

## WOMEN'S GIFTEDNESS AND EXPERIENCE

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I have been asked to speak on “Women’s Giftedness and Experience”. This is a topic every person in this room could eloquently speak on because of what we have seen and experienced! Hence my presentation this morning is going to concentrate on ways in which the Plenary Council can be an instrument towards making our church more inclusive for women (and non-ordained men) by insisting that the laws which prohibit this inclusion are changed.

I will begin by discussing what we understand by law and some of the different types of law which affect our lives. The emphasis will then move to current church (canon) law and those which limit or totally prohibit the ministries of women. This will be followed by a discussion of some of the laws where for the health and life of the church, the laity should be involved in church governance but because these laws allowing this presently exist as recommendations only, they are therefore ignored by most Australian diocesan bishops and parish priests. It is up to the Plenary Council to recommend that these laws are changed and their observance becomes mandatory for all dioceses and parishes.

What do we mean by law? While there can be no one definition, for our purpose it will be described as a system of rules that a society develops in order to deal with social relationships and to ensure good order in the community, and its prescribed rules or mode of conduct or action are formally recognised as binding by a recognised authority. Every law should have a purpose for its existence and if we do not know its purpose, the law should not exist. All laws have a life span and we know that laws can change and change

they should when the circumstances which brought them into existence have changed; and laws which have outlived their purpose and are no longer relevant should be abrogated. It is important that the community understands and accepts the values which the law intends to uphold. In fact some canonists believe that a law must be received, or accepted by the community, for it to have validity (Örsy, L, *Theology and Canon Law*, (Collegeville, Minnesota, 1992), 45. This is to guard against blind obedience.

While there are many types of law, I am going to briefly describe what we understand as natural law, divine law, civil law, and canon or church law. I will then concentrate on the laws of the Catholic Church and how they limit at best and most often deny women of their baptismal rights and natural dignity and reveal an attitude of superiority and privilege to a few.

### **Natural law**

Natural law can be described as a body of unchanging moral principles which provide the basis for all human conduct. It refers to moral principles common to most or all human cultures. Cicero, a Roman statesman who lived in the century before the Christian era, described what we mean by natural law:

There is indeed a law, right reason, which is in accordance with nature; existing in all, unchangeable, eternal. Commanding us to do what is right, forbidding us to do what is wrong. It has dominion over good men, but possesses no influence over bad ones. No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether. Neither the people nor the senate can absolve from it. It is not one thing at Rome, and another thing at Athens: one thing to-day, and another thing tomorrow; but it is eternal and immutable for all nations and for all time. Natural law obliges us to contribute to the general good of the larger society (*De Re Publica*).

For Christians, natural law flows not from divine commands, but from the fact that humanity is made in God's image, and humanity is empowered by God's grace. Living the natural law is how humanity displays the gifts of life and grace, the gifts of all that is good. We can say that the right to life, the right to one's good name, the right to be treated fairly and justly all stem from the natural law.

### **Divine law**

Let us now look at divine law. Divine law is understood as coming from a transcendent source, such as the will of God or gods, in contrast to laws made by humans. Divine laws are typically regarded as superior to laws made by humans due to an understanding that their source lies beyond human knowledge and reason. It can be hotly debated as to what are examples of divine law in the Christian tradition and especially in the Catholic Church. It is amazing how a line or two in scripture can be used to justify privilege for some and exclusion for others! An example which most Christian denominations hold is of a divine law is the institution of the Eucharist.

### **Civil law**

Civil law in our country is derived from the laws of ancient Rome which used doctrines to develop a code that determined how legal issues would be decided. It can be described as a body of rules that defines and protects the private rights of citizens, offers legal remedies that may be sought in a dispute, and covers areas of law such as contracts, torts, property and family law. Each country has its own legal system which must be adhered to not only by its citizens but also by all who enter the country. We all know that we must obey

the various Australian laws whether it concerns driving a car, paying taxes and voting in an election! And if we don't obey the law we have to accept the penalty! Not only must civil law be obeyed by its citizens, all organisations within its territory are also subject to its laws and this includes the Catholic Church! We can think of the recent example concerning the mandatory reporting of the sexual abuse of minors and the Catholic Church demanding exemption from this law because of the seal of confession. The Catholic Church has to accept and abide by the laws of the country and state where it is situated even if its precepts are in opposition to its own teachings.

### **Canon (church) law** “merely ecclesiastical law” (canon 11)

The canon law of the Catholic Church is the system of laws and legal principles made and enforced by hierarchical authorities in order to regulate its external organization and governance and to direct the activities of Catholics toward the mission of the Church. The canon law of the church had its origin in Roman law and unfortunately in its early history, it was Roman law which took precedence over the teachings of Jesus and the values of the gospel!

It is interesting that canon law describes its laws as “merely ecclesiastical laws” and they generally bind only baptised Catholics. Let us remember that these laws are all man-made! While church officials may claim that they are inspired by the Spirit, they do not and cannot claim that they come from God.

### **Changing canon (church) law** “merely ecclesiastical law” (canon 11)

As we begin, let us remember the following about our church laws:

- They have come into being because of a perceived need, that is, they have not always existed.

- Not all the laws have the same value
- They can be change and should be changed when the factors which brought them into being have changed.
- They can be dispensed.
- The principle of *epikeia* should be used when the law does not apply to the situation
- Some laws fall into disuse or are just abandoned

Other points to note are that the implementation of a law generally follows the lived experience, not the other way around; and as previously mentioned, there needs to be an acceptance by the community for which the law is intended.

### **Examples of changes in church law**

How possible is it to change the laws of the Catholic Church? Because they are “merely ecclesiastical laws,” that is they are man-made, the appropriate authority can change any of these laws and over the centuries there have been many modifications and changes to church laws.

Let us consider a few of the changes which have taken place in the life time of many of us. Before the Second Vatican Council, the church taught that “Outside the church there is no salvation”. This teaching, which was based on a misinterpretation of **Matthew 28: 18-20**, has a long history dating back to the fourth century, and in the ensuing centuries, this mis-interpretation was re-affirmed by several popes and church councils. It took the Second Vatican Council for us to recognise and appreciate those of other religious traditions and none.

We can think of other changes to church law such as the teaching on Limbo, something which Pope Benedict put an end to a decade ago, and in December

2016 Pope Francis made some quite radical changes to the procedures to be followed in the declaration of the nullity of a marriage.

I would like now to concentrate on another and a more significant change in which took place last year when Pope Francis altered a law in the Catechism of the Catholic Church. In promulgating the Catechism of the Catholic Church in 1992 as an Apostolic Constitution, Pope John Paul II described it as “a statement of the Church’s faith and of catholic doctrine, attested to or illumined by Sacred Scripture, the Apostolic Tradition, and the Church’s Magisterium. I declare it to be a sure norm for teaching the faith...<sup>1</sup> Such an affirmation of the status of this Catechism would lead us to believe that these teachings would remain steadfast and interestingly it is these three factors:

- Sacred Scripture,
- the Apostolic Tradition, and
- the Church’s Magisterium

which are typically used to rationalise the church’s opposition to the ordination of women.

But let us take the teaching on capital punishment, the death penalty, as outlined in this Apostolic Constitution. The Catechism reads:

...the traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding, in cases of extreme gravity, the death penalty (*Catechism of the Catholic Church*, (St Pauls, Society of St Paul, Homebush, NSW, 1994), 546.

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Yet despite this authoritative statement by his predecessor, in August last year Pope Francis changed this teaching:

The death penalty is inadmissible because it is an attack on the inviolability and dignity of the person and the Church works with determination for its abolition worldwide.

Such an about turn illustrates the principle that “merely ecclesiastical laws” even when “attested to or illumined by Sacred Scripture, the Apostolic Tradition, and the Church’s Magisterium” can be changed! Given that they are ‘merely ecclesiastical laws’, statements such as “it’s against canon law that women cannot be ordained” or “the non-ordained are incapable of governance in the Catholic Church” should be challenged and must be addressed at the Plenary Council. These man-made discriminatory laws can and must be changed if the church is to have any credibility in the future.

### **Attitudes towards Women in the church**

The Plenary Council also needs to address the bias that the Catholic Church displays against women and the particular contribution they can make. It has a long history! Let us consider a couple of examples.

In 1933 Pope Pius XI received a petition from several hundred people, including 342 bishops, to name St. Thérèse of Lisieux a doctor of the church. The pope replied simply ‘*obstat sextus*’, her sex was an obstacle! At this time no woman had been declared a Doctor of the Church even though there was no church law forbidding this! There was just the generally accepted view that even a woman who had been declared a saint, was inferior including inferior in her intelligence and could not possibly be declared a Doctor of the Church! Her

‘sex was an obstacle!’ This statement remained unquestioned at the time and it was some decades later before any women were declared Doctors of the Church.

Let us take another example, this time from canon law. In the selection of possible future bishops, canon 377 §3 states that the papal legate is to seek the opinions of others regarding nominations which have been forwarded to him. He is to consult some members of the college of consultors and of the cathedral chapter and if he judges it expedient, he is also to seek individually, and in secret, the opinions of other clerics, both secular and religious. Now the last clause! If he is to seek the opinions of lay persons, they must be people of outstanding wisdom! Only the lay people are to have “outstanding wisdom”! This was not a requirement of members of the college of consultors or of the cathedral chapter or of clerics, whether they be secular or religious! What is the church telling us about the non-ordained?

### **Governance in the Church**

With these facts in mind, we now look in more detail at the issue of governance in the church. Current church law teaches:

Canon 129 §1 Those who are in sacred orders are, in accordance with the provisions of law, capable of the power of governance, which belongs to the Church by divine institution. This power is also called the power of jurisdiction.

Canon 129 §2 Lay members of Christ’s faithful can cooperate in the exercise of this same power in accordance with the law.

Lay people are not capable of the power of governance themselves, and can only ‘cooperate’ in the exercise of this power. Why has church law linked

governance to ordination? Let us look at what the church taught regarding the power of governance at the turn of the last century. The 1917 Code of Canon Law determined that only clerics could obtain the power of jurisdiction (CIC 118). Yet clerics, according to the 1917 code, were those who had received tonsure which was a minor order, and they were not ordained. Thus at this time, ordination was not a necessity for obtaining power of jurisdiction! Why does the church consider it as necessary now?

The teachings of the Second Vatican Council remind us that the church is the People of God and that by baptism, Christ's faithful participate in their own way in the priestly, prophetic and kingly office of Christ (canon 204). This teaching emphasises that it is the call of all the baptised to participate in the sanctifying, teaching and governing power of the church. It does not restrict this participation to a 'co-operation' with an ordained man but something to which all the baptised have been called to by their baptism.

What does ordination to the priesthood call a man to do? He is called to preach the gospel and to celebrate the Eucharist and other sacraments. When you attend a ceremony for the ordination of a deacon or the ordination of a priest, you will notice that nowhere is the man or the deacon called to exercise governance. There is no mention of governance in these rituals which is an indication that the cleric's call to governance comes from his baptism as it does to all the baptised!

How does this law regarding the exercise of governance affect those women and lay men who have various roles in the church and who appear to have the power of governance? We call to mind the non-ordained in the positions of diocesan chancellor, tribunal judge (c.1421 §2), finance officer of a diocese (c.

494) a member of a diocesan finance council (c. 492), a lay person in charge of a parish (c.517 §2) etc. Why don't these eminently capable and committed people have the power of governance in their own right given that they are the baptised faithful? Does it give the appearance of a lack of trust for anyone who is not ordained to say that in their positions they are only 'co-operating' in the work of governance or they are sharing in this work of governance which is overseen by an ordained man? Where does this fear of having women and lay men in leadership and governance come from and what is it which is nourishing this fear?

It is this discriminatory law which means that women and lay men are effectively barred from the highest decision making bodies in the church. Sometimes they are consulted on particular issues. The argument is sometimes heard that "I have a good bishop so it doesn't affect me. Let's not worry about what the law says." This is being short-sighted and does nothing to address the issue of the denial of the rights of the laity to exercise their baptismal call to governance. A recognition of the giftedness and the particular experience and perspectives that all the baptised, and especially women, bring to all these positions is essential for the health and integrity of the church and something which should not be dependent on a 'co-operation' with an ordained. This issue of the exclusion of women and lay men must be addressed and a vote for change taken place at the Plenary Council.

### **Making the *sensus fidelium* a living reality**

I now wish to address further the participation of women and lay men in real decision making in dioceses and parishes or rather this present lack of participation. How is the diocesan bishop or the parish priest get any sense of

the *sensus fidelium* unless he has structures whereby he gets to know what the people in his diocese or parish think and how they see the way forward? Current church law only recommends that each diocese and each parish has a Pastoral Council to address the issues before the community. Regrettably and as a result, most diocesan bishops and many parish priests do not involve the laity in any serious decisions with regard to life in the diocese or parish. We therefore ask the Plenary Council to ensure that it becomes mandatory for all dioceses and parishes to have Pastoral Councils where the voice of the person in the pews is heard and respected. Furthermore these Councils must have a deliberative vote and not just be consultative. I am sure that there are many of us who have sat through parish meeting after parish meeting only to be reminded by the parish priest that he makes the final decision and that it is his opinion that matters! Through baptism we all share in the teaching, sanctifying and governing of the church and this gift should no longer be denied to us and to our church.

A few months ago, Rome announced the appointment of a new bishop for an Australian diocese. The bishop's first response was "With the priests and deacons by my side, I pray that we will serve Christ's faithful with charity, mercy and joy." Where does this bishop see the role of women and lay men in this diocese given that they are not going to be 'by my side'? Does this bishop intend to listen to his people and work with the people in his diocese? Does he want to know what the people in his diocese think or does he just want to know what the priests and deacons think?

Can you imagine a different response to the issue of child sexual abuse if a diocesan bishop who had a Diocesan Pastoral Council consisting of women and lay men along with clerics, confided to them that he was dealing with a priest

who was sexually abusing children? What do you think these women and men would have recommended to their bishop? How strong do you think they would have voiced their opinions? Would they have recommended a 'hush hush' approach to prevent scandal? Would they have agreed to the offender being moved to another parish for a new start? I don't think so!

## **Conclusion**

The church, by excluding women and lay men from governance roles, is witnessing to the world that it does not need the laity in these leadership roles. Yet the Royal Commission said something different and named this loss as a factor in contributing to where the church currently is! It is now up to the Australian faithful in the Plenary Council, to ensure that the contribution of all women and lay men is recognised as essential for healthy and balanced decision making in our church. They must be afforded their baptismal right of participating in the governance of the church. We must request a prompt a change in current church laws, that is merely ecclesiastical laws, with regard to decision making at all levels and the lifting of restrictions regarding particular ministries.

The purpose of law in the life of the Church is stated in the last canon of the 1983 Code of Canon Law (C 1752). It rephrases an ancient and consistently held principle, *Salus animarum suprema lex*, which may be translated as: *The salvation of souls must always be the supreme law of the Church*. The church laws which discriminate against more than half of its members and has a bias for those in the clerical state, is currently failing in its role of helping us all, including those in the clerical state, get to heaven! The Plenary Council must work to ensure changes in these 'merely ecclesiastical laws'!

