

WOMEN IN THE NEW CODE

By ROSE McDERMOTT

A STUDY OF WOMEN in Church law can be properly contextualized within the legal status of the laity. The 1917 Code of Canon Law reflected the Church as a 'perfect society' and hierarchically ordered. Clerics administered the spiritual goods of the Church, while the laity remained passive members. Within this structure women were even further removed from participation in the Church's mission, as evidenced in approximately thirty-three canons of the former Code. While the Church law never explicitly stated an unequal juridical condition for women, they were in fact unequal to laymen in many aspects of the Church's mission, as well as in the married and religious states. These discriminatory norms reflected the Church's perspective of a woman as: (a) subordinate to man, (b) a temptress and an occasion of sin to man, (c) lacking intellectual acumen and sound judgment, and (d) timid, scrupulous and in need of protection. Such legislation for women was rooted in: (a) a too fundamental interpretation of sacred scripture, (b) patristic writings taken out of context, (c) an uncritical adherence to early roman law, (d) legislation protecting celibate clergy, and (e) the gradual clericalization of church ministry.

During the antepreparatory work of the Second Vatican Council, only a few bishops recognized the need to discuss the place and condition of women in the Church. However, several bishops asked for a study of the spiritual, professional, educational and recreational needs of women religious in active congregations and for a revision of church legislation pertaining to their life-styles and apostolic work. The Preparatory Theological Commission presented a draft to the conciliar fathers containing a basic societal principle — the fundamental equality of human persons and the interdependence of all human beings formed in the image of God, both male and female. The Preparatory Commission for the Apostolate of the Laity studied the condition of women in the labour force and in society. The draft indicated that women were becoming more cognizant of their proper dignity, and it decried inhuman conditions of life and forms of labour affecting women throughout the world.

Lumen gentium teaches that the Church is God's people, a holy people with a priestly, prophetic and royal character called to bear

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witness to the Lord Jesus. The members of the Church are one; they share the one Lord, the one faith, and the one baptism. They have a common dignity, the same vocation to holiness, and the one salvation. All the faithful enjoy a radical equality prior to any functional diversity. Those incorporated into the Church by the sacrament of christian initiation share in the teaching, sanctifying and governing mission of Christ. This conciliar teaching on the nature of the Church changed the role of the laity from one of passive reception to responsible participation in the Church's ministry. Likewise, it shifted the Church's perspective of women and significantly altered their legal condition. Little remains of the former discriminatory legislation against women in the 1983 revised Code of Canon Law.¹

This article attempts to study the legal condition of women in the revised Code of Canon Law and their participation as baptized members in the teaching, sanctifying and governing ministries of the Church. It will note the implications of the *communio vitae* of marriage for women and the improved autonomy of women religious in the government of their respective institutes. Ministries requiring the power of jurisdiction which women with laymen may now perform will be indicated. The article will point to discriminatory norms in the revised Code which continue to place women in an unequal juridic condition *vis-à-vis* men in church law. The conclusion will refer to present studies and practice which seem hopeful in effecting a change in the residual discriminatory legislation. Only when men and women baptized in Christ share a single juridical personality in church law will it truly reflect the gospel message and conciliar teaching.

Office of teaching

Lumen gentium 12 teaches that the people of God share in Christ's prophetic office. All the baptized bear witness to the gospel through a life of faith, charity and prayer. Anointed by the Holy Spirit, they accept God's word, hold fast to it in faith, penetrate it more deeply and apply it to life. This ministry of the word can be accomplished through: (a) preaching, (b) catechizing, (c) missionary activity, (d) formal catholic education, and (e) social communication.

The norms in book three on the teaching office of the Church are rooted in this conciliar teaching and provide numerous opportunities for the laity, both women and men, to serve in the prophetic office of the Church, precluding any canonical mission or requirement of jurisdiction. Some of the ministries which the laity can perform in these areas of the Church's teaching office are the following:

(a) *Catechetical formation*. The law of the Church obliges all its members according to their respective roles to have a special concern

for catechesis (c. 774,1). Members of institutes of consecrated life and societies of apostolic life, as well as the laity in the Church, are to offer their services willingly to the parish priest for the catechetical formation of adults, young people and children (c. 776).

(b) *Missionary activity*. The work of evangelization is a fundamental duty of the baptized. Women with men should be conscious of their responsibility in the missionary activity of the Church (c. 781). Missionaries sent by the competent ecclesiastical authorities may be clerics, members of institutes of consecrated life and/or societies of apostolic life and the laity, especially catechists (cc. 784-785).

(c) *Catholic education*. The laity can be appointed as teachers of religion in catholic and/or non-catholic schools (c. 805). They should be outstanding in true doctrine, in the witness of christian life and in teaching ability (c. 804,2). Members of the laity who have scientific and pedagogical expertise and possess integrity of doctrine and uprightness of life can be appointed by the competent authority to teach in catholic universities (c. 810,1).

(d) *Social communication*. The faithful are obliged to co-operate with pastors in order that the use of the means of social communication may be animated with a human and christian spirit (c. 822,2). Women and men working in the management or use of the media should diligently assist pastoral action (c. 822,5).

Office of sanctifying

Sacrosanctum concilium teaches that the liturgy is the priestly work of Christ continued by his entire Church. The People of God, 'a chosen race, a royal priesthood, a holy nation, a purchased people' enjoy through baptism full, conscious and active participation in the liturgy.² The emphasis on the communal nature of the liturgy, as taught in the conciliar documents, stands in sharp contrast to the hierarchical ordering reflected in the former Code of Canon Law. This renewed understanding of the liturgy called for a substantial reformulation of canonical legislation on the sanctifying office of the Church which resulted in the abrogation of several discriminatory norms preventing women's participation in the liturgy.³

Canon 835,4 states that besides clerics, the other members of Christ's faithful have their own part to play in the sanctifying office of the Church. Each in his or her own role should share in liturgical celebrations especially in the eucharist. Liturgical celebrations are celebrations of the Church as the sacrament of unity, and they are to be celebrated in the presence of Christ's faithful and with their active participation (c. 837).

Some of the ways in which the laity, women as well as men, can participate in the preparation, celebration and living out of the sacraments are the following:

(a) *Baptism*. Either the parish priest or other competent persons prepare the parents of children to be baptized through prayer and pastoral advice (c. 851,2°). If the ordinary minister of baptism is absent or impeded, a catechist or some other person deputed by the local ordinary to this office may lawfully confer baptism (c. 861,2). A sponsor in an adult baptism assists the person in christian initiation (c. 872). In the case of an infant, the sponsor with the parents helps the child to live a christian life in carrying out the duties of baptism (c. 872).

(b) *Confirmation*. The sponsor at confirmation is to take care that the person confirmed acts as a true witness of Christ and faithfully fulfills the duties inherent in this sacrament (c. 892).

(c) *Eucharist*. In the absence of a minister, and when the needs of the Church require, a lay person can exercise the ministry of the word, preside over liturgical prayer, distribute holy communion and expose and repose the Blessed Sacrament (cc. 230,3; 943). Laity, both men and women, can serve as lectors, commentators, cantors and extraordinary ministers of the eucharist (c. 230,2). A properly instructed lay person may assist a blind priest or one suffering from some other infirmity in the celebration of the eucharist (c. 930,2).

(d) *Marriage*. *Gaudium et Spes* teaches the intimate partnership of life and love of the married couple. The *foedus* or covenant is the heart of the christian family, since it arises from the mutual love, fidelity and self-donation of the spouses.⁴ The fundamental equality of the wife *vis-à-vis* her husband in this *communio vitae* of marriage effected a noteworthy reformulation of the canonical legislation on marriage. The communal and sanctifying nature of the sacrament is particularly reflected in the revised norms. The baptized man and woman are the ministers of this sacrament, and they share a communion of life, assuming mutual responsibility for the formation and education of their children (cc. 835,4; 1055; 1134-1136). Women, with laymen, can be called to assist the diocesan bishop with the preparation, celebration and ongoing concern for couples in the sacrament of matrimony (cc. 1063-1064).

(e) *Orders*. Canon 1050,3° provides that a wife give testimony in the event that her husband is promoted to sacred orders as a permanent deacon. This norm differs significantly from the former Code which seemed to prefer the testimony of a man to that of a woman.⁵

Office of governing

Lumen gentium 13 teaches that all members of the Church share in the kingly mission of Christ. They possess a right and responsibility to spread the Good News and bring men and women into fellowship with God and with one another. In keeping with this teaching,

paragraph 30 of the same document obliges Church authorities to recognize the gifts and services of all the members of Christ so that they may co-operate according to their gifts in the Church's mission.

Other conciliar documents provide structures whereby the laity may participate in the governing mission of the Church. For example, *Christus Dominus* 27 encourages bishops to set up a pastoral council consisting of priests, lay people and religious to advise them in their pastoral functions. *Apostolicam actuositatem* 26 calls for the establishment of a pontifical commission for the encouragement of the lay apostolate, and paragraph 9 of this same document states:

Since in our days women are taking an increasingly active share in the whole life of society, it is very important that their participation in the various sectors of the Church's apostolate should likewise develop.

Through baptism, the laity have a serious responsibility in the governing office of the Church. Rooted in conciliar teachings, the norms in the revised Code of Canon Law provide that the laity, both men and women, can be admitted to ecclesial functions and offices by the competent authorities (c. 228,1). This is a significant change from the norms on governance in the 1917 Code of Canon Law which provided for the most part that administrative and judicial functions in the governing office of the Church were the prerogatives of the clergy. Laymen could be called on by the competent authorities to assist clerics in the administration of the temporal goods of the Church. Laymen could also be appointed as notaries or advocates in the ecclesiastical tribunals. Women, however, were excluded from all offices of governance 'for a number of reasons' which the classical commentators neither enumerated nor explained.⁶

Administrative positions which competent women as well as laymen may now be called on to fill would include: chancellor or vice-chancellor (c. 482), financial administrator (c. 494), and a pastoral administrator entrusted with the care of a parish under the direction of a priest (c. 517,2).

In a church tribunal or the judiciary area of the Church's governing office, women with laymen may serve in the roles of notary (c. 483), assessor (c. 1424), auditor (c. 1428), relator (c. 1429), promoter of justice (cc. 1435; 1436), defender of the bond (cc. 1435; 1436), procurator and advocate (cc. 1483; 1490) and judge in a collegiate tribunal (c. 1421,2,3).

In advisory or persuasive capacities, the laity can serve in such offices as legates of the Holy See (c. 363,2), or in the structures of

diocesan synods (c. 463,1.5°,2,3), diocesan and/or parish councils (cc. 228,2; 512; 536) and diocesan and parish finance committees (cc. 492; 537).

Women religious

Conciliar teaching on the fundamental equality and human dignity of all persons, and the right and responsibility of the baptized in the teaching, sanctifying and governing mission of the Church, effected a significant change in the legislation for institutes of women religious. The internal autonomy or governance of canonically approved institutes of religious has always been provided for and protected by the legislation and practice of the Church. However, several norms in the law for religious in the 1917 Code of Canon Law required institutes of women religious to have a guardian or protector in the person of the local ordinary. These norms dealt with canonical elections, quinquennial reports, claustral regulations, canonical examinations of candidates for the novitiate and profession of temporary and perpetual vows, temporalities and separations from the institute.⁷

Shortly after the celebration of the Second Vatican Council, post-conciliar legislation in the form of decrees (*Religionum laicalium*, 31 May 1967;⁸ *Cum superiores generales*, 27 November 1969;⁹ and *Ad instituenda experimenta*, 4 June 1970¹⁰) issued by the Sacred Congregation for Religious and Secular Institutes abrogated much of the discriminatory and/or protective legislation for women religious in the former Code. Whatever residual norms remained were subsequently removed or revised by the subcommission for the revision of the law for religious.

From the very beginning of their work, the members of the subcommission determined to avoid any inequality in the norms of the proposed draft dealing with institutes of consecrated life and societies of apostolic life. Mark Said, O.P., chairman of the subcommission, spoke of their fifth directive principle:

To the guiding principles set out above — the four leading ones of which we spoke originally — we can add a further consideration, constantly in the minds of the consultants: to avoid all discrimination in drawing up prescriptions between institutes of men and women. Many congregations of women have rightly complained about the prescriptions of the existing Code in this respect. There, it seems to be taken for granted that members of women's congregations need a guardian in all the various aspects of their life and work. When the Code was published, this attitude might possibly have had something to be said for it; but nowadays the formulation of such discriminatory norms is unthinkable.¹¹

A study of the 1983 Code of Canon Law indicates that nothing remains of such protective legislation for women religious. A few norms dealing with the temporalities and separations from religious institutes of diocesan right or autonomous monasteries of contemplative life require the decision or confirmation of the diocesan bishop (cc. 637; 638,4; 682,2; 688,2; 699,2). These norms would not seem to be discriminatory legislation. They apply to institutes of both men and women and provide for the rights of both the member and the institute in circumstances which demand greater objectivity and experience than could be offered within the necessarily limited confines of the particular institute.

Lay capacity for jurisdiction

While most ministries are performed without formal church approbation, there are a few which require orders and/or jurisdiction in the minister. Jurisdiction, or power required by law, enables a person to perform certain canonically determined acts in the Church. While most of these activities are within the office of government, certain ministries in the teaching and sanctifying office of the Church also require jurisdiction. In the former Code of Canon Law, only clerics could possess jurisdiction, even though it is neither conferred by nor dependent on the sacrament of orders.¹²

Lumen gentium teaches that all the faithful have a share in the ministerial duties of teaching, governing, and sanctifying.¹³ Recent studies emphasize the distinction between the power of orders and the power of jurisdiction which has significant implications for lay ministry.¹⁴ The capacity to exercise ministry is rooted in baptism, and a person's membership of the Church through the sacraments of christian initiation is the criterion for conferring jurisdiction on a person for a ministry requiring canonical determination.¹⁵ The revised law provides that the laity, both men and women, can co-operate in the exercise of jurisdiction (c. 129,2). Some ministries requiring jurisdiction but not ordination are: (a) judge in a collegiate tribunal, (b) professor of theology in an institute of higher studies, (c) lay catechist in a missionary territory, (d) major superior in a religious institute, (e) preacher at a liturgical celebration, and (f) official witness at a wedding. Under certain circumstances, these ministries can be performed by lay men and women. Besides jurisdiction, they require a certain degree of formal training and competence. As more and more of the laity recognize and appreciate their responsibility and privilege through the sacraments of christian initiation to share in the mission of the Church, these services will no longer be exclusively clerical functions. The Church will more truly reflect a community of persons fundamentally equal with a variety of charisms to build up the Body of Christ.

Remaining discriminatory norms(a) *Installation in ministries of lector and acolyte*

Canon 230,1 states that laymen whose age and talents meet the requirements prescribed by the decree of the Episcopal Conference can be given the stable ministry of lector and of acolyte through the prescribed liturgical rite. This norm is rooted in *Ministeria quaedam*, the *motu proprio* issued by Pope Paul VI on 15 August 1972,¹⁶ and in particular paragraph seven which states:¹⁷ 'The ministries of lector and acolyte, according to the ancient tradition of the Church, are reserved to men'.

Pope Paul VI desired to restore the minor orders of lector and acolyte as lay ministries, in keeping with the liturgical renewal calling for a plurality of orders and ministries within the worshipping community. Prior to this time, these ministries were considered as preparatory steps to ordination.

Paragraph seven, reserving installation in these lay ministries to men, generated considerable critical attention in the commentaries on the *motu proprio*. The functions of the lector are already given to women in the document *Liturgiae instaurationes* (5 September 1970).¹⁸ Likewise, the instruction *Immensae caritatis* (25 January 1973)¹⁹ permits qualified women to distribute holy communion for a time or in a permanent manner. Women bring bread and wine to the altar, assisting the priest in the sacrifice. Since women can perform all the functions involved in the lay ministries of lectors and acolyte, it seems inexplicable to exclude them from installation in these lay ministries.

This discriminatory norm in the 1983 revised Code of Canon Law reflects canonical discipline rather than any theological principle. It can only be understood in the light of past legislation which protected a celibate clergy while removing women from liturgical functions in the Church, or as a fixed opinion on the part of the legislator cementing these ministries as steps to sacred orders despite the transition effected in *Ministeria quaedam*.²⁰

In his address to the members of the United States National Federation of Diocesan Liturgical Commissions, during their annual meeting in 1972, Frederick McManus, director of the Bishops' Committee on the Liturgy observed that the decision to exclude women from formal investiture as readers and acolytes was incorrectly understood as excluding them from the actual and vastly more important exercise of those and other ministries. McManus observes:

The exclusion of women from the liturgical blessing or investiture is practically inexplicable: it runs against older traditions of women in the diaconal ministry, women religious presiding at the liturgy of

the hours, the blessing of religious superiors and consecrated women, the conciliar decision that women may administer sacramental blessings, the intent of the Pastoral Constitution on the Church in the Modern World. The point is that these ministries are not holy orders, not the sacrament of orders — and even the most cautious theologian would find it hard to deny the ministries to women in such circumstances. It was ironic that the week after the document was published we read in Luke 8 about the ministry of the women with Jesus and the disciples.²¹

(b) *Orders*

Canon 1024 states that only a baptized man can validly receive sacred ordination. Since a baptized woman cannot be ordained, she is not permitted an office requiring the full care of souls (c. 150). Likewise she is incapable of the power of government (c. 129,1), although she can co-operate in the exercise of jurisdiction according to the norms of law (c. 129,2). While all the faithful participate in the Church's ministry through the sacraments of christian initiation, those in the ministerial priesthood perform some special types of ministry. The celebration of Mass, the sacrament of penance or reconciliation, the anointing of the sick and the ordination of clergy all require a minister who has received sacred orders.

Research in sacred scripture and theology, changes in the disciplinary practices of other christian communions, developments in the behavioural sciences and transition in socio-cultural constructs have prompted the question of the ordination of women to the ministerial priesthood in the Catholic Church. The research of the Pontifical Biblical Commission and at least four doctoral dissertations brought no significant negative response to the question.²²

The Congregation for the Doctrine of the Faith studied the question and responded with a restatement of the traditional teaching of the Catholic Church excluding women from the ministerial priesthood in the declaration *Inter insigniores* (15 October 1976).²³ Theologians urged that discussion on the issue continue. Karl Rahner recognized the declaration as fundamentally reformable. He cautioned that theological reflection could proceed too slowly to the detriment of the Church.²⁴ During the past eighteen years, the question continues to be one of debate, discussion, study and writing.

While the bishops of the United States adhere faithfully to the teaching of the Church restated in *Inter insigniores*, they consider the issue of women in the Church among their top priorities. From December 1979 to July 1980, three meetings were held between members of the National Conference of Catholic Bishops' (NCCB) *ad hoc* 'Committee on Women in Society and in the Church' and

representatives of the Women's Ordination Conference (WOC), 'to discover, understand and promote the full potential of women as persons in the life of the Church'.²⁵

Bishop Michael McAuliffe, Chairman of the *ad hoc* 'Committee on Women in Society and in the Church' requested the NCCB to approve a thorough study of the possibility of ordaining women to the diaconate which would be sent to Rome. During their 1983 fall meeting, the bishops approved the writing of a pastoral letter on women in the Church.²⁶

Conclusion

It is important to remember, in the consideration of this important and delicate question, the understanding of the Church not only as the community of God's people, but also as a universal institution. As such, the Church is the recipient of and contributor to the numerous cultures of the world. In developed countries, many women, both lay and religious, are well educated and capable of a variety of ministries in the mission of the Church. However, it is a sad truth that women in many developing countries are not too far removed from human bondage. Their aspirations centre on the basic human needs, rather than their rights and responsibilities in the life and mission of the Church. Those addressing themselves to the issue should be sensitive to the vast differences and needs of women in the various countries of the world.

In the developed countries scholarly research, coupled with the commitment of our bishops to bring qualified and willing women into every possible office permitted by Church law, will do much to continue the debate and raise the consciousness of God's people. In the 1983 Synod of Bishops, Archbishop Louis Albert Vachon of Quebec noted that civil societies have made progress in eliminating discrimination against women. Yet, he stated:

These appeals of the Church to the world for the advancement of the status of women are on the point of losing all impact unless the recognition of women as full members becomes simultaneously a reality within the Church itself.²⁷

Above all, women should study prayerfully and integrate into their spirituality the concept of ministry as service so beautifully articulated in the documents of the Second Vatican Council. This concept of ministry as service is not foreign to woman's nature, activity and experience. It will sustain her in fidelity, love, hope and patience, as she suffers and grows with the Church in its labour to understand its mystery, to image Christ more closely and bring him more fully to a waiting world.

NOTES

- ¹ McDermott, Rose, S.S.J.: *The Legal condition of women in the Church: shifting policies and norms* (The Catholic University of America, No 499, Washington, D.C., 1979).
- ² *Sacrosanctum concilium* 14.
- ³ McDermott: *supra*, pp 5-82.
- ⁴ McDermott: pp 38-64.
- ⁵ McDermott: p 112.
- ⁶ McDermott: pp 101-22.
- ⁷ McDermott: pp 122-55.
- ⁸ ASS 59 (1967); 362-64.
- ⁹ ASS 61 (1969); 738-39.
- ¹⁰ ASS 62 (1970); 549-50.
- ¹¹ *Communicationes* 2: 176-77.
- ¹² 1917 *CIC*, c. 118.
- ¹³ LG 10-13.
- ¹⁴ Cuneo, J. James: 'The power of jurisdiction: empowerment for Church functioning and mission distinct from the power of orders', *The Jurist* 39 (1979), pp 183-219; Huels, John M., O.S.M.: 'Another look at lay jurisdiction', *The Jurist* 41 (1981), 1, pp 59-80.
- ¹⁵ Huels, pp 67-70.
- ¹⁶ ASS 64 (1972); 529-34.
- ¹⁷ *Ibid.*, p 533, VII.
- ¹⁸ ASS 62 (1970).
- ¹⁹ ASS 65 (1973).
- ²⁰ McDermott: pp 322-32.
- ²¹ McManus, Frederick: 'The State of the liturgy', *Origins* 2 (2 November 1972), 301, 303, 310-11.
- ²² Swidler, Leonard and Arlene, eds: *Women priests: A catholic commentary on the Vatican declaration* (New York, 1977), pp 3-15.
- ²³ Sacred Congregation for the Doctrine of the Faith, 'Vatican declaration: women in the ministerial priesthood', *Origins* 6/33 (3 February 1977); 517, 519-24; commentary, *ibid.*, pp 524-31.
- ²⁴ Rahner, Karl: 'Priestertum der Frau?', *Stimmen der Zeit* 195 (1977); 291-301.
- ²⁵ Interim report on the dialogue between the women's ordination conference and the United States Bishops' committee on women in society and in the Church', *Origins* 11/16 (25 June 1981); 81, 83-91.
- ²⁶ United States Bishops' meeting, 'Toward an expanded dialogue with women', *Origins* 12/26 (9 December 1982); 422-24.
- ²⁷ 1983 Synod of Bishops 'Male and female reconciliation in the Church', *Origins* 13/19 (20 October 1983); 334-35.