2000).

169. Collett, *supra* note 62, at 192.

170. See *supra* Section III and the numerous sources cited therein. See also, e.g., Paul's letter greeting the Romans, where included in his esteemed list of apostles and fellow workers are a

Christian to be a humanist. These worldviews do not need to be blended, as a Christian worldview already encompasses the highest view of humanity, the highest view of women and men. Anyone who believes that feminism and not Christianity establishes the fair treatment of women does not understand Christianity.

All mature human beings act from necessary commitment to normative positions they hold to be sound, having some sort of faith in truth that transcends mere existence.¹⁷¹ The constructivist position is inconsistent with this fact, which the wealth of scholarship pointing to the transcendent aspects of law¹⁷² makes all the more apparent. In fact, principles of truth rooted in Christianity are responsible for the belief in gender equality. As Westerners, feminists have been shaped by Christian presuppositions.¹⁷³ In other words, feminists ought to seriously consider the Christian foundations of any claim to gender equality,¹⁷⁴ as equality is based in Christian freedom.¹⁷⁵ Likewise, authentic Christians ought to embrace anyone who upholds true gender equality.

That freedom and gender equality available in Christianity, however, is often badly distorted by religion itself, and this offers great insight into why all feminists are not Christians. Contemporary Christians seem uncertain about gender equality.¹⁷⁶ Dr. Sarah Sumner argues that the debate over women in ministry has been improperly reduced to a debate over roles, rather than an understanding of the differing natures of men and women as designed by God.¹⁷⁷ Many in contemporary American Christianity who believe that feminism, including biblical feminism, has harmed the church and not helped to

significant number of females, including Phoebe, Priscilla, Aquila, Mary, Junia and others. *Romans* 16: 1, 3, 6, 7, 12, 13, 14, 15.

171. See generally BUDZISZEWSKI, *supra* note 18.

172. See *supra* Section I.

173. These presuppositions were foundational to an Enlightenment perspective of gender equality. See COTT, *supra* note 136, at 16–17.

174. This salient point deserves more consideration and could be fodder for further scholarship.

175. It may be equally accurate to state that anyone who believes in treating women fairly does so from inherent and transcendent notions founded in Christianity. The idea that one who believes in gender equality ought to be a Christian rather than a feminist deserves further exploration, but that query is beyond the scope of this article.

176. See Joe E. Trull, *Women And Other Creatures: The Gender Debate*, 7 J. CHRISTIAN ETHICS (April 1997), also available at <http://www.christianethicstoday.com/Issue/010/Women> (discussing the conflicting views regarding gender equality in twenty-first century Christianity). Beyond debating the issues, Christian principles have been distorted in American history in other areas in addition to gender to defend severe social injustices. See Michael V. Hernandez, *A Flawed Foundation: Christianity's Loss of Preeminent Influence on American Law*, 56 RUTGERS L. REV. 625 (2004) (discussing these distortions regarding Cherokee native Americans at 645-54, and in racism and slavery at 672-81). "The principles of race, racism and arrogance that spawned American slavery contravened true Christianity." *Id.* at 681. A similar comparative study regarding gender and law is a worthwhile pursuit, but is beyond the scope of this article.

177. SUMNER, *supra* note 113, at 30. See generally Borland, *supra* note 89, for evidence of extending intrinsic equality to men and women on the one hand, but limiting that equality with gender roles on the other hand.

achieve gender equality desperately desire to recover authentic womanhood and manhood.¹⁷⁸ Ann Arkins argues that

Christians and feminists are agreed in wanting the job market to be fair, but we are not agreed on the purpose of life itself. . . There is indeed an essential difference between Christianity and feminism, but it is a difference we have not just with the women's movement but with almost any philosophy in our society. We do not live for the here and now; we believe in a hereafter. We cannot live to please ourselves. . . We may not simply work for a just society; we have a gospel to proclaim which is even more urgent.¹⁷⁹

Even though men and women of faith have positively influenced the law through transcendent principles found in the moral code of the Word¹⁸⁰ which teaches that gender equality transcends civil law and can be accomplished through the transformative power of Jesus Christ, humans resist surrender to Christ, falling short of his moral code. This reveals why humanity will always struggle with gender equality. Feminism has not brought a satisfactory remedy to the lack of gender equality, but neither has religious Christianity.

A Christian perspective on gender equality should be a part of recapturing the intellectual life of the law and the church,¹⁸¹ and the Duke Journal of Gender Law & Policy has made that a priority. Christians, including myself, however, do not always embrace this challenge. "When faced with a crisis situation, we evangelicals usually do one of two things. We either mount a public crusade, or we retreat into an inner pious sanctum."¹⁸² Public thought and religious life have influenced each other in individual freedom, human reason, and market realities.¹⁸³ Harold Berman understood so clearly the relationship between law and religion. "In many areas of American life law reform will not work because law will not work. . . until it recovers its relationship to universal truths concerning the purpose of life itself."¹⁸⁴ This issue of the Journal, in which I am honored to participate, seeks that reform by including religious perspectives in the law affecting gender, as Richard Niebuhr aptly stated, "Every moment and period is an eschatological present, for in every moment [women and] men are dealing with God."¹⁸⁵

178. See, e.g., RECOVERING BIBLICAL MANHOOD AND WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM (John Piper & Wayne Grudem eds., 2006).

179. ANNE ARKINS, SPLIT IMAGE: MALE AND FEMALE AFTER GOD'S LIKENESS 253 (1987).

180. *John* 1:1 ("In the beginning was the Word; and the Word was with God, and the Word was God.").

181. This idea is spearheaded by J. P. Moreland in his book LOVE YOUR GOD WITH ALL YOUR MIND: THE ROLE OF REASON IN THE LIFE OF THE SOUL 187-200 (1997).

182. MARK NOLL, THE SCANDAL OF THE EVANGELICAL MIND 141 (1994).

183. COCHRAN, *supra* note 15, at 192 (referring to NOLL, *supra* note 40).

184. HAROLD J. BERMAN, FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION 15 (1993).

185. NEIBUHR, *supra* note 43, at 229.