

# CHRISTIANITY, FEMINISM, AND THE LAW

*Angela L. Padilla\* and Jennifer J. Winrich\*\**

## I. INTRODUCTION: THE CONNECTION BETWEEN CHRISTIANITY, FEMINISM, AND THE LAW

Man enjoys the great advantage of having a god endorse the code he writes; and since man exercises a sovereign authority over women, it is especially fortunate that this authority has been vested in him by the Supreme Being. For the Jews, Mohammedans, and Christians, among others, man is master of divine right; the fear of God, therefore, will repress any impulse towards revolt in the downtrodden female.<sup>1</sup>

—Simone de Beauvoir, *The Second Sex*.

Feminists who study women and the law confront a system which reflects the values and interests of patriarchy. Carol Smart, in discussing the power of law to disqualify women's experience and concerns, argues that there is a "congruence between law and what might be called a 'masculine culture,' and that in taking on law, feminism is taking on a great deal more as well."<sup>2</sup> Since a whole constellation of forces is at work in the establishment and reinforcement of patriarchy, feminists must look beyond the letter of the law and examine the cultural, social, religious, and economic forces

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\* Angela L. Padilla, J.D., Columbia University School of Law, 1991. B.A., Harvard and Radcliffe Colleges, 1987. Associate with Morrison & Foerster. I would like to thank Lisa Martinez, Sara Krusenstjerna, and Jennifer White for useful comments on earlier drafts of this article. I would also like to thank Tina Connely, who made it possible for me to attend law school. Finally, I thank the members of the Gay and Lesbian Law Students Association for sharing their courage and support so generously with me.

\*\* Jennifer J. Winrich, J.D., Columbia University School of Law, 1991. B.A., University of Georgia, 1988. Associate with Cleary, Gottlieb, Steen, and Hamilton. I would like to thank my mother and father who encouraged me to hear and follow my own voice and enabled me to find the God within. I would also like to thank Mae Hanson, Laura Williams, and Charles Higgins for their support and encouragement. This article is dedicated to Cynthia who survived, and is in memory of Olger Hanson through whom the words became real.

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<sup>1</sup> S. de Beauvoir, *The Second Sex* 621 (1949).

<sup>2</sup> C. Smart, *Feminism and the Power of Law* 2 (1989).

behind women's oppression.<sup>3</sup> To this end, we will consider the role of religion as one of these forces, because we cannot ignore religion and still hope to understand the patriarchal legal framework in which women and men operate.<sup>4</sup>

The patriarchal components of most historic religions<sup>5</sup> have largely been revealed. The result, at first glance, seems to be a clash between religion and feminism. The feminist must ask, whose purpose and goals does patriarchal religion serve?<sup>6</sup> Why participate in a religion whose symbols only amplify what is already destructive for women and men?<sup>7</sup> As a result, many feminists reject their religious traditions, concluding that they are beyond deconstruction, reconstruction, and transformation.<sup>8</sup> But many women, whose backgrounds represent a variety of religious heritages, have instead struggled to reconcile their identities as feminists and as members of a particular religious group.<sup>9</sup>

There are several reasons why we as a group cannot simply ignore society's traditional religious systems. Society, through the promulgation of a set of religious beliefs, addresses the questions that anthropologists say are

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<sup>3</sup> Harrison & Heyward, *Pain and Pleasure: Avoiding the Confusions of Christian Tradition in Feminist Theory*, in *Christianity, Patriarchy, and Abuse: A Feminist Critique* 148 (J. Brown & C. Bohn eds. 1989).

<sup>4</sup> A. Wilson Schaef, *Women's Reality: An Emerging Female System in a White Male Society* 161 (1981).

<sup>5</sup> For theories on patriarchal invasions of prehistoric matriarchal societies and matrilineal religions see R. Eisler, *The Chalice & The Blade* (1987); M. Stone, *When God Was a Woman* (1976); Rich, *Prepatriarchal Female/Goddess Images*, in *The Politics of Women's Spirituality* 32 (C. Spretnak ed. 1982). Because these prehistoric societies were not typically based on inequality or hierarchical power, the authors often prefer the terms "gynocentric" or "pre-patriarchal" to describe them.

<sup>6</sup> Spretnak, *Introduction*, in *The Politics of Women's Spirituality*, *supra* note 5, at xi.

<sup>7</sup> Parvey, *Re-membering: A Global Perspective on Women*, in *Christian Feminism: Visions of a New Humanity* 158, at 177 (J. Weidman ed. 1984).

<sup>8</sup> Many of these women reconstruct their own history from their own feminist myths, and often return to a Goddess-centered religion. See, e.g., Starhawk, *Dreaming the Dark: Magic, Sex, & Politics* (1982); Starhawk, *The Spiral Dance: A Rebirth of the Ancient Religion of the Great Goddess* (1979); M. Stone, *Ancient Mirrors of Womanhood: Our Goddess & Heroine Heritage* (1979); M. Stone, *supra* note 5.

<sup>9</sup> The problem of reconciling feminism and patriarchal religion is one shared by most feminist women who identify themselves as members of a traditional religious group. Although we will examine only Christianity and feminism, the same issue arises, for example, in Islam, Judaism, and Hinduism.

necessary for a culture to answer: the individual's relationship to self, to others, and to the universe.<sup>10</sup>

First, on an individual level, religion often shapes how we define ourselves and aids in the formation of our worldview. Women's self-definition often involves dual identification with women and with members of a religious group. This internalization of a religious identity is often so deeply imbedded in the psyche that it is difficult for women to challenge or abandon it, even if they are consciously aware of it. As feminist theologian Mary Daly suggests, "[W]omen have been divided from each other by pseudo-identification with groupings which are androcentric and male-dominated. Among these are the various religions whose ideologies degrade and mystify women to such an extent that even the fact of this degradation is not perceived by its victims."<sup>11</sup>

Regardless of the individual woman's particular awareness, we cannot, and perhaps should not, make religious women choose between feminism and their personal religious beliefs if we want to include *all* women in the feminist movement. We cannot effectively advocate legal, economic, or any other type of reform in ways that dismiss a woman's religious heritage. An example of this argument is found in Farida Shaheed's study of the extent to which Islam as an ideology has legitimized the patriarchal system in Pakistan. Although acknowledging a strong causal connection, she argues that feminists must operate *within* the religious belief system of Islam if they are to be effective. She warns, "a women's movement needs to be perceived as

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For a feminist look at Islam see, e.g., N. el-Saadawi, *The Hidden Face of Eve* (1982); F. Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (1987); Shaheed, *The Cultural Articulation of Patriarchy: Legal Systems, Islam and Women*, *S. Asia Bull.* (1986).

For a feminist look at Judaism see, e.g., J. Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (1990); *On Being a Jewish Feminist: A Reader* (S. Heschel ed. 1983); Plaskow, *Jewish Memory from a Feminist Perspective*, in *Weaving the Visions: New Patterns in Feminist Spirituality* 39 (J. Plaskow & C. Christ eds. 1989).

For a feminist look at Hinduism see, e.g., M.N. Srinivas, *The Changing Position of Indian Women*, T.H. Huxley Memorial Lecture delivered at London School of Economics (1978); Wadley, *Women and the Hindu Tradition*, in *Women in India: Two Perspectives* (1977); How, Mar. 1983 (issue of this New Delhi publication is devoted to the question of dowry in India).

<sup>10</sup> Weaver, *Images and Models—in Process*, in *The Politics of Women's Spirituality*, *supra* note 5, at 249, 250.

<sup>11</sup> M. Daly, *Beyond God the Father: Toward a Philosophy of Women's Liberation* 132–33 (1973).

rooted in the cultural reality of the society in which it operates. . . . [D]iscriminatory laws sanctified through Islam cannot be effectively countered with arguments which deny or discard Islam."<sup>12</sup> So, even if we as individuals reject our culture's religion along with its patriarchal worldview, we must interact with those individuals who do not—they are our victims, police officers, judges, juries, and lawyers. In the United States, Professor R. Kent Greenawalt reminds us, we must "live in a country in which a large number of people are seriously religious . . . ."<sup>13</sup>

Second, on a larger scale, religion shapes societal values and norms and in turn is shaped by societal beliefs and goals. The historical consequence of this interaction is that religion plays a role in "being shaped by and in sacralizing the social patterns of *sexism*. Religion makes sexism appear the normative nature of human relations, the order of creation, and the relation of God to humanity and history."<sup>14</sup> Although religion is sometimes used explicitly to socialize, more often it is only one element present in the process of socialization, and therefore enters through a dynamic that is largely implicit, uncalculated, and unconscious, but which operates to reinforce all of the harmful attitudes and stereotypes of patriarchal society.<sup>15</sup>

The effect of this process of socialization on the law cannot be overlooked. The law recognizes those acts that are socially acceptable by sanctioning and/or ignoring them, while it defines those that are unacceptable by penalizing them.<sup>16</sup> The result is that the law tends to legitimize and preserve the status quo while continuing to reflect the ideology and power structure of the socially dominant group.<sup>17</sup>

In the United States, this power structure and dominant ideology have been strongly influenced by the Judeo-Christian tradition.<sup>18</sup> In this article, we

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<sup>12</sup> Shaheed, *supra* note 9, at 38, 43.

<sup>13</sup> Greenawalt, *Religious Convictions and Lawmaking*, 84 Mich. L. Rev. 352, 356 (1985).

<sup>14</sup> Radford Ruether, *Feminist Theology and Spirituality*, in *Christian Feminism: Visions of a New Humanity*, *supra* note 7, at 9, 10 (emphasis added).

<sup>15</sup> M. Daly, *supra* note 11, at 2.

<sup>16</sup> Shaheed, *supra* note 9, at 38.

<sup>17</sup> *Id.*

<sup>18</sup> By "Judeo-Christian" tradition we are referring to the tradition derived from both the Old Testament (Judaism) and the New Testament (after Christ). For Christians, both the Old and the New Testaments are authoritative in shaping theology and religious practice. Because only the texts of the Old Testament, not the New Testament, are authoritative in Judaism, the Old Testament is referred to as the Hebrew Bible in Judaism.

limit our discussion of the influence of this tradition to an examination of Christianity.<sup>19</sup> Many of our laws can be traced to their biblical roots.<sup>20</sup> But

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For a history of Christianity in America, see R. Handy, *A Christian America: Protestant Hopes and Historical Realities* (2d ed. 1984); W. Hudson, *Religion in America* (1981); *Religion and America: Spirituality in a Secular Age* (M. Douglas & S. Tipton eds. 1982).

This work also reflects our own personal experiences as feminists brought up in the Christian tradition. In speaking of Christianity, we recognize that we are speaking within the confines of our own subjective experiences as a Latina/white, lesbian, middle-class American woman and a white, heterosexual, middle-class American woman.

Women's experiences of both Christianity and feminism are shaped by their race, ethnicity, class, and sexual orientation. For an understanding of African-American, Latina, Asian, and other women of color's experiences of Christianity and feminism, see J. Cone, *A Black Theology of Liberation* (1970); J. Cone, *God of the Oppressed* (1975); J. Grant, *White Women's Christ and Black Women's Jesus: Feminist Christology and Womanist Response* (1989); S. Thistlethwaite, *Sex, Race, and God: Christian Feminism in Black and White* (1989); A. Thiam, *Black Sisters, Speak Out: Feminism and Oppression in Black Africa* (1986); *Against Machismo* (E. Tamez ed. 1987); *Home Girls: A Black Feminist Anthology* (B. Smith ed. 1983); *Through Her Eyes: Women's Theology From Latin America* (E. Tamez ed. 1989); *With Passion and Compassion: Third World Women Doing Theology* (V. Fabella & M. Oduyoye eds. 1988).

For an understanding of lesbian women's experiences of Christianity and feminism, see J. Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (1980); C. Heyward, *Our Passion For Justice: Images of Power, Sexuality, and Liberation* (1984); C. Heyward, *Speaking of Christ: A Lesbian Feminist Voice* (E. Davis ed. 1989); A. Ide, *Loving Women: A Study of Lesbianism To 500 C.E.* (1985); J. McNeil, *Taking a Chance on God: Liberating Theology for Gays, Lesbians, and Their Lovers, Families, and Friends* (1988); S. Pennington, *Good News For Modern Ways: A Pro-Gay Biblical Approach* (1985); R. Scroggs, *The New Testament and Homosexuality: Contextual Background For Contemporary Debate* (1983).

<sup>19</sup> By limiting this article's focus to Christianity, we do not seek to imply that Christian feminism fulfills the struggles of feminist women of all religious affiliations. We especially do not intend to affirm Christian feminism at the expense of feminism within other traditions. Just as the traditional religious worldviews of other groups may operate differently from the traditional Christian worldview, so also the solutions offered by feminists within each group may differ. We seek to write from *within* our own Christian tradition, and our identification of its misogynist patterns and of its feminist potential is rooted in an analysis of Christianity itself, and not in a contrast with any other tradition.

<sup>20</sup> For a discussion of the biblical underpinnings of rape laws in Massachusetts as an example of this tendency, see Note, *Rape Law in Massachusetts: Our Puritan Forbearers and Other Cultural Remnants*, 22 N. Eng. L. Rev. 89 (1987).

perhaps more importantly, when we consider our laws and legal outcomes as they affect women, we see many *values* strongly reflected whose origins are found in the traditional Christian religion. It is for this reason that we as feminists cannot dismiss America's Christian heritage.

Analysts in both the first and second waves of feminism have exposed the sexism behind Judeo-Christian symbolism, ideology, structure, and ministry, but such revelations have often been dismissed by the feminist movement at large as wastes of energy that would better be spent on *real* political work. The message . . . is not that patriarchal religion is merely "unfair" in itself: The lies about the nature and function of woman that are intrinsic to patriarchal religion have informed the legal, educational, political, economic, and medical/psychiatric systems of our society and are accepted as "natural truths" by even the most modern and/or atheistic citizens.<sup>21</sup>

Professor Greenawalt, who goes so far as to argue that members of a liberal democracy can and *should* rely on their religious convictions when rational secular morality fails to provide answers to their questions,<sup>22</sup> similarly acknowledges the often unnoticed role of religion in socialization in the United States.

[I]t certainly is true that our country has a rich religious tradition and traces its cultural roots to a civilization in which religion has been a major element. Even positions that are not *consciously* religious are often deeply influenced by religion. . . . [and e]ven when the religious believer consciously relies mainly on naturalistic arguments, important religious premises may lurk in the background.<sup>23</sup>

This religious influence is evident in legal opinions. Justice Bradley, writing in 1872, stated that "the paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. *This is the law of the Creator.*"<sup>24</sup> More recently, Chief Justice Burger, concurring in *Bowers v. Hardwick*,<sup>25</sup> explicitly referred to Christian religious tradition to reinforce his view that sodomy laws should be upheld: "[T]he proscriptions against

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<sup>21</sup> Spretnak, Introduction, *supra* note 5, at xi.

<sup>22</sup> See Greenawalt, *supra* note 13, at 371-88.

<sup>23</sup> *Id.* at 379 (emphasis added).

<sup>24</sup> *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1872) (Bradley, J., concurring) (emphasis added).

<sup>25</sup> *Bowers v. Hardwick*, 478 U.S. 186 (1986).

sodomy have very 'ancient roots.' Decisions of individuals relating to homosexual conduct have been subject to state intervention throughout the history of Western civilization. Condemnation of those practices is firmly rooted in the Judeo-Christian moral and ethical standards."<sup>26</sup>

It is our thesis that Christian legitimization of patriarchal law is without justification. We will demonstrate that Christianity, as traditionally defined, infiltrates our legal process to the detriment of women. In the first part of this article, we will examine the traditional Christian worldview and the subsequent model of "woman" it presents. By then focusing on the legal outcomes of this model as they affect female victims of violence, we will suggest ways in which Christian patriarchy is replicated in the law to harm women. The second part of our article will set forth an alternative model of women espoused by Christian feminism and will propose how this view might result in improved legal outcomes for women.

## II. THE TRADITIONAL CHRISTIAN WORLDVIEW: "WOMAN" IN THE BIBLE

The Bible defines woman in relation to man: she is subordinate to man and she is his property. Male power over women is rooted in the Bible's construction of woman as guilty for the introduction of sin into the world, deserving of pain and suffering, seductive, wily, and sexualized. This concept of female inferiority has pervaded Western religion and law throughout the ages. It results in a set of normative assumptions about male authority to own, use, exchange, and have sexual access to women. While the biblical construction of men gives them power and rights, women are given few rights as individuals. Male violence against women is rooted in and may be the logical consequence of these basic patriarchal assumptions of women's status.<sup>27</sup> Traditional patriarchal law, like the Bible as traditionally interpreted, has constructed girls and women as subordinate to and owned by men. The law, in much the same way as the Bible, has enjoined women to be silent, submissive, and nonresistant to male violence. Both the law and the Bible—based as they are on the same view of woman as subordinate, guilty, and seductive—conspire in the perpetuation of women's inferior status, especially as this status is maintained by the fear of male violence both in the home and in the world at large.

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<sup>26</sup> Bowers, 478 U.S. at 196 (Burger, C.J., concurring).

<sup>27</sup> Radford Ruether, *The Western Religious Tradition and Violence Against Women in the Home*, in *Christianity, Patriarchy, and Abuse: A Feminist Critique*, supra note 3, at 31.

## A. The Authority of Scripture

In order to understand how "woman" is defined in the traditional Christian worldview,<sup>28</sup> the worldview on which our normative assumptions about men and women in the legal system are based, we need to understand how the Bible is interpreted by traditionalists. For traditionalists, the authority of scripture is based on an understanding of scripture as the Word of God. Scripture is viewed not as a historical document that one studies critically but as perfect revelation from God. The Bible, in this understanding, "not only communicates the Word of God but is the Word of God . . . [It] is not simply a record of revelation but revelation itself."<sup>29</sup>

This identification of revelation with scripture results from the belief that scripture is "wholly miraculous, the product of an inspiration which suspended the ordinary processes of human thought and guaranteed inerrancy."<sup>30</sup> In this understanding the authority of scripture is grounded in its "inspired" and "apostolic" origin from God.<sup>31</sup> As "inspired" in origin, scripture is the product of the Holy Spirit working through human authors, and this divine source acts as proof that the scriptural text reveals God's truths.<sup>32</sup> As "apostolic" in origin, scripture is understood to be the Word of God as it was received and recorded by the apostles, men who were empowered to exercise Christ's authority. Thus the role that humans played in the recording and transmission of scripture is not believed to have contaminated the authority of the texts, for the apostles were empowered to speak with Christ's authority.<sup>33</sup>

This approach to scripture rejects the claims of liberal theologians that the Bible is a historically and culturally conditioned document that can be

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<sup>28</sup> By "traditional Christian worldview" we are referring not to any one Christian sect but to the underlying attitude of theological patriarchy shared by most Christian denominations.

<sup>29</sup> E. Schussler Fiorenza, *Bread Not Stone: The Challenge of Feminist Biblical Interpretation* 25 (1984). Schussler Fiorenza is a Christian feminist scholar who, in this passage, describes the traditionalist approach to scripture.

<sup>30</sup> H. Niebuhr, *The Meaning of Revelation* 55 (1941). Niebuhr was a liberal theologian who embraced a historical-critical reading of scripture.

<sup>31</sup> S. Clark, *Man and Woman in Christ* 330 (1980). Clark is a fundamentalist scholar.

<sup>32</sup> "Human beings actually wrote the scriptures, and the scriptures bear many marks of the human personalities of their authors," this model concedes, "but these works were nonetheless written under the inspiration of the Holy Spirit, and this inspiration guarantees their truthfulness." *Id.*

<sup>33</sup> See *id.* at 331.



read critically. If the traditional approach accepted such an understanding of revelation as relative to time and culture, then feminist demands for liberation through transformation of the social roles of men and women could not be condemned, as they are by traditionalist theology, as violations of scripture's mandate for female submissiveness. In the words of one woman who adheres to the traditionalist interpretation of scripture:

I am convinced that the guidelines of the Bible with regard to womanhood . . . cannot be dismissed as the product of long past cultures with built-in biases and inequalities. Rather, I see them as transcending human culture, based on God's total knowledge of woman, and designed to give her the fullest and happiest life possible.<sup>34</sup>

This model of biblical interpretation results in a conception of the authority of scripture as absolute. The truths which the Bible reveals are regarded as meaningful ways of shaping faith and practice throughout history and across cultures. Consequently, this model resists the assertion that social and ecclesiastical relationships and structures should change in response to new social and historical circumstances.

## **B. "Woman" Defined**

The traditional Christian worldview ascribes to men and women separate, specific, and immutable social roles. In both the private realm of the home and the public realm of cultural, legal, political, and religious institutions, men and women are enjoined to fill distinctly different roles. The subordination of female to male is required both in the partnership of husband and wife in the home and in the relationship between men and women in the larger community. Both in the Bible and, as we are to see later, in the law, female subordination is based on a concept of women (and children, specifically female children) as the property of men. Implicit in this concept of male ownership of female is the image of woman as guilty for causing the "fall from grace" of humankind. Women's subordinate status is understood to be a just punishment for this guilt.<sup>35</sup> These basic patriarchal assumptions of women's subordinate status, rooted in the Bible and replicated in law, result in injunctions to women to be submissive and nonresistant to male

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<sup>34</sup> M. Hancock, *Love, Honor, and Be Free* 10–11 (1975).

<sup>35</sup> Radford Reuther, *The Western Religious Tradition and Violence Against Women in the Home, in Christianity, Patriarchy, and Abuse: A Feminist Critique*, *supra* note 3, at 32.

violence and in the reallocation of blame from male perpetrator to female victim. We will look at how "woman" is defined in a traditionalist interpretation of scripture to see how these normative assumptions of female submissiveness are developed.

### 1. *Woman as Guilty and Deserving of Punishment*

Then the Lord God said, "It is not good that the man should be alone; I will make him a helper fit for him." . . . So the Lord God caused a deep sleep to fall upon the man, and while he slept took one of his ribs and closed up its place with flesh; and the rib which the Lord God had taken from the man he made into a woman and brought her to the man.

Then the man said, "This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man."

Therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh.

—Genesis 2:18,21–24<sup>36</sup>

To the woman, [God] said, "I will greatly multiply your pain in childbearing; in pain you shall bring forth children, yet your desire shall be for your husband, and he shall rule over you."

—Genesis 3:16

These passages from Genesis ascribe to God woman's subordination to man. These and the biblical selections that follow are those most frequently cited to define and justify the role of women in family and society. The indications of subordination in this text are threefold.<sup>37</sup> First, man is the center of the creation story. Woman is created from and for him: "God provides [the man] with all that he needs for life: an occupation, land and wealth, and a wife."<sup>38</sup> The role of woman exists only in relation to man: the man has the power to name her, and once created and named, the woman is to make the man the center of her concern. Created to be a "helper" to man, a woman's life is "oriented towards his in such a way that direction for her life comes through him."<sup>39</sup> A second indication of subordination lies in the text's

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<sup>36</sup> We are using the Revised Standard Version of the Bible.

<sup>37</sup> S. Clark, *supra* note 31, at 24.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 24–25.

language: the word "Adam," from the Hebrew *ha-adam*, means "the man" or "the human" so that Adam "bears the name which is the designation of the whole race . . . and he keeps that name even after woman is formed and he is no longer the only human."<sup>40</sup> Thus, the male is understood to be the embodiment of the human race and the female is his wife or "helper." Finally, as the "first-born," Adam is empowered with a special precedence, and therefore power, to name and govern not only the natural world around him but his wife as well.<sup>41</sup>

Eve, however, rebelled against her submissive role when, against God's command, she accepted the Serpent's offer of fruit from the Tree of Knowledge. Eve's sin in accepting the fruit is that of thwarting her husband Adam's rule over her actions. This female rejection of male authority is understood to be the cause of evil in human existence. Before Eve took this independent action, she was to respond to Adam with voluntary submission in recognition of his special nature as the first and generic human. But because she disobeyed him, all women were thereupon assigned by God to forced subjection instead of voluntary submission to men. As God stated the curse:

"[H]e shall rule over you."

—Genesis 3:16

Female suffering as an acceptable norm is a central aspect of this subordination of female to male. Thus, by God's design, women are to submit to male authority and power, and women's pain and suffering are appropriate punishments for female insubordination. This image of woman lays the groundwork for legal and social acceptance of male violence against women and, as we shall see later, is replicated in the legal system's treatment of domestic violence, incest, and rape.

## 2. *Woman as the Property of Man*

God said:

"You shall not covet your neighbor's house; you shall not covet your neighbor's wife, or his manservant, or his maidservant, or his ox, or his ass, or anything that is your neighbor's."

—Exodus 20:17

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<sup>40</sup> Id. at 11, 25.

<sup>41</sup> Id. at 25-26.

The Lord said to Moses:

"You shall not uncover the nakedness of your father's wife; it is your nakedness. . . . You shall not uncover the nakedness of your brother's wife; she is your brother's nakedness."

—Leviticus 18:8,16

"If a man meets a virgin who is not betrothed, and seizes her and lies with her, and they are found, then the man who lay with her shall give to the father of the young woman fifty shekels of silver, and she shall be his wife, because he has violated her."

—Deuteronomy 22:28–29

The power dynamic between men and women is reinforced by the biblical construction of women as the property of men. In the Exodus passage, God forbids men from coveting three forms of other men's property: things, servants, and wives. Woman as property is further established by the rule in the Deuteronomy passage which requires a man who "seizes and lies with" (rapes?) a virgin to pay the virgin's father a certain amount of money and to marry the young woman. This rule may seem to protect a non-virgin from becoming destitute and outcast due to the loss of her virginity, which constituted her value to a man in a patriarchal society. However, this rule also functions to reinforce the male right to ownership and exchange of females. It is the virgin young woman who suffers the loss in this situation, yet she is not the one who is made whole by the money payment, because she does not exist as an individual. Instead, the money is paid to her father. The harm done to the female is imputed to her father because he "owns" her and has the right to trade her for money.

The biblical incest taboo in the Leviticus passage further adds to this ownership dynamic. Incest between male and female relatives is forbidden not because the female herself is violated but because she "belongs" to another man. Her violation functions as an offense against the man who owns her. Again, it is the male relative's right of ownership, use, and exchange of the female that is protected by the taboo. It is important to note that there is no explicit ban on father-daughter incest in the biblical texts. All the female relatives of potential male abusers who are protected by the taboo are protected because the property rights of another man—their husband, brother—would be violated if the woman were incestuously abused. A man's daughter, however, goes unprotected by the taboo because she "belongs" to

him alone. As a result, a biblical taboo on father-daughter incest must be extrapolated from the text by analogy to the other forms of incestuous relations which are forbidden.

### 3. *Woman as Seductive and Wily*

The first-born of Lot's daughters said to the other:

"Come, let us make our father drink wine, and we will lie with him, that we may preserve offspring through our father." So they made their father drink wine that night; and the first-born went in, and lay with her father; he did not know when she lay down or when she arose. And on the next day, the first-born said to the younger, "Behold I lay last night with my father; let us make him drink wine tonight also; then you go in and lie with him, that we may preserve offspring through our father." So they made their father drink wine that night also; and the younger one arose, and lay with him; and he did not know when she lay down nor when she arose. Thus both the daughters of Lot were with child by their father.

—Genesis 19:32–36

This story of how Lot's daughters preserved their father's "seed" by violating the incest taboo adds female seductiveness to the biblical construct of woman in three ways. First, the story implies that daughters "want" to have sex with their fathers, despite the fact that such sexual relations are contrary to divine law as extrapolated from the Leviticus text by analogy. Second, the story transfers the act of seduction, the act of violating the incest taboo, from Lot to his daughters. This highly unlikely scenario sets the stage for a "blame the victim" attitude about female victims of sexual offenses, and it allows the true aggressor to escape guilt. Third, the story makes it clear that the preservation of the father's "seed" is more important than observing the taboo against father-daughter incest, a taboo which in the modern day provides justification of protection from parental abuse of authority and power.

### 4. *Woman as Submissive Wife*

In the New Testament, the hierarchy of male over female is further developed through images of the proper roles of husbands and wives in family life.

Be subject to one another out of reverence for Christ. Wives, be subject to your husbands, as to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, and is himself its Savior. As the church is subject to Christ, so let wives also be subject in everything to their husbands. Husbands, love your wives, as Christ loved the church . . . let each one of you love his wife as himself, and let the wife see that she respects her husband.

—Ephesians 5:21–25,33

This text calls for the wife's subordination to the husband "in everything" and for the husband to love his wife. The imbalance here is clear: women are to respond to men with submission and respect, while men, not bound by equivalent commands, are to act towards women with love.

Not only are women to be subordinate to men in this worldview, but men and women are also assigned immutably separate roles in life. The woman performs the role of procreating and nurturing in the private sphere of the home and family, while the man fills the role of governing and bearing authority, not only in the family but in the public world as well. The description of a woman's role in the New Testament limits her to household duties.

So I would have younger widows marry, bear children, rule their households, and give the enemy no occasion to revile us.

—1 Timothy 5:14

Bid the older women likewise to be reverent in behavior, not to be slanderers or slaves to drink; they are to teach what is good, and so train the young women to love their husbands and children, to be sensible, chaste, domestic, kind, and submissive to their husbands, that the word of God may not be discredited.

—Titus 2:3–5

A woman's main concern, as described by these passages, lies in the home. She is to remain at home, to be "domestic" or "keeper at home" so that she can properly fulfill her roles as wife and mother. Note that an integral part of this domesticity is chastity, which seems to function as a part of submissiveness to male authority.

Other gender-specific roles and attitudes outlined in the New Testament reinforce this division between the separate worlds of men and women.

Differences in dress and hairstyle, for example, are mandated to preserve the distinct character of both sexes (1 Corinthians 11:2–16). In the churches, men and women are assigned different roles: men are empowered to speak while women are to remain silent and speak only at home (1 Corinthians 14:33–35).<sup>42</sup> Women are compelled in 1 Peter 3:3–4 and 1 Timothy 2:11 to act with chaste, modest, and reverent behavior to express their submission to the men to whom they are subordinate.

### **C. Eve and Mary as Biblical Female Archetypes**

We have seen through our preliminary examination of biblical text how scripture, at least as traditionally interpreted, presents a model of woman as one who is generally subordinate to man and submissive, silent, and chaste in her role as wife and mother. If we further consider the images of two individual women in the Christian tradition—Eve and “The Virgin” Mary—we are presented with a reinforced patriarchal view of the nature of woman: bad in the image of Eve and good in the image of Mary.

Eve’s place in the creation story has already been addressed: she is born out of man, is a helper of man, subsumed by man, and named by man. Still, Eve’s role in the story of the Fall cannot be overemphasized. Although many Christians view the account as a nonliteral attempt by the religious leaders of the time to explain the origins of human pain and suffering,<sup>43</sup> “the fact is that the myth has projected a malignant image of the male-female relationship and of the ‘nature’ of women that is still deeply imbedded in the modern psyche.”<sup>44</sup> Thus, the patriarchal view of the bad woman as symbolized by Eve cannot be dismissed lightly as myth.

Most Christians understand the story of the Fall of Adam and Eve to represent original sin.<sup>45</sup> When Adam and Eve rebel against God in the Garden, they are consequently expelled from Godly Paradise into a world of pain and toil. Although both Adam and Eve will now suffer in a world tarnished by human sin, Eve is seen as primarily responsible and thus becomes the scapegoat for “man’s” earthly woes.

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<sup>42</sup> But see Talbert, *Biblical Criticism’s Role: The Pauline View of Women as a Case in Point*, in *The Unfettered Word* 62–71 (R. James ed. 1987) (interpreting Paul’s letter to the Corinthians as expressing outrage, not approval, of female silence in the church).

<sup>43</sup> But see S. Clark, *supra* note 31, for a literal view of the Fall.

<sup>44</sup> M. Daly, *supra* note 11, at 45.

<sup>45</sup> For the story of the Fall, see generally Genesis 3.

The story begins with God's command to Adam and Eve not to eat of the tree of (carnal) knowledge. The Serpent then enters the Garden and convinces Eve to eat of it. After Eve has disobeyed God and eaten the fruit, she gives some to Adam and he eats it too. Suddenly, Adam and Eve become aware and ashamed of their nakedness. When God appears to question Adam about his disobedience, Adam admits that he has eaten of the tree (i.e., sinned), but blames it on Eve:

The Lord God asked:

"Have you eaten of the tree of which I commanded you not to eat?"

The man said, "The woman whom thou gavest to be with me, she gave me fruit of the tree, and I ate."

—Genesis 3:11–12

Then God looks at Eve and also comes close to blaming her:

Then the Lord God said to the woman, "What is this that you have done?"

—Genesis 3:13

After Eve blames the Serpent, God curses the Serpent, the woman, and the man.

To the woman he said, "I will greatly multiply your pain in child-bearing; in pain you shall bring forth children, yet your desire shall be for your husband, and he shall rule over you."

—Genesis 3:16

And to Adam he said, "Because you have listened to the voice of your wife, and have eaten of the tree, of which I commanded you, 'you shall not eat of it,' cursed is the ground because of you; in toil you shall eat of it all the days of your life."

—Genesis 3:17

Thereafter, Adam and Eve were banished from the Garden forever, after which Adam had intercourse with Eve who conceived and gave birth to a son.

From the myth of the Fall comes an image of woman as associated with bodily evil. She is carnal, rebellious, and guilty. She is responsible for the Fall. She is a *femme fatale*, a temptress and seducer of man who remains



powerless against sin and temptation in her spell. Furthermore, she is to be justly punished by God for her sexuality, rebellion, and tarnishment of "man." She is cursed to bear children and to be ruled over by man. She will quite deservedly suffer pain.<sup>46</sup>

Lest we assume that this image of woman had no impact and was seen solely as a myth to explain *human* alienation from God, we are reminded by Tertullian, speaking for the early Church, of just how guilt-ridden woman was in the image of Eve.

Do you not realize, Eve, that it is you? The curse God pronounced on *your sex* weighs still on the world. Guilty, you must bear its hardships. You are the devil's gateway, you desecrated the fatal tree, you first betrayed the law of God, you softened up with your cajoling words the man against whom the devil could not prevail by force. The image of God, Adam, you broke him as if he were a plaything. You deserved death, [but] it was the son of God who had to die!<sup>47</sup>

For the church "fathers" after Augustine, woman was "the cause of the Fall, the wicked temptress, the accomplice of Satan, and the destroyer of mankind."<sup>48</sup> Moreover, women's penalty for being so fleshy and culpable was provided by God through the pains of childbirth, which further identified them with the evils of sex.<sup>49</sup>

The implications inherent in this view of the nature of woman—a nature thrust upon her by the biblical story of Eve—are truly dangerous. Mary Daly, suggesting that few realize the significant connection between sexual injustice and the creation myth,<sup>50</sup> proposes several effects; these include internalization of the oppressor, internalization of blame and guilt, anxiety over social disapproval, feminine anti-feminism, emotional dependence, self-hatred as directed from the male outward against the woman and as directed from the woman inward against herself, and continued victimization of women by both women and men.<sup>51</sup>

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<sup>46</sup> Although it will not be a focus of this paper, this text has also been used to justify the sexual division of labor. See M. Warner, *Alone of All Her Sex: The Myth and The Cult of the Virgin Mary* 52–53 (1976).

<sup>47</sup> M. Warner, *supra* note 46, at 58 (quoting Tertullian, *Disciplinary, Moral and Ascetical Works* (1959)) (first emphasis added, second in original).

<sup>48</sup> M. Warner, *supra* note 46, at 58.

<sup>49</sup> *Id.* at 57.

<sup>50</sup> M. Daly, *supra* note 11, at 46.

<sup>51</sup> See *id.* at 44–68 for a general discussion of the internalization and socialization effects of the myth and image of Eve on women and men.

Not only has the myth contributed to men's and women's internal psychological and emotional dysfunctioning, it has infiltrated our society at large.

The myth has in fact affected doctrines and laws that concern women's status in society and it has contributed to the mind-set of those who continue to grind out biased, male-centered ethical theories . . . . The myth undergirds destructive patterns in the fabric of our culture. Literature and the mass media repeat the "temptress Eve" motif in deadly earnest, as do the rationalizations for social customs and civil laws, such as abortion legislation, which incorporate punitive attitudes towards women's sexual function.<sup>52</sup>

The Christian "cure" for woman's Eve nature is presented by the patriarchal church through the image of the Virgin Mary, the "good" woman exalted in the Christian tradition. This leads to the "Eve/Mary split".<sup>53</sup>

[The woman] is warned that she is, by nature, Eve—that by being a woman she inherits insidious power allied with the evil one, which, if not subdued by submission and obedience to her father or husband, could contaminate and finally destroy humanity. However, if she renounces her fundamental Eve-like nature and embraces a life either of obedient virginity or submissive motherhood, she can save not only herself but also the fathers, husbands, and sons she serves. She becomes like Mary, immaculately conceived and safely sexless.<sup>54</sup>

For both men who judge women<sup>55</sup> and women who judge themselves, the polarities are clear. "[Woman's] 'Eve nature' justifies punishment . . . she can be raped, battered, dominated, exiled. When she is seen as 'Mary,' she is honored and patronized, protected but excluded from decision making, seen as pure but without passion."<sup>56</sup> Either way women are victims of patriarchal morality. And, in practice, they can never really be "good" because the inimitability of the virgin-mother model (literally understood) has left all women essentially identified with Eve.<sup>57</sup>

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<sup>52</sup> Id. at 45. Daly refers to L. Lader, *Abortion II: Making the Revolution* (1973) for "striking examples of this punitive attitude as implied in abortion legislation."

<sup>53</sup> C. Lore Weber, *WomanChrist: A New Vision of Feminist Spirituality* 87 (1987).

<sup>54</sup> Id.

<sup>55</sup> This Eve/Mary split may affect men by allowing them to think that they can be "good" men and rape women because there are two kinds of women, "good" and "bad"; that raping "bad" women is not "bad"; and that often for them, most women, being associated with Eve, are "bad."

<sup>56</sup> C. Lore Weber, *supra* note 53, at 87.

<sup>57</sup> M. Daly, *supra* note 11, at 82.

The image of Mary has its origins in Luke and Matthew's account of Jesus' conception and birth.<sup>58</sup> Matthew tells us:

Now the birth of Jesus Christ took place this way. When his mother Mary had been betrothed to Joseph, before they came together she was found to be with child of the Holy Spirit; and her husband Joseph, being a just man and unwilling to put her to shame, resolved to divorce her quietly. But as he considered this, behold, an angel of the Lord appeared to him in a dream, saying, "Joseph, son of David, do not fear to take Mary your wife, for that which is conceived in her is of the Holy Spirit; she will bear a son, and you shall call his name Jesus, for he will save his people from their sins." All this took place to fulfill what the Lord had spoken by the prophet: "Behold, a Virgin shall conceive and bear a son, and his name shall be called Emmanuel."

—Matthew 1:18–25

Whereas Matthew's sole intent seems to be to connect Jesus' birth to the Old Testament prophesy, Luke adds drama and poetry and enlarges Mary's role through accounts of the Annunciation, the Visitation, the Nativity, and the Purification.<sup>59</sup> Although Mary's special status as the mother of the God-Son has roots in the New Testament Gospels, it was primarily the Roman Catholic Church that was responsible for extolling her qualities of silence,<sup>60</sup> modesty, and self-effacement as a model for the female sex.<sup>61</sup>

When we consider the characteristics of the "good" woman as symbolized by the Virgin Mary, we find an enigma which has given rise to complex and confusing lines of religious doctrine, although most stress her glory as Mother of the Divine and her abstinence from normal sexual relations. For purposes of this paper, we will concentrate on those characteristics for which she is valued and ultimately exalted as a woman.

First, Mary is untainted by original sin (i.e., human sexual intercourse). According to some doctrines, she herself was conceived immaculately,

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<sup>58</sup> John, Mark, and Paul do not mention Jesus' virgin birth. The Roman Catholic Church later, adopted an official doctrine of the Immaculate Conception (i.e., not only was Jesus conceived without human intercourse, Mary herself was so conceived in order to be worthy of being the Mother of Christ; that is, she was unstained by original sin). Moreover, Mary, in the Roman Catholic tradition, remained a virgin after the birth of Jesus.

<sup>59</sup> See M. Warner, *supra* note 46, at 3–24 for an account of Mary's role in the Gospels.

<sup>60</sup> Mary speaks only four times in Luke and is silent in Matthew.

<sup>61</sup> M. Warner, *supra* note 46, at 179.

presumably in order to be worthy of carrying the Son of God. Her/God's son Jesus was then also conceived without the sin of sexual intercourse. Finally, Mary continued to live a life untainted by sexual relations; although married to Joseph, she supposedly always remained a virgin. The result is a model of a woman exalted because of her remoteness from physical passion and normal sexual relations.<sup>62</sup>

Second, Mary is Mother, submissive Mother at that, for she conceives not through an affirmative choice or act of her own but by an act of the Holy Spirit in relationship to whom she is simply a receptacle. Moreover, the exaltation of Mary as Jesus' mother suggests that she is "good" and valuable only through her relationship to a man (as his mother),<sup>63</sup> further promoting the goal for women of vicarious attainment of worth through men.

In sum, Mary is a representation of what patriarchy has traditionally exalted most in women. She is at once the obedient virgin and submissive mother, albeit only miraculously so. Finally, Mary does indeed stand alone amidst her sex, for she is an impossible model.<sup>64</sup>

The problem for most Christian women is not necessarily whether Mary was in fact a "Virgin" and conceived Jesus without "sin."<sup>65</sup> The problem, as Marina Warner articulates, is that:

[U]nlike the myth of the incarnate God, the myth of the Virgin Mother is translated into moral exhortation. Mary establishes the child as the destiny of woman, but escapes the sexual intercourse necessary for all other women to fulfill this destiny. Thus, the very purpose of women established by the myth with one hand is slighted with the other. The Catholic religion therefore binds its female followers in particular on a double wheel, to be pulled one way and then the other . . . . By setting up an impossible ideal, the cult of the Virgin does drive the adherent into a position of acknowledged and hopeless yearning and inferiority . . . .<sup>66</sup>

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<sup>62</sup> R. Hosmer, *Gender and God: Love and Desire in Christian Spirituality* 46 (1986).

<sup>63</sup> M. Daly, *supra* note 11, at 82.

<sup>64</sup> See *id.*

<sup>65</sup> Although it is the Catholic Church which is responsible for Mary's veneration, many Christians, Catholic and Protestant alike, accept the supernatural virgin birth of Jesus without much question. As Warner suggests, "[m]etaphysical mysteries must defy reason, for if the human mind could compass them, they would lose their sacred character. So Christ the God-Man and Mary the Virgin-Mother blot out antimony, absolve contradiction, and manifest that the impossible is possible with God." M. Warner, *supra* note 46, at 336.

<sup>66</sup> *Id.* at 336-37. Warner also adds that: "Mary's virginity underlines the pollution of intercourse; her freedom from the pangs of birth focuses exaggerated attention

Although Christian (particularly Catholic) women would likely be the ones most deeply affected by the Virgin Mother "good" woman image, it is certain that all women suffer in a patriarchal society where remnants of the Eve/Mary split are still visible; where virginity "as innocence" is still prized<sup>67</sup> and seen as an indication of a superior moral status; where women's sexuality remains suspect; where motherhood is still seen as a woman's highest honor and duty; where motherhood and sexuality are often viewed as incompatible traits; where women are still protected and raised on pedestals; and, finally, where women still find primary achievement vicariously through their relations to men, as mother or wife. We have seen the connection between biblical legends and ethics, "revealed" myths and society's morals. Unfortunately, society and its legal processes do not escape this interplay.

### **III. REPLICATION OF CHRISTIAN PATRIARCHY IN THE LAW: INCEST, DOMESTIC VIOLENCE, AND RAPE<sup>68</sup>**

The biblical representation of woman as subordinate to man operates to the detriment of women, both religious and non-religious, because it is replicated in the legal system. Our laws and the attitudes of the lawyers, judges, juries, and police who develop and enforce these laws, recreate a particular ideological view of relationships between men and women which embodies patriarchy.<sup>69</sup> Legal institutions define and reinforce gender roles by allocating to men and women different rights, responsibilities, and liabilities based on gender classifications that impute a subordinate role to women.<sup>70</sup> The law's treatment of violence against women and girls, especially when it occurs within the family, clearly illustrates this phenomenon. The extent to which the law upholds patriarchy and reinforces female inferiority can also be seen, for example, in the treatment of women in the areas of

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on them. In addition, the Church's teachings on contraception and abortion, which stem directly from the same misogynist ideas about women's role contained in the myth of the Virgin, exacerbate the terrors of sex and childbirth by maintaining pregnancy as a constant and very real danger." *Id.* at 338.

<sup>67</sup> Interestingly enough the Virgin Mary's virginity is often seen as a source of her power. Is it any wonder then that men's sexual fantasies (including rape) often involve "disempowering" women by attempting to take away this virginity?

<sup>68</sup> We realize that these are arbitrary names given to acts of violence against women. But for purposes of this paper, we will concentrate primarily on rape as it takes place outside the home and domestic violence and incest as they occur within the home.

<sup>69</sup> Freeman, *Violence Against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?*, 3 *Can. J. Fam. L.* 377, 378 (1980).

<sup>70</sup> See *id.* at 389.

employment and reproductive rights.<sup>71</sup> Because violence against women functions in a patriarchal society as a form of social control, the legal system, by failing to take violence against women seriously, aids and abets the continued existence of patriarchy. By blaming, disbelieving, and allowing the female victim of domestic violence, incest, and rape to blame herself for her victimization, the legal system reproduces and legitimizes women's inferior status as constructed in the traditional Christian worldview. In turn, the religious system "sacralizes" women's subordinate legal position and elevates social norms into divinely mandated moral paradigms.<sup>72</sup> Thus, religion and law, each in turn, legitimizes the other's patriarchal construction of woman.

Before examining how and why the legal system replicates the traditional Christian worldview's construct of woman by allowing violence against women to go essentially unchallenged, we must note briefly that the connection between patriarchy in religion and patriarchy in law forms the basis of the political agenda of today's New Religious Right. This agenda centers on the defense and advocacy of specifically patriarchal social relationships between men and women within both the family and society at large. It advocates the return to a "biblical morality" where women were wives and mothers, without access to careers and reproductive rights, and where men ruled both their homes and the world.<sup>73</sup> Thus, one way that the traditional worldview affects legal outcomes is its use by the religious/political Right to advance an anti-woman agenda. The restrictive laws enacted as a result of this movement affect all women, religious and non-religious alike.

### **A. Male Violence Within the Family: Incest and Domestic Violence<sup>74</sup>**

The patriarchal relationship between men and women mandated by the biblical texts we examined above is reflected in the law's historic denial of

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<sup>71</sup> See M. Daly, *supra* note 11, at 106-14; Fischer, *Liberating Work*, in *Christian Feminism: Visions of a New Humanity*, *supra* note 7, at 117, 125-40.

<sup>72</sup> See Radford Reuther, *Feminist Theology and Spirituality*, in *Christian Feminism: Visions of a New Humanity*, *supra* note 7, at 10.

<sup>73</sup> For an understanding of this religious/legal agenda, see A. Crawford, *Thunder on the Right: The New Right and the Politics of Resentment* (1980); J. Falwell, *Listen America!* (1981); R. Viguerie, *The New Right: We're Ready to Lead* (1981); R. Zwier, *Born-Again Politics: The New Christian Right in America* (1982).

For feminist analyses of the movement, see A. Dworkin, *Right Wing Women* (1983); P. Johnston Conover & V. Gray, *Feminism and the New Right: Conflict Over the American Family* (1983); K. Luker, *Abortion and the Politics of Motherhood* (1984).

<sup>74</sup> Our focus on these two kinds of male violence within the family is not meant to suggest that other forms of male violence within the family do not exist. Women

independent civil status to adult women.<sup>75</sup> As permanent dependents of fathers and husbands, women had few rights of their own at common law. Their right to inherit and transmit property, to sue and be sued, to testify in court and serve as jurors, and to participate in the political process, were all severely curtailed.<sup>76</sup> Likewise, the biblical view of the family, with its asymmetrical allocation of power and authority between husband and wife, has historically been recreated by laws which keep women confined to and subordinate within the family home.<sup>77</sup> By limiting women's access to employment outside the home, undervaluing and undercompensating their work done outside the home, not compensating the work done inside the home, and preventing access to contraceptives and abortion, the law has historically carried out the biblical ideal of separate spheres for men and women. This results in a family structure of male breadwinner and female homemaker. Thus, the ideology of both the biblical injunctions and the legal rules is the same: women are to be nonproductive, economically dependent, confined within the home, and kept outside of society.<sup>78</sup>

Connected to this replication of biblical family norms in the law is the religious and legal view of the family as sacrosanct and the basic building block of society. Until recently, family life has been construed as private and not the proper subject of legal regulation, so long as it conformed to patriarchal norms. The biblical concept of male ownership of female is replicated in the law to the extent that husbands have been given complete authority to control their wives and children. An integral part of this authority has been the right, legitimated by law, to use violence against one's wife as a means of controlling her and the right to use one's daughters sexually without serious fear of legal ramifications. American and English common law, for example, gave husbands the legal right to physically discipline their wives.<sup>79</sup> The expression "rule of thumb" derives from the rule that a husband had a legal right to beat his wife so long as he used a stick no thicker than his thumb.<sup>80</sup> Blackstone put it this way:

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face many forms of violence within the family, including rape, psychological and emotional abuse, economic coercion and theft, and coerced loss of autonomy and potential for self-fulfillment.

<sup>75</sup> Radford Ruether, *The Western Religious Tradition and Violence Against Women in the Home*, in *Christianity, Patriarchy, and Abuse: A Feminist Critique*, supra note 3, at 31.

<sup>76</sup> See *id.*

<sup>77</sup> Freeman, supra note 69, at 389.

<sup>78</sup> See *id.* at 385.

<sup>79</sup> Brady, *The Illinois Domestic Violence Act of 1986: A Selective Critique*, 19 Loy. U. Chi. L.J. 797, 798 (1988).

<sup>80</sup> See *id.* at 799.

The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentice or his children, for whom the master or parent is also liable in some cases to answer.<sup>81</sup>

An excerpt from a late nineteenth-century opinion of the Supreme Court of North Carolina makes clear that the law was reluctant to regulate this violence because it took place in the private sphere of the home. "If no permanent injury has been inflicted, nor malice, cruelty, nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forgive and forget."<sup>82</sup>

In the present day, statutes which prohibit domestic violence and incest exist,<sup>83</sup> but go largely unenforced for two reasons. First, the lawyers, police, judges, and juries charged with carrying out the law are impaired by patriarchal attitudes about a woman's subordinate status in society. Second, the female victims themselves, having internalized this debilitating definition of their role, often do not seek legal remedies for their injuries. Patriarchal assumptions, as created by religion and law, thus strip women of the power to name their oppression, to challenge the construction of female subordination as morally and legally normative, and to create alternative ways of being.

### 1. Incest

Father-daughter incest often goes unreported, unprosecuted, or unpunished<sup>84</sup> because the legal system replicates the biblical view of female

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<sup>81</sup> Freeman, *supra* note 69, at 399 (quoting 1 W. Blackstone, *Commentaries* 444).

<sup>82</sup> Brady, *supra* note 79, at 799 (citing *Thurman v. City of Torrington*, 595 F.Supp. 1521 (D. Conn. 1984)).

<sup>83</sup> For a comprehensive state-by-state list of incest statutes and parallel statutory rape statutes, see J. Herman, *Father-Daughter Incest* 221-59 (1981). For a state-by-state analysis of the civil protection order statutes, see Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 *Fam. L.Q.* 43, 60-67 (1989).

<sup>84</sup> While difficult to estimate, the percentage of incest cases which reach the stage of a formal complaint range from 3% to 17%. See J. Herman, *supra* note 83, at 164. The likelihood that arrest, prosecution, conviction, and imprisonment will result from filing a complaint is very low. In a study of 250 police reports of sexual abuse of children in New York City, the majority of cases (75%) did not lead to arrest, or the accused was arraigned but never brought to trial (44%). Reasons for dismissing the cases included lack of corroborating evidence or the prosecutor's judgment that the child would not make a good witness. In this study, 38 men pleaded guilty to lesser



submission and ownership by males. It does this by disbelieving the female victim's account of abuse and reallocating blame for it from the male perpetrator to either the female victim herself or to her mother. The religious, legal, and psychiatric views of incest are marked by a belief in the "Seductive Daughter" and the "Collusive Mother."<sup>85</sup> Like Eve and Lot's daughters, the female victim of incestuous assault is construed as the temptress and blamed for her father's sexual abuse. Medical literature on incest, following Freud's theory that father-daughter incest was either a sexual fantasy of young girls or an acting out of this fantasy,<sup>86</sup> has ascribed initiative for sexual incidents almost entirely to the daughter. D. James Henderson, an authority on incest, thus describes the daughter's role in a major psychiatry textbook:

The daughters collude in the incestuous liaison and play an active and even initiating role in establishing the pattern. The girls . . . welcome their fathers' advances as expression of parental love. . . . [T]he incestuous daughter is unlikely to report the liaison at first or to protest about it. If she eventually does, it is as much precipitated by anger at her father for something else or jealousy of his relationship with another woman, as a real objection to his incestuous behavior.<sup>87</sup>

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charges, and 15 were found guilty after trial. Of these 53 men (21% of original pool), over half (30) were given fines or suspended sentences. Only 23 men (9%) were sentenced to prison, a majority for one year or less. *Id.* at 167 (citing V. DeFrancis, *Protecting the Child Victim of Sex Crimes Committed by Adults*, 181-94 (1968)).

<sup>85</sup> *Id.* at 36. The "Collusive Mother" is based on the theory that father-daughter incest can be blamed, if not on the daughter's seductive ways, then on her mother's refusal to be a "good wife" and have sexual relations with her husband, thus "driving" him to sexually use his daughter.

<sup>86</sup> *Id.* at 9-10.

<sup>87</sup> *Id.* at 40 (quoting Henderson, *Incest in Comprehensive Textbook of Psychiatry* (A.M. Freedman, H.I. Kaplan, B.J. Sadock eds. 2d ed. 1975)). A similar view was put forth by Dr. Laurretta Bender, a leading child therapist:

These children undoubtedly do not deserve completely the cloak of innocence with which they have been endowed. . . . The history of the relationship in our cases usually suggested at least some cooperation of the child in the activity, and in some cases the child assumed an active role in initiating . . . . [A] most striking feature was that these children were distinguished as unusually charming and attractive . . . . Thus it is not remarkable that frequently we considered the possibility that the child might have been the actual seducer rather than the one innocently seduced.

*Id.* at 39.

It should not surprise us, therefore, that the legal system apportions blame to the daughter instead of the father.<sup>88</sup> Attempts by the incest survivor to disclose the abuse or to expose the perpetrator usually end up exposing the girl's alleged sexual motives and guilt. The experience of one survivor at the police station where she reported an incestuous assault exemplifies this underlying attitude:

[We] went to the police. They asked if I hadn't imagined the whole thing, if I hated my uncle [the abuser], what I was wearing, and they acted like I tried to tempt him. I was only ten years old.<sup>89</sup>

Construing the daughter as seductive and therefore guilty for causing her own abuse inappropriately apportions the blame for incest. No matter what the child's fantasies or behavior, the adult should be legally responsible if sexual interactions occur. Because no other adult crimes are attributed to the reason that "the child wanted me to do it,"<sup>90</sup> it is clear that something else is operating here: patriarchal assumptions about male ownership of women and a father's right to use female members of his family, especially his daughters, as he sees fit.<sup>91</sup>

In addition to blaming the victim, the legal system replicates biblical norms of female subordination by disbelieving the incest victim's report of her abuse. Wigmore's *Treatise on Evidence* sets forth a doctrine impeaching the credibility of any female, especially a child, who complains of a sex offense.<sup>92</sup> Suggesting that these complaints are based in the victim's imagination rather than in fact, Wigmore recommended that a psychiatrist examine

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<sup>88</sup> The image of the "Seductive Daughter" and its guilt reversal is prevalent in male-oriented pornography. This excerpt is illustrative:

Our sexual encounter began innocently enough. I was explaining the facts of life to her. If you could have seen her at 13—her young body in the bloom of womanhood, her soft blond hair cascading in ringlet curls down to her shoulders, her face as sweet and pretty as could be—you would understand how it happened. I couldn't help but get aroused as I explained sexual intercourse to her, and I suddenly realized that a visible erection was bulging inside my pants. As I was explaining to her how a man's penis enters a woman's vagina, she glanced at my pants and said teasingly, "Why don't you show me, Daddy?"

Id. at 38.

<sup>89</sup> F. Rush, *The Best Kept Secret: Sexual Abuse of Children* 148 (1980).

<sup>90</sup> Coleman, *Incest: A Proper Definition Reveals the Need for a Different Legal Response*, 49 Mo. L. Rev. 251, 267 (1984) (quoting L. Sanford, *The Silent Children* 162-64 (1980)).

<sup>91</sup> J. Herman, *supra* note 83, at 49.

<sup>92</sup> 3A Wigmore, *Evidence* § 924a (Chadbourn rev. 1970).

any female complainant to determine her credibility.<sup>93</sup> Many states require that a child's accusation of incest be corroborated by testimony of a third party.<sup>94</sup> However, sexual abuse of girls rarely takes place in the presence of witnesses, so this requirement effectively makes prosecution of these cases impossible. Again, as in the "blame the victim" phenomenon, the disbelief of a victim's uncorroborated report of abuse is based upon patriarchal assumptions about a female's sexual guilt and seductiveness. Our legal system allows a robbery victim's uncorroborated testimony to support a complaint and conviction, but in cases such as incest where the victim is most often female and where a male's right to use his "property" is challenged, this rule is not valid and a higher standard of proof must be met.

The survivors of incest often internalize these religious and legal assumptions about their guilt for the abuse. In addition to the well-documented psychological harm that incest and guilt reversal causes, these internalized assumptions also prevent many girls and women from reporting the incest. As one survivor explained:

I was raised to think that men can't help it if they are aroused by women and it's our responsibility. We are sexy, fleshy things to tease poor men who are out of control. I just feel fleshy and dirty.<sup>95</sup>

As long as a survivor feels "responsible" for her father's sexual offenses, and as long as this is reinforced by religion and the legal system, it is unlikely that incest will be reported and prosecuted to the appropriate extent.

## 2. Domestic Violence

The dynamics of the patriarchal power imbalance in the family, as set out by the Bible and as supported by the legal system, have a similar effect on the treatment of domestic violence.<sup>96</sup> Traditionally, the criminal justice

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<sup>93</sup> J. Herman, *supra* note 83, at 11.

<sup>94</sup> The need for corroboration has been upheld in *United States v. Ashe*, 427 F.2d 626, 628-29 (D.C. Cir. 1970); *Wilson v. U.S.*, 271 F.2d 492, 493 (D.C. Cir. 1959).

The Texas Court of Criminal Appeals has repeatedly overturned incest convictions by characterizing the daughter as an accomplice when the convictions rest solely on the uncorroborated testimony of the victim. The accomplice testimony rule requires that the daughter's testimony be corroborated to sustain the conviction. See *Bolin v. State*, 505 S.W.2d 912, 913 (1974); Note, *Characterization of the Daughter as an Accomplice in Incest Prosecutions: Does Texas Immunize the Father?*, 20 *Hous. L. Rev.* 1129 (1983).

<sup>95</sup> As quoted in F. Rush, *supra* note 89, at 146.

<sup>96</sup> For the purposes of this paper, domestic violence is defined as "a malevolent act by one family member against another with the intent of causing physical, sexual,

system has treated domestic violence as a private family matter: police fail to arrest the batterer, prosecutors fail to prosecute, and judges and juries are lenient toward those batterers who are tried in court. The legal system ordinarily does not recognize the moral equivalence of violence between husband and wife and violence between strangers. It was not until 1984, in *Thurman v. City of Torrington*,<sup>97</sup> that these two kinds of violence were equated. In *Thurman*, the plaintiff, an abused wife for many years, successfully sued the local police department for violation of her right to equal protection of the laws on the ground that the police gave less attention and protection to battered women than to victims of violence by strangers. A battered woman's chance of receiving help from the legal system is seriously impaired because those charged with carrying out the laws function under the patriarchal assumptions of female submission to male. Police departments generally operate under the assumption that domestic violence is a private matter to be resolved in the home and not a serious criminal problem, because the male is the head of his household and has the ultimate authority there. Police give abuse calls low-response status, fail to arrest the abuser or to remove him from the home at the victim's request, and often fail to notify the victim of all her legal rights.<sup>98</sup> Police departments usually use a "mediation" technique to deal with domestic abuse cases, very often taking the abuser on a "walk around the block."<sup>99</sup> Some state laws permit arrest in domestic violence cases only when the police officer has probable cause to believe that a felony has been committed or when the officer actually has witnessed a misdemeanor; other laws allow warrantless arrests not only in case of a felony or witnessed misdemeanor, but when an officer has probable cause to believe that a misdemeanor has been committed, that a restraining order has been violated, or both. Only a small minority of states have mandatory arrest laws.<sup>100</sup> The officer's decision concerning the arrest of a batterer is affected by patriarchal assumptions about women's role both in

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or psychological damage." L. Karp & C. Karp, *Domestic Torts: Family Violence, Conflict, and Sexual Abuse* 1 (1989). This paper focuses on male violence toward female family members. Incest and rape, though analyzed separately, are forms of domestic violence as well.

<sup>97</sup> 595 F. Supp. 1521 (D.Conn. 1984).

<sup>98</sup> Note, *The Minnesota Domestic Abuse Act: Family Court Jurisdiction Over Family Violence*, 9 Hamline L. Rev. 525, 537 n.63 (1986) (citing U.S. Comm'n on Civil Rights, *The Federal Response to Domestic Violence* 23-27 (1982)).

<sup>99</sup> See *id.* at 537.

<sup>100</sup> Note, *Mandatory Arrest for Domestic Violence*, 11 Harv. Women's L.J. 213, 214 (1988).

the family and as victims of violence. Thus, leaving arrest in domestic violence situations to the officer's discretion, as is the case in most states, often results in a failure to arrest the batterer. One New York City police officer relates this anecdote:

I had a call and this guy was beating his wife up. My partner took me outside and said, "[L]ook, son. I'm going to tell you something. I've been married probably longer than how old you are." He said, "[M]y wife feels as though I don't love her anymore, so at least once a month, I start an argument, I slap her around a little bit, and we have a perfect marriage. I've been married thirty-five years."<sup>101</sup>

This attitude not only prevents arrests when they might be appropriate, but also is communicated to the victim and reinforces her victimization by allocating blame for the violence to her and by refusing to acknowledge her actual situation. As one victim stated:

Each time they [the police] come they said, "Okay, be a good wife, you can fix it, why are you trying to break up the family. He'll just go find himself another wife."<sup>102</sup>

If the batterer is arrested, prosecutors often do not charge the abuser with the most serious offense possible and often do not prosecute at all.<sup>103</sup> Should the case go to trial, it is likely that the judge and jury will not take the charges seriously. For example, Pamela Nigro Dunn, a victim of prolonged domestic abuse who was eventually kidnapped, shot, stabbed, strangled, and left dead in the town dump by her husband, was rebuffed by the judge in the District Court, in Somerville, Massachusetts, where she sought a protective order. The judge "scolded her for seeking judicial intervention and for wasting his time in court, and although he granted a restraining order, he denied her request for increased protection."<sup>104</sup> Often, judges will ask defendants in domestic violence cases to "tell their whole story," inviting the batterer to justify his violence by explaining how the female victim caused him to beat her.<sup>105</sup> This suggests that the batterer's "explanation" for his violence is a legally sufficient reason for the court to condone it and therefore to allow the batterer to escape conviction or to receive a light punishment.

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<sup>101</sup> Note, *Protecting Battered Women: A Proposal For Comprehensive Domestic Violence Legislation in New York*, 15 *Fordham Urb. L.J.* 999, 1021 n.139 (1987) (no citation included).

<sup>102</sup> See *id.* at 1021 n.140.

<sup>103</sup> Note, *supra* note 98, at 538 n.72.

<sup>104</sup> Note, *Judging Domestic Violence*, 10 *Harv. Women's L.J.* 275 (1987).

<sup>105</sup> *Id.* at 283.

Finally, the fact that the victim often stays in the abusive situation provides a useful rationalization for the legal system's inadequate handling of the problem. However, this type of response ignores the fact that it is the patriarchal system itself that perpetuates both male violence in the home and female inability to leave the home and flee the violence. Many women cannot leave because they are economically dependent on the male breadwinner; many of them, because they have been fulfilling their biblically sanctioned role as wife, mother, and homemaker, lack the financial resources and marketable skills that would make them self-sufficient. Even women who are financially independent of their husbands share an inability to flee male violence in the home due to "Battered Woman Syndrome" which affects women of all economic backgrounds.<sup>106</sup> For these reasons, women compel themselves and are compelled by others to stay in abusive situations. The use of male violence as a source of social control, supported as it is by religion and the law, succeeds in keeping women in their place.

## **B. Male Violence Outside the Family: The Case of Rape<sup>107</sup>**

In this section, we turn to an examination of rape as an expression of male violence against women outside of the home.<sup>108</sup> We consider how the legal process of addressing rape reflects deeply internalized religious beliefs which result in detrimental legal outcomes for women. The effect is two-fold. On the one hand, we see religiously derived attitudes operate on an explicit level in the so-called marital exemption for rape.<sup>109</sup> On the other hand,

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<sup>106</sup> L. Karp & C. Karp, *supra* note 96, at 25.

<sup>107</sup> This is not to suggest that other forms of violence do not exist outside the home. There are many, including pornography, sexual harassment in public and in the workplace, violence against women in advertising, gender stratification in the labor market, and violence against women in popular culture (e.g., television, motion pictures, etc.).

<sup>108</sup> Although we will concentrate on rape primarily as it occurs outside of the home, we do not intend to discount the seriousness of rape, either broadly or narrowly defined, within the home.

<sup>109</sup> Like incest and domestic violence, the law's treatment of marital rape reflects the traditional Christian view of woman as the property of her husband. Historically, the marital rape exemption has provided that a husband could not ordinarily be charged with raping his wife. In language that reflects the biblical construct of a man's dominion over woman in marriage, Lord Hale explains that the husband and wife are one, and that the wife is the property of the husband: "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual contract the wife hath given up herself in this kind unto her husband, which she cannot retract." M. Hale, *The History of the Pleas of the Crown* 629 (1780).

and perhaps more importantly, Christian attitudes infiltrate the legal process in a more subtle way—through the internalization of religious beliefs about the nature and role of woman and her relationship to man. The implications of the metaphysical ground rules set forth in Genesis extend beyond the letter of specific laws that regulate the when and how of intercourse and deeply underlie the attitudes and operation of our legal system.<sup>110</sup> Thus, we will consider the extent to which religious socialization infiltrates and goes beyond the letter of the law to affect the way victims, police, prosecutors, defendants, judges, juries, and legislators view and react to rape. We will address several problematic areas that arise in the legal process: 1) the focus on a woman's consent; 2) the tendency to blame the victim and attack her credibility; and 3) the reluctance of victims to report or prosecute rape, as well as the system's failure to pursue complaints fully.

Rape is generally understood as sexual intercourse engaged in by force, against the will and without the consent of the victim.<sup>111</sup> The problems involved in defining consent and in proving the victim's nonconsent are unique to rape law. Historically, a woman was required actively and physically to resist the rape in order to prove her lack of consent. This harsh requirement focused on the act of the victim, not the offender, and unduly endangered the woman whose life was threatened by the rapist. Consequently, many states revised their rape statutes and now claim to focus on the element of force.<sup>112</sup>

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This harsh view of woman as the property of man may seem to have softened somewhat since the seventeenth century. In the modern view, it might be seen as ownership through consensual transfer. However, this philosophy of irrevocable consent to the husband's dominion is tantamount to ownership. It allows men who rape their wives to be protected by laws conditioned by the biblical view of female subordination to male in marriage. Although some progress has been made to the extent that rape in marriage under certain circumstances is a criminal act, at least forty states still have some form of marital exemption for rape. See J. Kaplan & R. Weisberg, *Criminal Law: Cases and Materials* 1064 n.11 (1986). See also *People v. Liberta*, 64 N.Y.2d 152 (1984) (husband can be liable for raping his wife when they are apart); Model Penal Code § 213.1(1) (1962) ("male who has sexual intercourse with a female *not his wife* is guilty of rape if . . . [conditions]" (emphasis added)). The biblically sanctioned model of male dominance over women still stands as an impediment to legal reform in the area of marital rape. Our legislative process does not escape this influence, as evidenced by the comment of California state senator, Bob Wilson, "But if you can't rape your wife, who can you rape?" A. Dworkin, *Intercourse* 166 (1987) (citing D. Russell, *Rape in Marriage* 18 (1982)).

<sup>110</sup> A. Dworkin, *supra* note 109, at 164.

<sup>111</sup> This article concentrates on male-female rape although we acknowledge that male-male rape occurs.

<sup>112</sup> See S. Estrich, *Real Rape* 57-71 (1987).

Nonetheless, the issue of nonconsent continues to underlie the definition of rape<sup>113</sup> and plays a critical role in the determination of whether sufficient evidence of force exists to charge or convict. As Susan Estrich explains:

For many courts, force is the key to making a simple rape criminal, but force—even force that goes far beyond the physical contact necessary to accomplish penetration—is not itself prohibited. What is required, and prohibited, is force used to overcome female *non-consent*. The prohibition of “force” or “forcible compulsion” ends up being defined in terms of a woman’s resistance.<sup>114</sup>

This ever-present element of nonconsent or resistance presents a particularly difficult problem for women (and men) socialized by traditional Christian religious beliefs. According to the traditional view, it is not a woman’s moral prerogative to resist. Rather, as previously illustrated, women are to be submissive and nonresistant, deferring to men in light of their divinely sanctioned subordinate position.

These scriptural directives have obvious implications for the married woman who is raped by her husband; the married woman is explicitly directed to submit to her husband who is head of the household. But the effect of scriptural directives extends further to all women as they are socialized to be “feminine.” They are trained to be kind, chaste, submissive, deferential, modestly dressed, non-confrontational, and nonresistant. As they internalize and externalize these qualities in their developmental process, their subordinate position is reinforced. First told that they are supposed to submit, in the end, they are left equipped to do little else *but* submit:

Force, or the threat of force is the method used against her, and a show of force is the prime requisite of masculine behavior that she, as a woman, has been trained from childhood to abjure. She is unfit for the contest. Femininity has trained her to lose. According to the odds, she is three inches shorter and 24 pounds lighter than her male assailant. This works to her disadvantage psychologically as well as physically, but worse than the difference in size is the life-long difference in mental attitude toward strength. He has been encouraged from childhood to build his muscles and toughen his fists.

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<sup>113</sup> The Model Penal Code, although focusing on the male act of force, contains the underlying assumption that the woman does not consent. Rape is found where the man “*compels her to submit by force . . .*” Model Penal Code § 213.1(1) (1962) (emphasis added). The woman submits (consents) involuntarily—because of force.

<sup>114</sup> S. Estrich, *supra* note 112, at 60 (emphasis added).



She has been encouraged to value soft skin, her slender wrist, her smooth, unmuscled thigh and leg. His clothing gives him maximum mobility. His shoes are sturdy; thick heels give him power. Her clothing hampers free movement by design, and fragile materials add to her vulnerability. One yank and her blouse is ripped. One stumble and her stockings are torn. Her skirt allows for easy access. One gesture, one motion and she is humiliatingly exposed. Her flimsy shoes have straps that break and heels that come loose. She cannot run.<sup>115</sup>

The frequent result is supported by statistics: women/victims who face threats to their life and well-being are often unwilling to fight or resist.<sup>116</sup> Often women believe that they are merely following the rules set up for them by society.<sup>117</sup> A rape victim testified:

I was raped when I was 17 by my fiancé the night before he was due to ship out with the Navy. Up to then I had tried to be everything he wanted according to the religious, social and moral codes by which both of us had been raised. I played the expected role throughout our engagement, deferring to him in judgment, in conversation, even in the way I dressed. I was sedate, demure, humble, submissive—and a virgin. He kept begging me to have intercourse and I kept saying, "No, not yet. It's not right." On our last date he pushed me in the back of his car and held me. I just gave up. After all, wasn't I supposed to defer to him in everything?<sup>118</sup>

We have seen that women have been taught to be submissive and deferential and consequently are often ill-equipped to resist. Yet the law requires them to resist when they are being raped. It requires evidence that the woman did resist, at least to the extent necessary to show that the rapist used force against her. Thus, although the legal inquiry may have moved to "force" from "consent," the issue is still one of women's resistance. The law fails to take account of the many forces acting against women's ability to resist, in particular the forces of Christian-influenced socialization. Thus, it is critical to consider whose understanding and definition of force should apply.<sup>119</sup> Historically, it is clear that it has been the man's.

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<sup>115</sup> S. Brownmiller, *Against Our Will: Men, Women and Rape* 402–03 (1975).

<sup>116</sup> *Id.* at 403 (citing M. Amir, *Patterns in Forcible Rape* 169 (1971)).

<sup>117</sup> *See id.*

<sup>118</sup> *Id.* at 393 (no citation included).

<sup>119</sup> S. Estrich, *supra* note 112, at 60.

The problems of blaming the victim, attacking her credibility, and general underreporting of the crime were noted in the previous discussion of domestic violence and incest cases. For many of the same reasons and reflecting the same biblical underpinnings, these patterns appear in rape.

The "blame the victim" phenomenon operates in rape cases in much the same way as in domestic violence and incest cases—the victim blames herself, while other legal operators scrutinize her clothing, behavior, attitude, and demeanor to assess her innocence. The biblical themes of female guilt, carnality, and temptation reappear in the law in juxtaposition to injunctions on chaste behavior and dress. The result is clearly illustrated by one victim's testimony:

For years afterward I felt it was my fault. I tried to figure out what had made him follow me. Was it the clothes I was wearing or was it my walk? It *had* to be my fault, you see? I was only a child—an innocent child, but I was ashamed for a long time.<sup>120</sup>

Judges, in turn, often reinforce and validate the woman's sense of guilt through opinions reflecting how their own beliefs about women's proper behavior justify blaming the victim when she acts improperly: "It is the height of imprudence for any girl to hitch-hike at night. That is plain, it isn't really worth stating. She is in the true sense asking for it."<sup>121</sup>

Under the common law, a woman's prior sexual history was often used against her to discredit her and to show how her "unchastity" somehow warranted the act. (Recall that Eve as a sexual or "unchaste" woman was deserving of God's punishment.) Although modern enactments of rape shield statutes in many states act *formally* to prevent this means of blaming the victim, the woman's status (her physical appearance, occupation, class, race) and her behavior prior to the rape can contribute to labeling her a "bad" woman who is either lying or deserving of rape. This process of judgment and condemnation begins with the police and continues with judges and juries.

A 1978 Philadelphia study illustrates how certain types of rape victims are likely to have their complaints dismissed. These include women who go willingly somewhere with the rapist, women who know or have dated the offender, poor women, women of color, prostitutes, those dependent on alcohol or drugs, and those who have had psychiatric treatment. Women who are runaways or who have had previous trouble with the police are also less

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<sup>120</sup> S. Brownmiller, *supra* note 115, at 404 (no citation included).

<sup>121</sup> C. Smart, *supra* note 2, at 35 (citing P. Patullo, *Judging Women* 18–21 (1983) (quoting statement by Judge Bertrand Richards, 1982)).

likely to be taken seriously, as are those who report the rape themselves instead of having a friend or family member do so. Finally, two out of three obese women have their complaints dismissed.<sup>122</sup>

The tendency to blame victims is closely linked to the legal community's general distrust of women's testimonies. Because a woman is so blameworthy and naturally seductive (recall Eve tricking Adam in the Garden), the community tends to believe that she has somehow precipitated the event even if it believes the rape did occur. The goal of laws designed to corroborate the victim's testimony is to protect the man falsely accused of rape by the evil woman.

The connection between religion and law in this area could not be closer. The major rape story in the Bible is that of Potiphar's wife (Genesis 39:6–20). She made sexual advances to her slave and falsely accused him of rape after he rejected her. This story reflects the historical and primary concern of the "rapacious man"—that a vengeful woman might lie and create havoc for a fine, exemplary man.<sup>123</sup> The almost identical message was repeated by Sir Matthew Hale who, like Wigmore, cautioned against the danger of false accusations: "[rape] is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho ever so innocent."<sup>124</sup> Although this attitude is less explicitly expressed in modern times, it continues to play a part in the prosecution of rape cases, beginning with the police, who often disbelieve a victim's story. One woman recounts her experience:

I went to the police station and said, "I want to report a rape." They said, "Whose?" and I said, "Mine." The cop looked at me and said, "Aw, who'd want to rape you?"<sup>125</sup>

The disbelief continues during the rape trial—if a trial ensues—as the prosecution tries to prove that the woman is telling the truth. Often the woman feels as if she is on trial. One woman testified:

I don't understand it. It was like I was the defendant and *he* was the plaintiff. I wasn't on trial. I don't see where I did anything wrong. I

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<sup>122</sup> Taylor, *Rape and Women's Credibility: Problems of Recantations and False Accusations Echoed in the Case of Cathleen Cromwell Webb and Gary Dotson*, 10 Harv. Women's L.J. 59, 92–94 (1987) (citing T. McCahill, L. Meyer & A. Fischman, *The Aftermath of Rape* 105–108 (1979)).

<sup>123</sup> S. Brownmiller, *supra* note 115, at 13.

<sup>124</sup> M. Hale, *supra* note 109, at 635.

<sup>125</sup> S. Brownmiller, *supra* note 115, at 408 (no citation included). This comment also reflects the policeman's confusion about what rape is. Rather than an act of violence against a woman, he sees it as a "normal" sexual act precipitated by the woman's physical attractiveness.

screamed. I struggled. How could they have decided that he was innocent, that I didn't resist?<sup>126</sup>

A conservative estimate indicates that in 1973 four out of five rapes went unreported.<sup>127</sup> A mid-1970s study confirmed that among the reasons women don't report rape or prosecute claims are their dread of the courtroom trauma and their fear that the man's denial would be believed.<sup>128</sup>

Thus, it is clear that the legal system's treatment of incest, domestic violence, and rape replicates the biblical model of "woman" as defined by traditional patriarchal Christianity, resulting in grave consequences to the female victim/survivor. We now turn to examine the alternative.

#### IV. THE CHRISTIAN FEMINIST WORLDVIEW: "WOMAN" IN THE BIBLE

Recently these patriarchal assumptions have been unmasked and challenged by the rise of both feminist liberation theology and the women's liberation movement. The insights of feminism and its demands for liberation and societal change have opened new patterns of organizing family and public life which threaten the long accepted tradition of male-dominant patterns of authority.<sup>129</sup> The feminist demand that women be viewed as individuals with rights both in the home and in the public world threatens the traditional conception of the family in Western religious and legal thought: a conception which defines men as leaders of their family whose primary rights and responsibilities lie in the public sphere and women as wives and mothers acting within the family.<sup>130</sup> The increase in accepted American family structures from the ideal of a traditional family (male breadwinner, female wife-mother, and several children) to include families in which both parents are employed outside the home, one parent families (headed most often by women), and gay and lesbian families (often including adopted or

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<sup>126</sup> Id. at 418.

<sup>127</sup> Id. at 190. More recently, Rebecca Haggerty, rape counselor at the Brooklyn Women's Anti-Rape Exchange stated that "fewer than 10% of women who are the victims of rape actually report it." Melodie Bahan, spokeswoman of the New York Chapter of the National Organization for Women, claimed that "rape is the most underreported crime in the country." N.Y. Daily News, April 17, 1991, at 3.

<sup>128</sup> Taylor, *supra* note 122, at 93 (citing L. Holstrom & A. Burgess, *The Victim of Rape: Institutional Reactions* 58 (1978)).

<sup>129</sup> R. Quebedeaux, *By What Authority: The Rise of Personality Cults in American Christianity* 159 (1982). (The Moral Majority believes that the restoration of traditional patterns of authority in the home will cure the present crisis of authority.)

<sup>130</sup> P. Johnston Conover & V. Gray, *supra* note 73, at 3.

biological children) has made this threat very visible in recent years.<sup>131</sup> When options multiply and traditional ways of ordering family life are no longer the only available ones, a crisis of individual and social identity ensues.<sup>132</sup> Christian fundamentalism and its right-wing politics have emerged in response to the intense conflicts in worldviews created by feminist demands and by the changes they engender. Christian fundamentalism champions the restoration of both the male minister's authority in the church and the husband's authority in the home.

The fundamentalist drive to make the male-female power relationship embodied in the traditional Christian family normative for American society should not shock us. It merely articulates historical male and female roles in religion and society, roles which went largely unquestioned until feminism challenged destructive hierarchies of relationship based on gender.

A Christian feminist response to the traditional image of woman includes several elements: 1) a view of scripture as historically and culturally conditioned; 2) a focus on the principal figure of Christianity—Jesus of Nazareth—and his association with and treatment of women; 3) a reconstruction of women's spiritual heritage and use of extra-canonical literature; and 4) attention to woman-empowering language and symbol through the inclusion of feminine god-language and divine imagery.<sup>133</sup> The starting point for Christian feminism is the affirmation that God embraces, dignifies, and elevates the personhood of woman as much as that of man; woman is equal as *imago dei* (image of God) and not beneath or subordinate.<sup>134</sup> The result of Christian feminism is a new model of woman who is a subject defining herself instead of an object of man's patriarchal definition. Misconceptions derived from traditional religious beliefs about woman's "proper" or "God-given" role are revealed as patriarchal constructs and therefore can no longer be used to justify the present system. This effort in feminist hermeneutics

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<sup>131</sup> See David, Moral and Maternal: The Family in the Right, in *The Ideology of the New Right* 136, 137 (R. Levitas ed. 1986).

<sup>132</sup> Heinz, *The Struggle to Define America*, in *The New Christian Right: Mobilization and Legitimation* 133, 142 (R. Liebman & R. Wuthnow eds. 1983).

<sup>133</sup> "Christian feminism" is a general term signifying an attempt to reconcile Christianity and feminism. Other more broadly used terms are "womanist theology" and "feminist liberation theology." Consequently, it encompasses many individual experiences and approaches, and as used in this article is not intended to reflect any one particular method. The elements we have listed are common components of most reconciliation attempts. They are not exclusive, exhaustive, nor are all of them always essential. We will focus on the first two elements.

<sup>134</sup> Radford Ruether, *Feminist Theology and Spirituality*, in *Christian Feminism: Visions of a New Humanity*, supra note 7, at 11.

is significant not only for historical scholarship or to women in the Christian biblical tradition, but also for all women in Western societies, since the Bible continues to underlie and influence the perceptions and attitudes of secular society<sup>135</sup> and persists in functioning as a religious/ideological justification for patriarchy.<sup>136</sup>

### A. The Authority of Scripture

The Christian feminist view of biblical text is that it is “inspired revelation” inasmuch as it may contain the divinely communicated word of God, but that it is not itself the revealed, infallible word of God. The difference in this approach to scriptural interpretation is that *exegesis* (what is read out of the text) requires consideration of a number of factors.

First, the Bible contains a diversity of literary forms including stories, parables, chronicles, legal codes, prayers, sermons, poetry, myth, personal prophecies, and recollections.<sup>137</sup> The scriptural materials were first preserved by oral tradition after which they were recorded and edited at different times by different people. The authors each had their individual styles, interests, and goals.<sup>138</sup> What we read as biblical scriptures today are revised and re-revised records of oral tradition translated from Hebrew to Greek to Latin and finally to the vernacular.<sup>139</sup> Feminist theologians conclude, then, that the text cannot be read without due consideration of the human influence—that humans are susceptible to error, personal motivations, cultural and theological biases, and that they write in a particular literary form for a particular audience with certain objectives in mind. As Rachel Hosmer states, the Bible is a “record of how the people of God understood their *own* experience.”<sup>140</sup> Thus, Christian feminists see scripture as culturally and historically conditioned, and in light of the time, as often reflective of patriarchal values, understandings, and goals instead of the word of God.

Another factor in feminist interpretation requires attention to the differing levels of authority placed on certain texts.<sup>141</sup> The order is, from most to least

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<sup>135</sup> E. Schussler Fiorenza, *supra* note 29, at xi–xii.

<sup>136</sup> See *id.*

<sup>137</sup> R. Hosmer, *supra* note 62, at 14.

<sup>138</sup> See *id.* at 15.

<sup>139</sup> See *id.*

<sup>140</sup> *Id.* at 27 (emphasis added).

<sup>141</sup> Although most Christians share this hierarchical view of the authority of different texts, it is particularly important for Christian feminists since the most liberating messages for them—those of Jesus—are found in the most authoritative texts.

authoritative: 1) the Gospels of the New Testament; 2) the remaining epistles and letters of the New Testament; and 3) the Old Testament.<sup>142</sup> This order of authority is based on the fact that the old covenant in the Old Testament has, for Christians, been replaced by the new covenant as recorded in the New Testament, and that the most complete record of this new covenant is reflected in Jesus' words, which are presumed to have been recalled by the Gospel writers.<sup>143</sup> It should be noted at this point that the most authoritative texts—the Gospels—are not histories or biographies of Jesus as we define those terms today.<sup>144</sup> Nor are there any official texts left to us written by Jesus himself.

An additional consideration in feminist interpretation is the context of a given scriptural passage. The reader should pay attention to who is speaking, who the audience is, what the speaker's purpose is (i.e., is the speaker dealing with a general theological issue or addressing a social or cultural concern), and what the historical setting is.<sup>145</sup> The reader should also evaluate the passage in light of the entire chapter, the whole New Testament, or the background of the Old Testament.<sup>146</sup> Feminist interpretation also encourages reference to extra-biblical sources: commentary and interpretation by scholars in biblical language, history, and theology to aid in the interpretation of text.<sup>147</sup> Furthermore, feminists warn against what is called proof-texting, lifting texts out of their context and applying them literally to "prove" a modern-day argument.<sup>148</sup>

Finally, the Bible is for Christian feminists a collection of works written by men and subsequently translated and interpreted by them.<sup>149</sup> Since all theological interpretation passes through the mind and experience of the interpreter, historic Christian interpretation reflects a definite male bias.<sup>150</sup>

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<sup>142</sup> See O. Eldred, *Women Pastors: If God Calls, Why Not the Church?* 46–47 (1981).

<sup>143</sup> See *id.* at 47.

<sup>144</sup> E. Pagels, *Adam, Eve, and the Serpent* 5 (1988).

<sup>145</sup> O. Eldred, *supra* note 142, at 47.

<sup>146</sup> See *id.*

<sup>147</sup> See *id.*

<sup>148</sup> See *id.* at 46.

<sup>149</sup> Theological scholarship by women is a relatively new phenomenon. In the past, several translations of the Bible were made by women or with the considerable assistance of women, but were essentially ignored. See *id.* at 47–48. For an example of extra-canonical scripture as recorded by women, see the discussion of the Gospel of Mary in E. Pagels, *The Gnostic Gospels* 13–26 (1979).

<sup>150</sup> O. Eldred, *supra* note 142, at 48.

Moreover, these male writers were responding to societal concerns as well as to questions of theological belief. "The studies of the social world of early Christianity underline that Christian faith and revelation are always intertwined with the cultural, political, and social contexts, and we can no longer neatly separate biblical revelation from its cultural expression."<sup>151</sup> It is for this reason that Christian feminists look at biblical texts critically and use all the interpretive tools available to them. Although we may find a core message or threads of God's revealed "truth" within the text, we are careful to recognize what the messenger's inherent bias is as it appears in the process of recorded "revelation."

## B. Women in the Life of Jesus

An examination of the actual life of Jesus, of what the historical record tells us about how he actually lived his life, with whom he chose to associate, and whom he condemned, reveals an image of the role of woman in religion and in society different from the traditional view. Jesus the Liberator,<sup>152</sup> through the example of his words and acts, did not provide justifications for oppression and inequality. Rather, the historical Jesus lived his life by breaking through false distinctions between people, by joining men and women in a community of coequal disciples, and by inverting set patterns of destructive human relationships based on hierarchies that included gender.

The central exhortation for the life of Christians is to love God and neighbor.<sup>153</sup> In every aspect of his life, Jesus gave a radically new and completely inclusive definition of the neighbor whom we are to love. Jesus' neighbor, as we can see from all his actions and from his parables, included the sinner, the leper, the prostitute, the foreigner, and most importantly for purposes of this paper, the woman. Jesus' example of Christian relationship was set when he embraced, ministered to, and loved unconditionally the outcasts, including women, of his world. He did not choose the safety of custom and say, "I'd better stand aside and criticize them [the outcasts], and people will see how religiously correct I am."<sup>154</sup> Rather, Jesus reached out with compassion to the oppressed and offered them justice, love, and salvation.

Jesus' main goal may not have been the liberation of women *per se* or the advancement of feminism, even though some scholars have asserted that he

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<sup>151</sup> E. Schussler Fiorenza, *supra* note 29, at 34.

<sup>152</sup> See J. Pelikan, *Jesus Through the Centuries* 206-19 (1985).

<sup>153</sup> See, e.g., Matthew 5-7.

<sup>154</sup> Guinan, *Homosexuals: A Christian Pastoral Response Now*, in *A Challenge to Love: Gay and Lesbian Catholics in the Church* 67, 75 (R. Nugent ed. 1986).



was indeed a feminist.<sup>155</sup> Rather, Jesus' focus seemed to be on the transformation of the inner spirit and on proclaiming a new "Kingdom of God" with such urgency that he could not be silenced even in the face of death.<sup>156</sup> But Jesus' treatment of and association with women is an important starting point for Christian feminists because it stands in sharp contrast to the religious messages about women promulgated both before and after his life. In light of the fact that Jesus was himself a product of an androcentric culture, and that it was to this culture that he preached, his reaction to women was strikingly revolutionary and even heretical.<sup>157</sup> He ministered to women, included them in his public ministry, associated openly with them, spoke of their spiritual equality, and rejected the subservient and subordinate position that his culture had assigned to them.<sup>158</sup>

The status of women in first-century society was quite low. A woman was viewed as the property of her father or husband and was valued primarily as a wife or mother. Legally, a woman could not stand as a witness in a court of law.<sup>159</sup> Against this background of patriarchal culture, we will consider Gospel accounts of Jesus' interactions with women in order to present an overall picture of Jesus' radically different view, a view that may be reclaimed today by women who oppose the Christian legitimization of patriarchy.<sup>160</sup>

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<sup>155</sup> R. Eisler, *supra* note 5, at 177-83 (citing Swidler, *Jesus Was a Feminist*, in the *Catholic World*, Jan. 1971). Contra R. Eisler, *supra* note 5, at 120-21 (because feminism has as its primary aim the liberation of women, it would not be historically accurate to call Jesus a feminist, since this was not his primary goal. Rather, it would be more accurate to describe Jesus' teachings as reflecting a "gylanic view of human relations").

<sup>156</sup> E. Pagels, *supra* note 144, at 7.

<sup>157</sup> R. Eisler, *supra* note 5, at 120-22. Jesus' equal treatment of women in light of his cultural context has even been used as an argument by those who doubt his actual human existence in history. See *id.* at 122.

<sup>158</sup> See *id.* at 121-24.

<sup>159</sup> V. Mollenkott, *Women, Men and the Bible* 10 (1988). Mollenkott writes from an evangelical perspective and her religious roots in fundamentalism are evident. Yet she attempts to reconcile Christianity and equality for women. Moreover, her chapter, "The Christian Way of Relating," provides a helpful overview of the Gospel stories of Jesus' encounters with women. It also includes illustrations of first-century Hebrew laws affecting women. *Id.* at 1-22.

<sup>160</sup> In addition to the Bible, various sources were consulted for this section which reviews the Gospel accounts of Jesus' interactions with women. Considerable overlap in commentary occurred since the authors all draw primarily on the Gospel texts as their source. See *id.* at 1-22; O. Eldred, *supra* note 142, at 51-54; R. Hosmer, *supra* note 62, at 39-44; P. Jewett, *The Ordination of Women* 61-62 (1980).

To begin, Jesus breaks through the social taboos of his time and shatters stereotypes by interacting with women in essentially the same manner as he does with men. Women are among those who recognized him as a prophet (Luke 1:36–38) and among those whom he calls to follow him as disciples (Luke 8:1–3, Mark 15:41). They are his friends and companions (Luke 10:38–42), and they often hold meetings of his early “church” in their homes (Colossians 4:15, 1 Corinthians 1:11, Acts 15:14, 15 and 40). He heals them (Matthew 8:1, 4–15, 9:23–25; Luke 13:10–13; Matthew 15:21–28) and teaches them (John 4:21–24, 11:25–26). But in addition to these general indications, there are several key incidents that illustrate his disdain of the traditional view of women.

It is significant that Jesus speaks openly to women in public and frequently to those who are most despised and rejected by first-century standards. His encounter with the Samaritan woman at the well is a good example. Although Jesus is prohibited from talking to any woman in public, this woman is doubly cursed; she is not only a woman, but she has false beliefs (a Samaritan) and is “unclean” (living with a man in the absence of marriage). Instead of chastising her, Jesus discusses theological truths with her. She in turn returns home to proclaim Jesus’ message and to bear witness to many in her town (John 4).

Similarly, Jesus is approached by a group of Sadducees who attempt to trap Jesus through a theological trick which involves the question of a “barren” woman’s place in heaven. The woman has been married to five or six brothers in an attempt to provide them with a child. The Sadducees now ask whose wife she will be in heaven. Jesus ignores the question of whose wife she will be and “rescues” the woman from her societal worthlessness by answering that there are no sexual differences in heaven—only angels. It appears that Jesus does not define and judge her according to her sexuality and inability to reproduce, but rather he invites her to share in his spiritual kingdom<sup>161</sup> (Mark 12:18–27).

Women were essentially treated as objects in Jesus’ day, but time after time he disparages this view. Luke recounts the story of Jesus healing a woman on the Sabbath. When the religious leaders criticize him for violating Jewish law, Jesus recognizes the way women are treated and counters by reminding the leaders that they take care of even their livestock’s needs on this day (Luke 13:15–16). Jesus also heals an “unclean” woman who has been bleeding for twelve years. Jesus does not, however, see her as a dirty object and direct her to segregate herself according to Hebrew custom; he

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<sup>161</sup> R. Hosmer, *supra* note 62, at 40.

instead tells her that her faith has healed her (Matthew 9:19–21). Mollenkott suggests that it is “especially significant that Jesus took pains to locate the healing within the poor despised woman’s faith rather than in himself or in the male establishment or even in God the Father.”<sup>162</sup>

Jesus consistently rejects the double standard which objectifies women as sexual/biological beings. When Jesus is presented with the adulteress (whose punishment by Jewish law was death), he recognizes that the male adulterer has been set free. He refuses to condemn her, but leaves it up to those in the crowd “who have not sinned.” Since there are of course none, the woman is set free (John 8:4).

Men, who could traditionally divorce women for any reason, questioned Jesus about the grounds for divorce. Again rejecting the double standard and realizing the worthless position women were thrust into upon divorce, Jesus forbids divorce altogether. He further charges that any man who divorces his wife—absent fornication—commits adultery. It is likely that Jesus had the protection of women in mind (Matthew 19:3). Jesus’ single standard of morality<sup>163</sup> is repeated in his Sermon on the Mount when he warns that a man who looks at a woman with lust has committed adultery in his heart. Although this passage undoubtedly reflects Jesus’ typical focus on internal attitudes as opposed to external laws, it may also be a condemnation of the sexual objectification of women<sup>164</sup> (Matthew 5:27–28).

Moreover, Jesus responds to women’s relegation to domestic tasks and childbearing. Without devaluing these roles, Jesus suggests that there are alternative callings. When a woman praises Jesus’ mother as the womb from whom he came and the breasts of whom he sucked, she echoes her culture’s patriarchal value placed on woman’s reproductive parts. But Jesus does not praise these female body functions; rather he transcends categories of male/female by praising a person’s spiritual relationship to God<sup>165</sup> (Luke 11:27–28). Similarly, while in the home of Martha and Mary, Martha criticizes Mary for listening to Jesus’ teachings instead of tending to the dinner. Jesus responds by telling Martha that Mary’s interest in learning about the Kingdom of God is more important than the details of dinner (Luke 10:38–42).

Jesus also has a message about the meaning of family. When he is told by a messenger that his family wants to see him, Jesus looks around to the people surrounding him and names them as his family. He redefines family

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<sup>162</sup> V. Mollenkott, *supra* note 159, at 5.

<sup>163</sup> See *id.* at 6.

<sup>164</sup> See *id.* at 7.

<sup>165</sup> O. Eldred, *supra* note 142, at 53–54.

as a spiritual relationship not a biological one. Moreover, he includes women on an equal ground in this new family; all members share the same and sole attribute, a commitment to the will of God.<sup>166</sup>

Finally, although women had been present at Jesus' birth, throughout his life, and at his death, it was a woman whom Jesus made present for perhaps the most significant event of his "life," his resurrection. Jesus first appeared to Mary Magdalene after his death and then to other women, telling them to act as witnesses to the event. It is ironic not only that he appeared to women, who could not in law act as witnesses, but that he appeared first to Mary Magdalene, a prostitute of the lowest social status at the time (Matthew 28). Despite the significance of this act by Jesus, the male disciples were so influenced by their culture that they did not at first believe these women (Luke 24:11).<sup>167</sup> There is evidence that even Paul ignored Jesus' appearance to women in his first letter to the Corinthians (1 Corinthians 15:5).<sup>168</sup>

Traditional Christian thought often misinterprets, underemphasizes, or altogether dismisses the "new" status of women as expressed in the life and ministry of Jesus. Jesus preached a radical message of liberation and equality for all people, including women. He never spoke in terms of dominance and submission or subordination. He did not blame women, nor did he relegate them to certain spheres of duty. But despite this message by one of patriarchy's officially recognized divine messengers, the Christian religion became androcentric like most other religions,<sup>169</sup> influenced by the patriarchal social structures that remained. Christian feminists, and all women resisting patriarchal legitimization based on "Christian values," can reclaim Jesus from his androcentric environment in order to confront systems wrongly justified in his name.

### **C. Another Look at Patriarchal Myths: Creation and Paul**

Traditionalist use of especially "troubling" scriptural passages defining woman's nature or role challenges the feminist reconstruction of the woman-empowering aspects of Jesus' life.<sup>170</sup> In response, feminists follow the guidelines for interpretation already articulated;<sup>171</sup> in other words, they ask

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<sup>166</sup> Id. at 53.

<sup>167</sup> P. Jewett, *supra* note 160, at 61.

<sup>168</sup> See id.

<sup>169</sup> R. Eisler, *supra* note 5, at 124.

<sup>170</sup> See *supra* text at notes 27-67 on traditional worldview for examples of key passages.

<sup>171</sup> See *supra* text at notes 129-169 on feminist approach to interpretation of the Bible.

who is speaking and for what purpose? What problem is being addressed? What literary form is being employed? Is it properly situated within its context? Moreover, feminists look at these passages in light of the Gospel record and message of Jesus.

However, as we saw before, there are several key passages that are used frequently to perpetuate patriarchal myths and justify stereotyped roles. We will address two of these now: the Genesis Creation/Fall stories and Paul's Household Codes.

Although much has been written about Eve's place in Creation and the Fall, Christian feminists generally agree that Genesis' attribution of patriarchal tendencies to God's will was a way of preserving what was an already existing model of social thought.<sup>172</sup> Moreover, the use of the patriarchal Genesis story (Genesis 2 and 3) to justify female subordination represents selectivity and proof-texting. Genesis, itself, offers another version of creation (Genesis 1) in which male and female are simultaneously created, both in God's image. The Genesis accounts reflect two different oral traditions.<sup>173</sup>

Similarly, scriptural passages directing women to be silent, submissive, chaste, and subordinate in their role as wife and mother also involve issues of problematic interpretation. These directives are usually attributed to Jesus' Apostle Paul. But Paul's radical vision of an equality of all persons in Christ is incompatible with subordination directives ascribed to him.<sup>174</sup> As he stated:

"There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female: for you are all one in Christ Jesus."

—Galatians 3:28

It is likely that this revolutionary attitude was unacceptable to the patriarchal minds of later writers,<sup>175</sup> and thus many scholars agree that Paul's followers proceeded to write letters attributed to Paul in which they corrected these dangerous views.<sup>176</sup> Generally, it is believed that Paul wrote eight of the thirteen "Pauline" letters: Romans, 1 and 2 Corinthians, Galatians, Philippians, 1 Thessalonians, and Philemon. There is near consensus that

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<sup>172</sup> Bohn, *Dominion to Rule: The Roots and Consequences of a Theology of Ownership, in Christianity, Patriarchy, and Abuse: A Feminist Critique*, *supra* note 3, at 105, 106.

<sup>173</sup> R. Hosmer, *supra* note 62, at 16–20.

<sup>174</sup> See *id.* at 36.

<sup>175</sup> See *id.*

<sup>176</sup> E. Pagels, *supra* note 144, at 23.

Paul did not write 1 or 2 Timothy or Titus, since they differ so in style and viewpoint from the others. Debate continues with regard to Ephesians, Colossians, and 2 Thessalonians, but they may also be "deutero-Pauline" (secondary) letters.<sup>177</sup> Regardless of the actual authorship of each letter, it is clear that Paul contains tremendous inconsistency, with some passages reflecting the new spirit of equality and others reflecting the old ways of patriarchy. It is likely that some of the passages can be explained as interpolations. It is also possible that Paul, a Christian convert in adulthood, was heavily influenced by his own patriarchal background and thus confused by parts of Jesus' new message. Whatever the answers are to these questions, it is obvious that the hierarchical subordination/separation model conflicts with Jesus' teachings. Therefore, Paul's passages cannot be lifted out of context to legitimize further the patriarchal view of woman's place in the name of Christianity.

#### **V. PATRIARCHAL LAW STRIPPED OF RELIGIOUS JUSTIFICATION: LEGAL OUTCOMES OF CHRISTIAN FEMINISM**

We have demonstrated that the patriarchal Christian model of woman has infiltrated the legal system to the detriment of women. We have also shown how Christian feminism unmask the historical and theological defects of this model and offers an alternative. Because religion and law, each in turn, have "sacralized" and legitimized the other's patriarchal construction of woman, we propose that changing one will inevitably affect the other. Thus, if freed from the traditional view, women and the legal system can move beyond some of the normative patriarchal assumptions which have shaped and justified the system to the detriment of women.

When women are the victims of male violence, the legal system legitimizes their victimization by disbelieving their accounts of abuse, by blaming the victim rather than the perpetrator, and by failing to protect the victim from further abuse or to punish the perpetrator. This response is rooted in a cultural definition of woman as subordinate to male authority and power, a piece of male property, and an appropriate victim of violence. As we have already seen, Christianity is one of a constellation of forces which reinforces this view of woman. We propose that by changing the view engendered by traditional Christianity of woman as subordinate and deserving of pain to a view espoused by Christian feminism of woman as equally human and deserving of integrity and respect, the legitimization of violence

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<sup>177</sup> See *id.*

against women will lose a major source of its "sacralization," and thus be weakened. We will consider this proposal, taking as our examples the legal system's treatment of incest and domestic violence.

The religiously sanctioned image of woman as subordinate and deserving of pain and punishment provides a context within which incest and domestic violence are defined not as "public" or socially threatening crimes, but as acceptable assertions of male prerogative within the family.<sup>178</sup> This normative assumption about how male power can be exercised within the home, rooted in the Bible and adopted by the legal system, devalues the harm to female victims. In most cases, the victims internalize this devaluation, thereby reinforcing their sense of helplessness. To prevent and respond adequately to incest and domestic violence, we must transform the view of woman from appropriate victim to valued human being, capable of true testimony about abuse experiences and deserving of belief and attention from the legal system.

In incest cases, for example, transforming the model of the daughter from the seductive and wily sexual property of the father to a child deserving of bodily integrity and capable of being a truthful witness to her own experience necessarily leads to a more serious and effective treatment of these cases by the legal system. The following are six reforms which can result from this new perspective on gender in the context of incest.

First, mandatory disclosure laws for teachers and others who discover sexual abuse would lead to increased reporting of abuse and early intervention.<sup>179</sup> Second, a broader statutory definition of coercion and consent, to include the compelling authority of the father, is necessary to recognize the power dynamics of the incestuous relationship.<sup>180</sup> Third, several legislative reforms can be made to better allow the admission into evidence at trial of a child victim's account of abuse.<sup>181</sup> These are: permitting a special hearsay exception for a child victim's out-of-court statement of abuse; videotaping of depositions of a child victim's testimony; closed-circuit televising of a child victim's trial testimony; and revising of the testimonial competency standard for child witnesses.<sup>182</sup> Fourth, the requirement for corroborated testimony by some states should be abolished. As discussed above, this

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<sup>178</sup> N. Hahn Rafter & E. Stanko, *Judge Lawyer Victim Thief* 8 (1982).

<sup>179</sup> J. Herman, *supra* note 83, at 135.

<sup>180</sup> See *id.* at 175.

<sup>181</sup> R. Eatman & J. Bulkley, *Protecting Child Victim/Witnesses: Sample Laws and Materials* 1 (National Legal Resource Center for Child Advocacy and Protection, 1986).

<sup>182</sup> See *id.*

requirement is rooted in a gender-biased suspicion of female testimony regarding sex crimes and a male fear of false accusations in such cases. This requirement makes the laws essentially unenforceable since incest is rarely committed in the presence of corroborating witnesses. Fifth, rape shield statutes, which limit the admission into evidence of specific instances of the victim's prior sexual conduct, should be extended to incest victims.<sup>183</sup>

In the case of adult survivors of incest who seek legal redress through civil claims long after the statute of limitations for criminal provisions has run, the "discovery rule" exception to the accrual of the statute of limitations in tort claims should be extended to incest cases.<sup>184</sup> In traditional tort theory, the intentional tort victim's cause of action accrues, and the statute of limitations starts to run, when the tortfeasor completes the tortious act. The "discovery rule" delays a cause of action's accrual and tolls the statute of limitations if the victim did not know and could not reasonably have known of the tortious injury.<sup>185</sup> It is only applied in cases of negligent torts. Because of the severe emotional harm often caused by incest, many victims suppress memory of their abuse and do not recall it until they are adults.<sup>186</sup> Justice would require, therefore, that a special exception be carved out within the "discovery rule" for incest cases in order to preserve the survivor's claim.

All of these reforms reflect a recognition both of the harm done to the victims of incest and of their right to seek legal remedy for this harm. This recognition flows logically from the transformation of the "rule of the father" in the family home to a new view of all family members, female and male, as deserving of physical and emotional integrity and safety.

Similarly, in domestic violence cases, a feminist interpretation of the biblical model of woman "de-sacralizes" the traditional view of woman as the appropriate victim of male violence and strips it of a key source of support. If religious justifications for treating family violence as a "private" matter and as a natural component of the husband's role as head of the household were transformed, the legal system, which, as we have already seen is heavily shaped by these norms, could respond to this violence more effectively.

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<sup>183</sup> Case Comment, 21 *Suffolk U.L. Rev.* 335 (1987). This Comment describes the Massachusetts Supreme Judicial Court's refusal to extend the rape shield statute to victims of incest in *Commonwealth v. Domaingue*, 397 Mass. 693 (1986).

<sup>184</sup> Note, *The Discovery Rule and Father-Daughter Incest: A Legislative Response*, 29 *B.C.L. Rev.* 941, 942 (1988). See also Note, *Statutes of Limitations in Civil Incest Suits: Preserving the Victim's Remedy*, 7 *Harv. Women's L.J.* 189 (1984); Note, *Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages*, 25 *Santa Clara L. Rev.* 191 (1985).

<sup>185</sup> Note, *The Discovery Rule and Father-Daughter Incest: A Legislative Response*, *supra* note 185, at 942.

<sup>186</sup> *Id.* at 949-50.



Transforming the model of woman, therefore, could result in the following legal reforms. First, police response to domestic violence calls must be improved. As we saw earlier, inadequate police attention to domestic violence is rooted largely in a belief that women provoke beatings and thus deserve to be beaten, that the beatings are valid expressions of the husband's authority, that the women who stay in such situations must like the violence, and that family violence is not a serious public crime. If these religiously supported myths about gender relationships within the family were replaced by a view of woman as deserving of protection and safety within the home, the police response to domestic violence could be reformed. Mandatory arrest is one needed reform which could result from this transformation. Mandatory arrest concretely reflects a belief that society values the female victim and punishes violence against her, even when her husband is the perpetrator.<sup>187</sup> Second, the statutory definition of domestic violence could be broadened to include sexual abuse in addition to physical abuse. As in the case of incest, such a reform would send a clear message that a woman is not the property of her husband or boyfriend and cannot be sexually abused by him.

Finally, for both religious and non-religious women who are socialized into powerlessness and subordination by a patriarchal culture that is supported by religious norms, changing the model of woman would result in women's self-empowerment. Stronger laws and a more responsive legal system can help women victimized by male violence only if the women themselves believe that they deserve protection and safety. If women internalized the unequivocal rejection of a man's right to use violence against his wife or girlfriend and of the view of women as the blameworthy, appropriate victims of violence, they would be able to seek the help they need. They would no longer view themselves as guilty, deserving of violence or required to submit to male power.<sup>188</sup>

In sum, we are seeking distributive justice for girls and women. Our proposal for transformation of both the religious construct of woman and of

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<sup>187</sup> Note, *supra* note 100, at 223.

<sup>188</sup> This is especially important for women who consciously refer to the traditional interpretation of the Bible to rationalize their husbands' use of violence. When such women telephone battered women's shelters, their calls often begin, "I'm a Bible-believing Christian, but . . . ." A feminist interpretation of the biblical texts is crucial to these women for whom the Bible is equally a source of faith and oppression. The success of feminist interpretation here is outlined by Thistlethwaite, *Every Two Minutes: Battered Women and Feminist Interpretation*, in *Weaving the Visions: New Patterns in Feminist Spirituality*, *supra* note 9, at 302, 303.

the legal system's treatment of her, is based on a desire to give a stronger voice to the disenfranchised in the struggle against powerful patriarchal culture. By unmasking the weak scriptural basis for traditional Christian patriarchy, and by revealing the grounds for affirmation of women in the biblical materials, we remove one of the key justifications for bias in the legal system and open up the system to positive reform for women.