

'I'll tell ye what – I won't sell her for less than five,' said the husband, bringing down his fist so that the basins danced. 'I'll sell her for five guineas to any man that will pay me the money, and treat her well; and he shall have her for ever, and never hear aught o' me. But she shan't go for less. Now then – five guineas – and she's yours. Susan, you agree?'

She bowed her head with absolute indifference.

'Five guineas,' said the auctioneer, 'or she'll be withdrawn. Do anybody give it? The last time. Yes or no?'

'Yes,' said a loud voice from the doorway. All eyes were turned.

Standing in the triangular opening which formed the door of the tent was a sailor, who, unobserved by the rest, had arrived there within the last two or three minutes. A dead silence followed his affirmation.

'You say you do?' asked the husband, staring at him.

'I say so,' replied the sailor.

'Saying is one thing, and paying is another. Where's the money?'

The sailor hesitated a moment, looked anew at the woman, came in, unfolded five crisp pieces of paper, and threw them down upon the table-cloth. They were Bank-of-England notes for five pounds. Upon the face of this he chinked down the shillings severally – one, two, three, four, five.

The sight of real money in full amount, in answer to a challenge for the same till then deemed slightly hypothetical, had a great effect upon the spectators. Their eyes became riveted upon the faces of the chief actors, and then upon the notes as they lay, weighted by the shillings, on the table.

Up to this moment it could not positively have been asserted that the man, in spite of his tantalising declaration, was really in earnest. The spectators had indeed taken the proceedings throughout as a piece of mirthful irony carried to extremes; and had assumed that, being out of work, he was, as a consequence, out of temper with the world, and society, and his nearest kin. But with the demand and response of real cash the jovial frivolity of the scene departed. A lurid colour seemed to fill the tent, and change the aspect of all therein. The mirth-wrinkles left the listeners' faces, and they waited with parting lips.

'Now,' said the woman, breaking the silence, so that her low dry voice sounded quite loud, 'before you go further, Michael, listen to me. If you touch that money, I and this girl go with the man. Mind, it is a joke no longer.'

'A joke? Of course it is not a joke!' shouted her husband, his resentment rising at her suggestion. 'I take the money: the sailor takes you. That's plain enough. It has been done elsewhere – and why not here?'

'Tis quite on the understanding that the young woman is willing,' said the sailor blandly. 'I wouldn't hurt her feelings for the world.'

'Faith, nor I,' said her husband. 'But she is willing, provided she can have the child. She said so only the other day when I talked o't!'

'That you swear?' said the sailor to her.

'I do,' said she, after glancing at her husband's face and seeing no repentance there. 'Very well, she shall have the child, and the bargain's complete,' said the trusser. He took the sailor's notes and deliberately folded them, and put them with the shillings in a high remote pocket, with an air of finality.

The sailor looked at the woman and smiled. 'Come along!' he said kindly. 'The little one too – the more the merrier!' She paused for an instant, with a close glance at him. Then dropping her eyes again, and saying nothing, she took up

the child and followed him as he made towards the door. On reaching it, she turned, and pulling off her wedding-ring, flung it across the booth in the hay-trusser's face.

'Mike,' she said, 'I've lived with thee a couple of years, and had nothing but tempers. Now I'm no more to 'ee; I'll try my luck elsewhere. Twill be better for me and Elizabeth-lane, both. So good-bye!'

Seizing she sailor's arm with her right hand, and mounting the little girl on her left, she went out of the tent sobbing bitterly.

A stolid look of concern filled the husband's face, as if, after all, he had not quite anticipated this ending; and some of the guests laughed.

'Is she gone?' he said.

'Faith, ay; she's gone clane enough,' said some rusties near the door.

He rose and walked to the entrance with the careful tread of one conscious of his alcoholic load. Some others followed, and they stood, looking into the twilight. The difference between the peacefulness of inferior nature and the wilful hostilities of mankind was very apparent at this place. In contrast with the harshness of the act just ended within the tent was the sight of several horses crossing their necks and rubbing each other lovingly as they waited in patience to be harnessed for the homeward journey. Outside the fair, in the valleys and woods, all was quiet. The sun had recently set, and the west heaven was hung with rosy cloud, which seemed permanent, yet slowly changed. To watch it was like looking at some grand feat of stagery from a darkened auditorium. In presence of this scene after the other there was a natural instinct to abjure man as the blot on an otherwise kindly universe; till it was remembered that all terrestrial conditions were intermittent, and that mankind might some night be innocently sleeping when these quiet objects were raging loud.

'Where do the sailor live?' asked a spectator, when they had vainly gazed around.

'God knows that,' replied the man who had seen high life. 'He's without doubt a stranger here.'

'He came in about five minutes ago,' said the furmity woman, joining the rest with her hands on her hips. 'And then 'a stepped back, and then 'a looked in again. I'm not a penny the better for him.'

'Serves the husband well be-right,' said the staylace vendor. 'A comely respectable body like her – what can a man want more? I glory in the woman's spirit. I'd ha' done it myself – od send if I wouldn't, if a husband had behaved so to me! I'd go, and 'a might call, and call, till his keacorn was raw; but I'd never come back – no, not, till the great trumpet, would I!'

'Well, the woman will be better off,' said another of a more deliberative turn. 'For seafaring natures be very good shelter for shorn lambs, and the man do seem to have plenty of money, which is what she's not been used to lately, by all showings.'

'Mark me – I'll not go after her!' said the trusser, returning doggedly to his seat. 'Let her go! If she's up to such vagaries she must suffer for 'em. She'd no business to take the maid – 'tis my maid; and if it were the doing again she shouldn't have her!'

Perhaps from some little sense of having countenanced an indefensible proceeding, perhaps because it was late, the customers thinned away from the tent shortly, after this episode. The man stretched his elbows forward on the table, leant his face upon his arms, and soon began to snore. The furmity seller

decided to close for the night, and after seeing the rum-bottles, milk, corn, raisins, etc, that remained on hand, loaded into the cart, came to where the man reclined. She shook him, but – could not wake him. As the tent was not to be struck that night, the fair continuing for two or three days, she decided to let the sleeper, who was obviously no tramp, stay where he was, and his basket with him. Extinguishing the last candle, and lowering the flap of the tent she left it and drove away.

Thomas Hardy's portrayal of wife-sale is well documented in legal texts.<sup>70</sup> Prior to 1857, divorce in England could be obtained only by way of an Act of Parliament: an expensive undertaking beyond the grasp of the wealthy elite.<sup>71</sup> For the majority in society, the breakdown of the marital relationship resulted either in continued unhappiness or in simple desertion. Where a husband abandoned his wife and informally established a new family relationship elsewhere, he was at risk of detection and prosecution before the ecclesiastical courts. A second risk was that the wife would run up debts for which he would remain responsible. On the other side of the coin, the wife remained vulnerable to her husband seizing 'her' property which legally belonged to him. In order, therefore, to minimise, if not eliminate such difficulties, wife-sale became an option. Wife-sale represented a non-legal, but nevertheless, semi-formal public transference of the husband's right of property in his wife to another man: the women being conceptually regarded by both law and society, as a mere chattel. Unlike Hardy's illustration of the phenomenon where the wife was sold apparently 'spontaneously', many wife-sales took on a certain ritualism and formality. The wife, in order to emphasise the property aspect of her transfer, would commonly be physically taken to the local cattle-market with a leather halter around her neck. There she would be placed for sale to the highest bidder. Frequently there would have been a prior arrangement as to this property transfer. It may have been that the wife had already found another partner, and that all was required for the sake of the publicity (and thereby dubious legitimacy) of the transaction was a public spectacle in which money changed hands for her person, whereby the 'former' husband was absolved on any further liability to maintain her. Frequently the deal would be sealed with a celebratory drink at the local hostelry. Where such practices came to the attention of the courts, they were denounced as unlawful as being contrary to 'public decency and good manners'.

The statistical significance of wife-sale, according to Lawrence Stone, has been exaggerated. In its 'peak years' of 1780 to 1850, there were fewer than three hundred (recorded) cases in England. Nonetheless, wife-sale carries with it immense symbolism as to status of women and the manner in which women were viewed as chattels of their husbands.

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70 See, for example, C Kenny, 'Wife Selling in England' (1920) 45 *Law Quarterly Review*, 496; Lawrence Stone, *The Road to Divorce* (Oxford University Press, 1992), p 141.

71 Between 1700 and 1857, a mere 322 divorces were secured through Act of Parliament.

*Women in religious texts*

**WHAT BECAME OF GOD THE MOTHER? CONFLICTING IMAGES OF GOD IN EARLY CHRISTIANITY<sup>72</sup>**

**Elaine H Pagels**

Unlike many of his contemporaries among the deities of the ancient Near East, the God of Israel shares his power with no female divinity, nor is he the divine husband or lover of any. He scarcely can be characterised in any but masculine epithets: King, Lord, Master, Judge, and Father. Indeed, the absence of feminine symbolism of God marks Judaism, Christianity, and Islam in striking contrast to the world's other religious traditions, whether in Egypt, Babylonia, Greece, and Rome or Africa, Polynesia, India, and North America. Jewish, Christian, and Islamic theologians, however, are quick to point out that God is not to be considered in sexual terms at all. Yet the actual language they use daily in worship and prayer conveys a different message and gives the distinct impression that God is thought of in exclusively masculine terms. And while it is true that Catholics revere Mary as the mother of Jesus, she cannot be identified as divine in her own right: if she is 'mother of God', she is not 'God the Mother' on an equal footing with 'God the Father'.

Christianity, of course, added the Trinitarian terms to the Jewish description of God. And yet of the three divine 'Persons', two – the Father and Son – are described in masculine terms, and the third – the Spirit – suggests the sexlessness of the Greek neuter term 'pneuma'. This is not merely a subjective impression. Whoever investigates the early development of Christianity – the field called 'patristics', that is, study of 'the fathers of the church' – may not be surprised by the passage that concludes the recently discovered, secret Gospel of Thomas: 'Simon Peter said to them [the disciples]: Let Mary be excluded from among us, for she is a women, and not worthy of Life. Jesus said: Behold I will take Mary, and make her a male, so that she may become living spirit, resembling you males. For I tell you truly, that every female who makes herself male will enter the Kingdom of Heaven.'<sup>73</sup> Strange as it sounds, this only states explicitly what religious rhetoric often assumes: that the men form the legitimate body of the community, while women will be allowed to participate only insofar as their own identity is denied and assimilated to that of the men.

Further exploration of the texts which include this Gospel – written on papyrus, hidden in large clay jars nearly 1,600 years ago – has identified them as Jewish and Christian Gnostic works which were attacked and condemned as 'heretical' as early as AD 100–150. What distinguishes these 'heterodox' texts from those that are called 'orthodox' is at least partially clear: they abound in feminine symbolism that is applied, in particular, to God. Although one might expect, then, that they would recall the archaic pagan traditions of the Mother Goddess, their language is to the contrary specifically Christian, unmistakably related to a Jewish heritage. This we can see that certain Gnostic Christians diverged ever more radically from the Jewish tradition than the early Christians who described God as the 'three Persons' or the 'Trinity'. For instead of a monistic and

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72 Elizabeth Abel and Emily K Abel (eds) *The Signs Reader: Women, Gender and Scholarship* (Chicago, University of Chicago Press, 1978).

73 A Guillaumont, H Ch Puech, G Quispel, W Till, Yassah Abd-al-Masih (eds), *The Gospel According to Thomas* (hereafter cited as 'ET') (London: Collins, 1959) logion 113–14.

masculine God, certain of these texts describe God as a dyadic being, who consists of both masculine and feminine elements. One such group of texts, for example, claims to have received a secret tradition from Jesus through James, and significantly, through Mary Magdalene.<sup>74</sup> Members of this group offer prayer to both the divine Father and Mother: 'Through Thee, Father, and through Thee, Mother, the two immortal names, Parents of the divine being, and thou, dweller in heaven, mankind of the mighty name ...'<sup>75</sup> Other texts indicate that their authors had pondered the nature of the being to whom a single, masculine God proposed, 'Let us make mankind in our image, after our likeness' (Genesis 1:26). Since the Genesis account goes on to say that mankind was created 'male and female' (1:27) some concluded, apparently, that the God in whose image we are created likewise must be both masculine and feminine – both Father and Mother.

The characterisation of the divine Mother in these sources is not simple since the texts themselves are extraordinarily diverse. Nevertheless, three primary characterisations merge. First a certain poet and teacher, Valentinus, begins with the premise that God is essentially indescribable. And yet he suggests that the divine can be imagined as a Dyad consisting of two elements: one he calls the Ineffable, the Source, the Primal Father; the other, the Silence, the Mother of all things.<sup>76</sup> Although we might question Valentinus's reasoning that Silence is the appropriate complement of what is Ineffable, his equation of the former with the feminine and the latter with the masculine may be traced to the grammatical gender of the Greek words. Followers of Valentinus invoke this feminine power, whom they also call 'Grace' (in Greek, the feminine term 'charis') in their own private celebration of the Christian Eucharist: they call her 'divine, eternal Grace, She who is before all things'.<sup>77</sup> At other times they pray to her for protection as the Mother thou enthroned with God, eternal, mystical Silence'.<sup>78</sup> Marcus, a disciple of Valentinus, contends that 'when Moses began his account of creation, he mentioned the Mother of all things at the every beginning, when he said, 'In the beginning God created the heavens and the earth', for the word 'beginning' (in Greek, the feminine arche) refers to the divine Mother, the source of the cosmic elements. When they describe God in this way different gnostic writers have different interpretations. Some maintain that the divine is to be considered masculo-feminine – the 'great male-female power'. Others insist that the terms are meant only as metaphors – for, in reality, the divine is neither masculine nor feminine. A third group suggests that one can describe the Source of all things in either masculine or feminine terms, depending on which aspect one intends to stress.<sup>79</sup> Proponents of these diverse views agree, however, that the divine is to be understood as consisting of a harmonious, dynamic relationship of opposites – a concept that may be akin to the eastern view of ying and yang but remains anti-thetical to orthodox Judaism and Christianity.<sup>80</sup>

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74 L Dunker, F Schneidewin (eds), *Hippolytus, Refutationis Omnium Haeresium* (hereafter cited as 'Ref') (Gottingen, 1859) 5.7.

75 Ref 5.6.

76 WW Harvey (ed), *Iranaeus, Adversus Haereses* (hereafter cited as 'AH') (Cambridge, 1857) 1.11.1.

77 *Ibid*, 1.13.2.

78 *Ibid*, 1.13.6.

79 *Ibid*, 1.115–21.1.3; Ref 6.29.

80 Pages 97–99.

The author continues to examine the texts, and finds – in differing sources – the characterisation of the divine Mother as either the Holy Spirit or as Wisdom. However, these texts – treating the male and female as of equal divine importance – met with rejection. Elaine Pagels continues:

All the texts cited above – secret ‘gospels’, revelation, mystical teachings – are among those rejected from the select list of 26 that comprise the ‘New Testament’ collection. As these and other writings were sorted and judged by various Christian communities, every one of these texts which gnostic groups revered and shared was rejected from the canonical collection as ‘heterodox’ by those who called themselves ‘orthodox’ (literally straight-thinking) Christians. By the time this process was concluded, probably as late as the year AD 200, virtually all the feminine imagery for God (along with any suggestion of an androgynous human creation) had disappeared from orthodox Christian tradition.

What is the reason for this wholesale rejection? To look for the actual, historical reasons why these gnostic writings were suppressed is an extremely difficult proposition, for it raises the much larger question of how (ie by what means and what criteria) certain ideas, including those expressed in the texts cited above, came to be classified as heretical and others as orthodox by the beginning of the Third century.<sup>81</sup>

As these texts suggest, then, women were considered equal to men, they were revered as prophets, and they acted as teachers, travelling evangelists, healers, priests, and even bishops. In some of these groups they played leading roles and were excluded from them in the orthodox churches, at least by AD 150–200. Is it possible, then, that the recognition of the feminine elements in God and the recognition of mankind as a male and female entity bore within it the explosive social possibility of women acting on an equal basis with men in positions of authority and leadership? If this were true it might lead to the conclusion that these gnostic groups, together with their conception of God and human nature, were suppressed only because of their positive attitude toward women. But such a conclusion would be a mistake – a hasty and simplistic reading of the evidence. In the first place, orthodox Christian doctrine is far from wholly negative in its attitude towards women. Second, many other elements of the gnostic sources diverge in fundamental ways from what came to be accepted as orthodox Christian teaching. To examine this process in detail would require a much more extensive discussion than is possible here. Nevertheless the evidence does indicate that two very different patterns of sexual attitudes emerged in orthodox and gnostic circles. In simplest form gnostic theologians correlate their description of God in both masculine and feminine terms with a complementary description of human nature. Most often they refer to the creation account of Genesis 1, which suggest an equal (or even androgynous) creation of mankind. This conception carries the principle of equality between men and women into the practical social and political structures of gnostic communities. The orthodox pattern is strikingly different: it describes God in exclusively masculine terms, and often uses Genesis 2 to describe how Eve was created from Adam and for his fulfilment. Like the gnostic view, the orthodox also translates into sociological practice: by the late 2nd century, orthodox Christians came to accept the domination of men over women as the proper, God-given order – not only for the human race, but also for the Christian churches. This correlation between

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81 At p 103.

theology, anthropology, and sociology is not lost on the apostle Paul. In his letter to the disorderly Corinthian community, he reminds them of a divinely ordained chain of authority: as God has authority over Christ, so the man has authority over the women, argues Paul citing Genesis 2: 'The man is the image and glory of God, but the woman is the glory of man. For man is not from women, but woman from man; and besides, the man was not created for the women's sake, but the woman for the sake of the man.'<sup>82</sup> Here the three elements of the orthodox pattern are welded into one simple argument: the description of God corresponds to a description of human nature which authorises the social pattern of male domination.<sup>83</sup>

Mary Daly has analysed the relationship between religion and the subordinate status of women in society. In the passages which follow, Daly examines the traditional – male – interpretation of the story of Adam and Eve.

### **BEYOND GOD THE FATHER: TOWARD A PHILOSOPHY OF WOMEN'S LIBERATION<sup>84</sup>**

#### **Mary Daly**

The story of the Fall of Adam and Eve is not given serious weight in the modern consciousness, it would seem.<sup>85</sup>

The fact is, however, that the myth has projected a malignant image of the male-female relationship and of the 'nature' of women that is still deeply embedded in the modern psyche. In the Christian tradition it continues to colour the functioning of the theological imagination. Berdyaev found it possible to write the amazing comment that 'there is something base and sinister in the female element'.<sup>86</sup> What is equally amazing (verified by this author's experience) is that theological students, confronted with such a passage, frequently are unable to see anything remarkable or significant about it. 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-centred ethical theories – a point to be developed in a later chapter. 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 rationalisations for social customs and civil laws, such as abortion legislation, which incorporate punitive attitudes toward women's sexual function.<sup>87</sup>

In view of the fact that the destructive image of women that was reflected in and perpetuated by the myth of the Fall retains its hold over the modern psyche – even though in a disguised and residual manner – it is not adequate for theologians simply to intellectualise and generalise the alleged content of the myth as an expression of a universal state of alienation. Indeed this approach is intellectually bankrupt and demonic. It amounts merely to abandoning the use of

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82 1 Cor 11: 7–9.

83 Pages 105–6.

84 The Women's Press, 1973.

85 *Beyond God the Father*, p 44.

86 N Berdyaev, *The Beginning and the End*, RM French trans (Gloucester, Mass: YMCA Press, 1952).

87 For striking examples of this punitive attitude as implied in abortion legislation, see L Lader *Abortion II: Making the Revolution* (Boston: Beacon Press, 1973).

explicitly sexist theological imagery while failing to acknowledge its still persistent impact upon society. Such silence about the destructiveness of the myth's specific content is oppressive because it conveys the message – indeed becomes the message – that sexual oppression is a non-problem. It is not good enough to talk about evil abstractly while lending implicit support to traditional images that legitimate specific social evils.

*The Myth Revisited*

The story of the Fall was an attempt to cope with the confusion experienced by human beings trying to make sense out of the tragedy and absurdity of the human condition. Unfortunately, as an exclusively male effort in a male-dominated society, it succeeded primarily in reflecting the defective social arrangements of the time. The myth was both symptom and instrument of further contagion. Its great achievement was to reinforce the problem, of sexual oppression in society, so that women's inferior place in the universe became doubly justified. Not only did she have her origin in the man; she was also the cause of his downfall and all his miseries. Humourless treatises on the subject of Eve's peculiar birth and woeful sinfulness written by the indefatigable fans of Adam down through the millennia are their own best parodies. Yet a hoax of cosmic proportions took a few thousand years to be seen through. Having at last noticed the incongruity, theologians have dismissed it from their attention. Few have even barely begun to glimpse the significance of the tragedy of sexual injustice that was inadvertently 'revealed' by the story of the Fall.

The fact that the myth cultivated a backward-looking consciousness and, taken as an overall perspective on the world, constituted an obstacle to progress, was noted by Teilhard de Chardin as early as 1933 (in an essay entitled *Christologie et Evolution*). The story conveys to the popular imagination the idea that the best has already been; paradise seems to be located in the past. The specific nature of the backward-looking vision which Teilhard failed to acknowledge is fixation upon a one-sided and distorted image of half the human species – and also of the other half (Adam is pictured as a servile and arrogant dunce) – which prevents the becoming of psychically whole human beings.

Other critics of the tradition such as Hesnar, looking at it from a psychoanalytic point of view, have pointed out that it encourages an all-pervasive guilt feeling that condemns life and its instinctive joys. The refusal of life is experienced as frustration, which becomes self-accusation and aggression against the self. Logically, this would appear to lead to self-annihilation, but what usually happens is that it is at least partially transformed into aggression against others. In this way, the self-hatred encouraged by Christianity becomes a perversion of the basic desire and need to communicate with others and so fosters hatred, oppression and even war.<sup>88</sup> The specific form of aggression which such critics fail to take adequately into account is that which makes women into objects. They do not really deal with the fact that the projection of 'the Other' – easily adaptable to national, racial, and class differences – has basically and primordially been directed against women.

To summarise: theologians and scholars generally have failed to confront the fact that in the myth of the Fall the medium is the message. Reflection upon its specific content and cultural residues of this content leads to the conviction that, partially through this instrument, the Judeo-Christian tradition has been aiding

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88 Dr A Hesnard, *Morale sans Pêche* (Paris: Presses Universitaires de France, 1954).



and abetting the sicknesses of society. In a real sense the projection of guilt upon women is patriarchy's Fall, the primordial lie together with its offspring – the theology of 'original sin' – the myth reveals the 'Fall' of religion into the role of patriarchy's prostitute. This is not to say, of course, that religion was ever in a true paradise, dispensing pure revelation, free of idolatry and of servitude to unjust social arrangements. The point is simply that by its built-in bias and its blind reinforcement of prejudice the myth does express the 'original sin' of patriarchal religion. The message that it unintentionally conveys – the full implications of which we are only now beginning to grasp – is that in patriarchy, with the aid of religion, women have been the primordial scapegoats.<sup>89</sup>

### *Naming*

Mary Daly next proceeds to examine the Fall in relation to the 'naming' – or more accurately, 'false naming' of women. Naming is the process whereby masculine, patriarchal labels are attached to concepts – such as God – whereby women are excluded from linguistic definition. What is needed, Daly argues, is a 're-naming' of concepts which is inclusive, rather than exclusive of women.

#### *The Fall and False Naming*

The myth of the Fall can be seen as a prototypic case of false naming. Elizabeth Cady Stanton was indeed accurate in pointing out the key role of the myth of feminine evil as a foundation for the entire structure of phallic Christian ideology.<sup>90</sup> As I have indicated, the myth takes on cosmic proportions since the male's viewpoint is metamorphosed into God's viewpoint. It amounts to a cosmic false naming. It misnames the mystery of evil, casting it into the distorted mould of the myth of feminine evil. In this way images and conceptualisations about evil are thrown out of focus and its deepest dimensions are not really confronted. Implied in this colossal misnaming of evil is the misnaming of women, of men, of God. Consequent upon this dislocation of the mystery of evil has been a dislocation of the Christian 'solution'.

Out of the surfacing woman-consciousness is coming the realisation that the basic counteraction to patriarchy's false naming of evil has to come primarily from women. By dislodging ourselves from the role of 'the Other', that is, by saying inwardly and outwardly our own names, women are dislodging the mystery of evil from this false context and thus clearing the way for seeing and naming it more adequately.

#### *Effects of the Myth*

As one author puts it: 'the fall of man should rightly be called the fall of woman because once more the second sex is blamed for all the trouble in the world.'<sup>91</sup> The attitude of negativity on the part of the male is directed against women. This, clearly, was the prevailing psychological climate which engendered the myth and sustained its credibility. However, there is more to the problem than this. The myth has provided legitimisation not only for the direction of the self-hatred of the male outward against women, but also for the direction of self-hatred

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89 *Beyond God the Father*, pp 45–47.

90 Letter to the Editor, 'The Critic' (1896) cited in Aileen S Krador (ed), *Up From the Pedestal*, (Chicago: Quadrangle Books, 1968), p 119.

91 HR Hays, *The Dangerous Sex: The Myth of Feminine Evil* (New York: GP Putnam's Sons, 1964), p 88.

inward on the part of women. As long as the myth of feminine evil is allowed to dominate human consciousness and social arrangements, it provides the setting for women's victimisation, by both men and women.

It is now quite commonly known that it is characteristic of any oppressed group that its members suffer from a divided consciousness. Freire has described this phenomenon:

The oppressed suffer from the duality which has established itself in their innermost being. They discover that without freedom they cannot live authentically. Yet, although they desire authentic existence, they fear it. They are at one and the same time themselves and the oppressor whose consciousness they have internalised.<sup>92</sup>

As contradictory, divided beings, the oppressed do not fully grasp the paralysing fact that the oppressor, having invaded the victims' psyches, now exists within themselves. They are caught in a web of self-defeating behaviour.

This problem, which has been perceived as the dilemma of all oppressed groups, is most tragically the case with women – divided beings par excellence. Having been divided against the self, women want to speak, but remain silent. The desire for action is by and large reduced to acting vicariously through men. Instead of living out the dynamics of the authentic self, women generally are submerged in roles believed to be pleasing to males. When a rebel tries to raise up her own identity, that is, to create her own image, she exposes herself to threatened existence in sexist society. This is partly because both women and men identify with the goals of the super-ordinate group and therefore see the rebellious female as 'the enemy'. It may also be said that, in attacking her, women are also attacking the male in the sense that she is a surrogate victim, a more vulnerable object for repressed resentment. It seems that sexist society generates a chronic inability to realise the location of the problem, to ferret out the cause of the destruction.

Patriarchal religion adds to the problem by intensifying the process through which women internalise the consciousness of the oppressor. The male's judgment having been metamorphosed into God's judgment, it becomes the religious duty of women to accept the burden of guilt, seeing the self with male chauvinist eyes. What is more, the process does not stop with religion's demanding that women internalise such images. It happens that those conditioned to see themselves as 'bad' or 'sick' in a real sense become such. Women who are conditioned to live out the abject role assigned to the female sex actually appear to 'deserve' the contempt heaped upon 'the second sex'.<sup>93</sup>

## THE TRANSITION FROM CULTURE TO LAW AND LEGAL THEORY

Legal theory derives from social and political theory: social and political theory form the foundation on which legal theory rests. Early theoretical attempts to see law as a reflection of the cultural mores of society were offered by Emile Durkheim, Eugen Ehrlich and William Graham Sumner. The central tenets of each theorist's thought will be briefly examined here. The writers – in differing ways – each view law as a reflection of culture and no more. The value of such approaches – from a feminist perspective – lies in illustrating the close links

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92 Freire, *Pedagogy of the Oppressed*, p 32.

93 *Beyond God the Father*, pp 47–49.

between law and cultural – patriarchal – values, and the manner in which law is grounded in society. Once this is appreciated, the sheer magnitude of the feminist endeavour becomes starkly clear: the endeavour is one which requires the realignment of deeply held patriarchal attitudes and arrangements which have become translated into law as a natural outcome of the evolution of society from nature to culture to law. The central tenets of these theorists will be considered before considering the implications of such theories from a feminist perspective.

### THE DIVISION OF LABOUR IN SOCIETY<sup>94</sup>

**Emile Durkheim**<sup>95</sup>

The French sociologist Emile Durkheim was principally concerned with an examination of the manner in which societies are bound together, and the evolution of society from its early form in which shared values predominate to more complex society where there will be demonstrated a diffusion of values. In seeking to explain societal bonding and change, Durkheim employs two principal concepts: organic and mechanical solidarity. Because cultural values, or the morality of society, cannot be empirically quantified, Durkheim utilises law as a visible symbol of society's solidarity: law is thus a reflection of the 'consciousness' of society. In 'simple' societies, exemplified by an absence of division of labour, Durkheim believes, the law will be predominantly repressive, for law is used to uphold and reinforce the collective conscience of society. Penal law serves this purpose: where deviant behaviour is experienced the law and legal process will step in to reaffirm society's values through punishing the offender. As society diversifies and becomes more complex and the division of labour becomes more marked, the need for predominantly penal, repressive law diminishes. The law in a complex society will be increasingly concerned with restitutive law – that is to say laws which do not express the 'collective vengeance' of society, but laws which are designed to realign relationships in order to provide restitution for wrongs suffered. Durkheim's empirical work has been subjected to much academic criticism. It has been demonstrated, for example, that 'simple' societies have a significant degree of division of labour which Durkheim denies;<sup>96</sup> and that societies do not evolve from 'organic solidarity' to 'mechanical solidarity' in the manner in which Durkheim suggests.<sup>97</sup> Nevertheless, Durkheim's thought continues to exert a powerful influence on sociological jurisprudence, and the core of his thought illustrates vividly the linkage between culture and law. In *The Division of Labour in Society* Durkheim writes that:

We have not merely to investigate whether in [complex] societies, there exists a social solidarity arising from the division of labour. This is a self-evident truth, since in them the division of labour is highly developed, and it engenders

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94 1893. See generally, Alpert, *Emile Durkheim and His Sociology* (1961); S Lukes and A Scull, *Durkheim and the Law* (1983); RBM Cotterrell (1991) 25 *Law and Society Review* 923.

95 1858–1917.

96 See Stanislaw Malinowski, *Crime and Custom in Savage Society* (1926).

97 See, *inter alia*, RD Schwarz and JC Miller (1964) 70 *American Journal of Sociology* 159.