

ARTICLE

WOMEN'S WORK:
A LUTHERAN FEMINIST PERSPECTIVE

MARIE A. FAILINGER*

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... I bring you good news of great joy which will be for all the people!¹

In the moment of elation at this Word, one should not too easily get comfortable with the Good News. The Gospel is a subversive proclamation. It subverts the tentative essays of the feminist project even while often siding with those feminist voices as they are raised in protest and in plea for a larger justice than the Western philosophical project has been able to deliver. It recognizes and yet subverts our self-assurance that we "know"

* Professor of Law, Hamline University School of Law. Thanks to my co-panelist Susan Stabile, to Elizabeth Schiltz, to members of the University of St. Thomas Law Journal staff, to my research assistant, Melanie Bormett, and to the staff of the Hamline Law Library for their wonderful help as this manuscript was developed.

1. *Luke* 2:10 (New American Standard Version).

about work: about what is valuable work, about how women work, and about how women as workers are engaged by men and by society generally.

The Gospel is subversive in many ways relevant to the problem of women and work, subverting what we think we know, and how we understand the link between relational responsibility and justice. First, as this article will suggest, in thinking about work, Lutheran feminists would want to go beyond the existing claims of feminist scholars about how we can know what we know. Before the law can support “good work,” we must know what work is for human beings and how women experience workplaces. While Lutherans side with feminists in valuing contextual ways of knowing, they would argue that the Gospel subverts all—including feminist—understandings of how we know what we know.² In subverting feminists’ search for a new foundation of knowledge once the Western project has been dismantled, the Gospel insists that our turn to contextual knowing must embrace a larger context than the social and material conditions in which women work.

Second, feminists have focused on relationality as at the core of all important human endeavors,³ including work. While Lutheran feminists would share this focus, they would argue that the Gospel is subversive in demanding a more genuine and inclusive relationality that decenters all human efforts to describe what is at stake in working relationships. A key conundrum for many feminists has been the challenge of negotiating the conflict between their ethical and experiential preference for care of the other with the facts of economic and social oppression of women that sometimes result when others take advantage of women’s care.⁴ For Lutherans, the Gospel reaffirms the rightness of sacrificial neighbor-love in a way that does not necessarily carry the baggage of the inevitable victimization of women.

A preliminary and necessary admission to those who stand outside the Lutheran or Christian tradition: my argument about the way in which Lutheran feminism would reconstruct the boundaries of knowledge and care is necessarily my own; it builds upon a long tradition of Lutheran ethics but a relatively short historical period of discussion among feminists who are

2. DEANNA A. THOMPSON, *CROSSING THE DIVIDE: LUTHER, FEMINISM AND THE CROSS* 102, 114 (2004) (noting that Lutherans and feminists share a commitment to a hermeneutics of suspicion, to a critical method and to a focus on experiential dimensions of knowing, but noting that “Luther’s dialectical approach to human existence and God’s alien and proper work allows for a deeper accounting of sin as harm done to others” that would affect how we understand what we can truly know).

3. See, e.g., Marilyn Friedman, *Feminism and Modern Friendship: Dislocating the Community*, in *FEMINISM AND COMMUNITY* 187, 187 (Penny A. Weiss & Marilyn Friedman eds., 1995) (noting the “predominant theme” of feminist thought is a critique of abstract individualism and “a conception of the self as inherently social”).

4. See, e.g., MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* 268–276 (1990) (describing how family members who lack privilege are endangered both by rights-based approaches and relational approaches that deny them basic rights).

Lutherans about what the dialogue between these two traditions would uncover. There is no authoritative "Lutheran feminist" tradition, at least not yet. Christian feminist voices, and even Lutheran feminist voices, are multi-valent, as was Luther's own. On one hand, to speak as a Lutheran feminist is to speak only for myself; each woman speaks a singular argument out of a lived faith tradition as well as her experience and thoughts about women's life-work, work in which any modern woman is immersed. More broadly, it is always important to acknowledge that scores of intellectual children birthed by both feminist jurisprudence and Lutheran theology bear new life for the law, and one can find such plenitude even within the seemingly narrow confines of Lutheran feminist theology itself.⁵ However, to stress such diversity does not foreclose the possibility of identifying distinctively Lutheran feminist themes that I hope this article will fairly, if incompletely, represent. Many Lutheran feminist claims will bear a clear family resemblance while others will not.⁶

Identifying the commonalities within a tradition such as Lutheranism is not just important to nourish those feminists of faith who live within the law and our own religious tradition. Our insights can similarly nourish those from other traditions, religious and secular, whose lives the law and the tradition shape because their wisdom can challenge ours. The challenge for Christian feminists, including Lutherans, is to ensure that our insights continually resound with our opening message, the Good News. Whether we dream of better justice or stand in critique of law, our insights can be authentic and true only so long as we keep in the center of our imagination the true hope that is within us.

5. Among those voices who have done work relevant to ethics and law, see THOMPSON, *supra* note 2; MARY M. SOLBERG, *COMPELLING KNOWLEDGE: A FEMINIST PROPOSAL FOR AN EPISCOPALY OF THE CROSS* (1997); Ann Pederson, *Conversations Toward an Ongoing Lutheran Reformation*, 24 *CURRENTS IN THEOLOGY AND MISSION* 5 (1997); Kristen Kvam, "The Sweat of the Brow is of Many Kinds:" *Luther on the Duties of Adam and His Sons*, 24 *CURRENTS IN THEOLOGY AND MISSION* 44 (1997).

6. Even authentically Lutheran contributions from feminist theologians may create dissonance among Lutheran traditionalists. See Pederson, *supra* note 5, at 6. On the other hand, in my view, it is also important to be careful about the fact that some who affiliate with Lutheran congregations and institutions do not (or do not always) make arguments consistent with recognized Lutheran theology. As with other streams within a religious tradition, non-Lutherans who come upon "a Lutheran who is a feminist" need to probe with care whether the individual's arguments are consistent with the core of the Lutheran witness before associating feminist theologies with Lutheranism. As an example of a Lutheran-affiliated theologian utilizing non-Lutheran arguments, see, e.g., Marit Trelstad, *Relationality Plus Individuality: The Value of Creative Self Agency*, 38 *DIALOG* 193, 198 (1999) (employing a Whiteheadian perspective to argue that it can be damaging to "preach" relationality to women who have had their "intrinsic, subjective being violated," and urging that women's struggle "is not to see themselves as a part of a risky relationality, but may be, rather, to affirm their own 'ego boundaries' in psychoanalytic terms, 'intrinsic value' or agency in process terms, or places of plain safety in very practical terms").

I. HOW WE KNOW HOW WOMEN WORK AND SHOULD WORK:
DEEPENING CONTEXTUAL KNOWLEDGE AND
AVOIDING FOUNDATIONALISM

A. *Lutheran-Feminist Agreement on Knowing As Contextual*

As suggested, Lutheran feminists would approach the problem of knowledge in ways similar to secular feminists—by focusing on deep, contextual “knowing” that can only be partial and contested, but they would interrogate even traditional feminist methods for knowing what we know. A major effort in modern feminist jurisprudence has been to undermine the Western turn to abstraction as the major methodology for understanding the truth and resolving important ethical as well as legal issues.⁷ Feminist lawyers have called for a return to contextual investigation about reality and contextual reasoning about justice in diverse critiques.⁸ They have sided with historians and Critics in demanding that the context of legal rule-making must be considered in critically examining the law; they have argued that social policy and historical movements play a key role in shaping law in ways that produce as many unjust results as just ones.⁹ They have lifted up the particular context of the lives of women as a missing, almost deliberately ignored element of consideration when judges and legislators have made law.¹⁰ In proving how women have been invisible to the law, they have given countless examples, from women’s legal incompetency in the nineteenth century¹¹ to the recurring theme of the limits that reproduction and child care place upon women’s social possibilities in the twenty-first century.¹²

7. See NANCY LEVIT & ROBERT R.M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 13, 48–49 (2006) (describing feminist “special attention” on contextual reasoning).

8. See, e.g., MINOW, *supra* note 4, at 322 (critiquing abstract reasoning for obscuring ambiguity of problems and human relationships, and empowering wrong/right argumentation rather than recognition of convergent ideas, in the context of life and death decisions).

9. See, e.g., JUDITH A. BAER, *OUR LIVES BEFORE THE LAW: CONSTRUCTING A FEMINIST JURISPRUDENCE* 72 (1999) (describing feminists’ rejection of reason and “‘rigorous logical manipulation of abstractions’ in favor of ‘sensitivity to context and . . . a faith in emotion and intuition as tools of thought’” (citing Joan Williams, *Deconstructing Gender*, in *FEMINIST JURISPRUDENCE* 44–45 (Leslie Friedman Goldstein ed. 1992))).

10. See, e.g., MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 4–5 (2d ed. 2003) (describing the recurring theme of “the importance of women’s experience” in feminist scholarship and arguing that women’s injuries have been unrecognized or minimized because “women’s experience is not adequately expressed in the law”).

11. See Nadine Taub & Elizabeth M. Schneider, *Women’s Subordination and the Role of Law*, in *FEMINIST LEGAL THEORY: FOUNDATIONS* 9, 10 (D. Kelly Weisberg ed., 1993) (describing women as “legal nonentities unable to sell, sue or contract without the approval of their husbands or other male relatives”).

12. See, e.g., BAER, *supra* note 9, at 145 (arguing that men help to sustain women’s inequality by refusing to share birth control, child care, household work, and financial responsibility with their children’s mothers); TOVE STANG DAHL, *WOMEN’S LAW: AN INTRODUCTION TO FEMINIST JURISPRUDENCE* 104–107 (Ronald L. Craig trans., 1987) (arguing that women’s pregnancies and caretaking responsibilities are largely forced upon women and prevent them from gaining self-determination and self-realization).

Feminists, however, charge that abstract ways of knowing cause more harm than simply blinding lawmakers to essential pieces of the social puzzle that law attempts to set in order.¹³ Feminists also claim that abstract reasoning about truth, on its own, permits lawmakers to distance themselves from those who seek justice, or indeed to blame victims in the legal system for their own misfortunes.¹⁴ As they have proposed new justice and new ways in which the legal system should interact with women, feminists have also called for lawyers to account for and honor their client's life as they communicate and decide with, and advocate for their clients.¹⁵

The sphere of women's work exemplifies the problem with ignoring context in favor of abstract thinking as well as any other. We might take the conundrums of modern-day divorce and sexual harassment as two examples. Attempting to resolve the courtroom acrimony of divorce, lawmakers designed no-fault dissolution regimes that acknowledged, but did not fully understand, what it means that women's domestic work is unpaid. These regimes, designed around an abstract understanding of gender equality, employ a presumption that equal division of assets would achieve equal opportunity for both men and women.¹⁶ Yet, despite statutory laundry-lists of factors that authorize judges to deviate from perfectly equal division, the failure of lawmakers and judges to truly understand the effects of unpaid women's labor on their property and income status has resulted in the creation of serious property outcome inequalities between men and women after divorce.¹⁷ As feminist legal theorist Judith Baer puts it, "The truth we can get at through the legal language is that laws [that award only wives alimony] discriminate against men. The truth we cannot get at is the harm divorce law does to women."¹⁸ Had these seemingly progressive lawmakers

13. See LEVIT & VERCHICK, *supra* note 7, at 51–52 (noting how legal story-telling fails to take account of women's experiences).

14. See, e.g., CHAMALLAS, *supra* note 10, at 73–74 (noting "judicial insensitivity" to battered women and "examples of judges blaming women for 'provoking' violence against them and displaying irritation at having to spend valuable court time attempting to get to the bottom of family disputes").

15. See Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 *FORDHAM L. REV.* 249, 258, 267 (1998) (describing Cynthia Fuchs Epstein's history of feminist law firms that attempted to "democratize attorney-client relations, and establish egalitarian working communities" and Carrie Menkel-Meadow's research suggesting that women lawyers, following an ethics of care, "would reject adversarial modes of practice and seek modes of lawyering that take the interests of all parties into account and endeavor to preserve the relationships among them" and "organize their work relationships in a less competitive, more collaborative and egalitarian manner").

16. See CHAMALLAS, *supra* note 10, at 32 (noting that no-fault divorce gained popularity in an era when feminists envisioned equal sharing of family life between men and women and supported "equal, non-gender-based standards" for divorce, custody and child support, despite feminist skepticism about its benefits).

17. See BAER, *supra* note 9, at 104–105 (describing the contribution of divorce to the "feminization of poverty" because of the declining economic status of ex-wives as compared with their ex-husbands).

18. *Id.* at 105.

and judges understood in a deep way the relationship between women's unpaid and underpaid labor, such as the limitations that child care responsibilities put on their ability to earn and accumulate assets, the inevitable failure of a facially "equal" policy of asset distribution in divorce would have been clearer.

Similarly, we might note how difficult it was for women to achieve parity of workplace conditions because of abstract thinking about the nature of equality and discrimination. It has now become something of a running joke among feminists and judges that sex discrimination was only included in Title VII in order to trivialize and defeat the law.¹⁹ But if we look at the campaign that had to be mounted for judges and lawmakers to recognize the connection between hostile, sexually subordinating conduct in the workplace and the unequal position of women,²⁰ we see the consequences of understanding equality as an abstraction. Lawmakers' failure to ask real women how their productivity and dignity are affected—and to take their answers seriously—when their supervisors can grope, sexually demean and proposition them without reproach, has slowed not only the development of the doctrine, but also its implementation.²¹

Beyond specific "told you so" examples like divorce, however, feminists sometimes have difficulty explaining why contextual thinking is more likely to gain purchase on the truth than abstract reasoning. Some seem almost to resort to the argument that this is how women *do* think, and so it must be a valid way of understanding the world,²² yet, such an argument, if

19. *But see* Robert C. Bird, *More Than a Congressional Joke: A Fresh Look at the Legislative History of Sex Discrimination of the 1964 Civil Rights Act*, 3 WM. & MARY J. WOMEN & L. 137, 138–142 (1997) (arguing that this commonplace notion is incorrect and that "feminists who strongly supported the inclusion of sex as a protected class . . . secured its passage into law").

20. *See, e.g.*, Katherine H. Flynn, Note and Comment, *Same-Sex Sexual Harassment: Sex, Gender and the Definition of Sexual Harassment Under Title VII*, 13 GA. ST. U. L. REV. 1099, 1103–1104 (1997) (describing, *inter alia*, early courts' rejections of Title VII sexual harassment claims because such harassment was "based on desire and not specifically on the gender of the victim . . . 'a personal proclivity, peculiarity or mannerism' and an attempt to satisfy 'a personal urge,'" and a "distasteful and unfortunate occurrence" unrelated to the victim's employment, and their view that "[t]o allow sexual harassment claims under Title VII would turn every 'pass' into a potential lawsuit, would ignore the reality of natural sexual attraction between men and women, and would invite false claims of sexual advances as retaliation for negative employment decisions or discipline").

21. *See, e.g.*, Avon L. Sargent, Topical Summary, *Are the Legal Remedies Available to Sexually Harassed Women Adequate?* 20 WOMEN'S RTS. L. REP. 185, 189 (1999) (noting that "many victims believe that their employer's grievance mechanisms are designed to protect the employer instead of the employee," that "a number of corporations failed to provide their equal employment or affirmative action staff with sufficient independence and authority" resulting in inadequate prevention or investigation of claims, and that "many employers, including local governments, do not have policies, complaint procedures, and training in place to address sexual harassment").

22. *See, e.g.*, CHAMALLAS, *supra* note 10, at 56, 59 (describing the critique of conservative readers of Carol Gilligan and Robin West's work for tracing "the origin of sexual differences to biology").

it indeed is sufficient, certainly does not establish the priority of contextual ways of knowing over logical reasoning or other speculative inquiry.

B. The Lutheran Tradition on Knowledge—Finitum Capax Infiniti

Lutheran feminists stand together with other feminists in lauding the turn to contextual jurisprudence. Luther himself was famously a contextual thinker. Whether he was writing a sermon for his uneducated congregants or a commentary on the Bible, parsing a papal document or engaging a noted academic, Luther reflected his basic interpretive view, which was rhetorical and concrete: “[L]et God’s word be what it may, I must pay attention and know to whom God’s word is addressed.”²³ Indeed, Lutheran theologians argue that to the extent he spoke of broad and abstract truths, he built those truths from the ground up, from his personal experience and that of others.²⁴ Not one to make purely abstract pronouncements about eternal principles and universal truths—except for the one Great Truth—his theology is shaped with a keen sense of engagement with the Other. He argued, “‘Experience alone makes a theologian. . . . It is by living—no, rather it is by dying and being damned that a theologian is made, not by understanding, reading or speculating.’”²⁵ Indeed, theologian Ann Pederson argues, Luther’s central insight of “justification by grace through faith alone was hardly an ‘abstract’ doctrine of Luther; rather it grew out of his experience *coram deo* [in the presence of God].”²⁶

There are good, Lutheran reasons for a contextualized, narrative-driven approach to the key problems of the human condition, whether in telling the good news that Luther was obsessed to proclaim, or puzzling about the demands of justice. In explaining this approach, Luther focused on the core of the Gospel message: *finitum capax infiniti* (the finite is the bearer of the infinite).²⁷ Pederson explains that Luther fought both Aristotle and many Reformers whom he debated about the Eucharist, claiming that “it is in Jesus the human one and in this created, earthly world where God is found. God is found in, with, and under the created order . . .”—ubiquitous, “both present at the right hand of God and in the elements of the Lord’s supper.”²⁸

23. Beverly J. Stratton, *Here We Stand: Lutheran and Feminist Issues in Biblical Interpretation*, 24 *CURRENTS IN MISSION* 23, 27 (1997) (quoting MARTIN LUTHER, 35 *LUTHER’S WORKS* 170 (Jaroslav Pelikan ed., Concordia Publishing House, 1935–86)).

24. See SOLBERG, *supra* note 5, at 56–57, 83; Pederson, *supra* note 5, at 10, 11 (noting Luther’s approach was to reflect on details, particular and concrete, and to move to the abstract).

25. SOLBERG, *supra* note 5, at 57 (quoting MARTIN LUTHER, 54 *LUTHER’S WORKS* 7 (Jaroslav Pelikan ed., Concordia Publishing House 1935–86); MARTIN LUTHER, *D. MARTIN LUTHERS WERKE: KRITISCHE GESAMTAUSGABE* 5, 163, 28 (Weimar: Hermann Böhlau Nachfolger 1908) (1883)).

26. Pederson, *supra* note 5, at 11.

27. *Id.* at 10.

28. *Id.*

In Lutheran theology, what we can know about our own world is not revealed in the same way as our salvation, but it is discernable using the multiple ways we human beings have of knowing.²⁹ Yet, *finitum capax infiniti* gives strong analogical justification for us to prefer contextual investigation: if the finite is the bearer of the infinite, then it is first to the finite that those who would know the world must look. Feminist lawyers have been saying this for a long time: it is not in the abstractions such as justice and fairness that we will find either the problems that plague human beings or their solutions.³⁰ A Lutheran feminist might argue that it is only in viewing the actual relations between persons in the world, how they oppress each other or partner with each other, how they swallow up the earth's goods or act as stewards of those goods, that we will come to know what we must about the world. Indeed, the feminist emphasis on real justice as being embodied, as not being separated from our experiences and senses, our suffering, our laboring, as much as our thinking, is caught up in this concept.³¹

Contextualized jurisprudence about work requires a deep appreciation of the lives of men and women who work—one that goes beyond statistical verities such as the differences between men and women's pay,³² or the number of hours that women put in doing domestic work after they have completed their paid labor.³³ While these statistics are helpful starting places to identify the existence of unjust structures as well as effective evidence lending veracity to individual women's description of their situations, they do not do justice to the complex experience of women working.

Nevertheless, a simple resort to women's narratives or studies to counteract the abstractions that theory and statistics offer is not enough to satisfy the demand for contextual knowing. Lutherans come to the observation and evaluation of social life with deep suspicion about how humans construct their ways of knowing,³⁴ whether in individuals' narratives of

29. SOLBERG, *supra* note 5, at 77, 82 (noting Luther's view that reason "used in its proper domain—to draw logical conclusions, for example, or in human cultural endeavors" was an important source of human knowledge; and Althaus' view that for Luther, experience was a medium for the receipt of knowledge).

30. See, e.g., BAER, *supra* note 9, at 72–74 (describing Joan Williams' contrast of Enlightenment thinking which celebrates reason and "rigorous logical manipulation of abstractions" toward truth with feminist epistemology, and describing conventional legal theory as a "reasoned, dichotomous, oppositional, hierarchical, abstract, and deductive epistemology of separation").

31. See Mary M. Solberg, *Notes Toward an Epistemology of the Cross*, 24 CURRENTS IN THEOLOGY AND MISSION 14, 17–18 (1997).

32. The relative status of pay women have received for the kinds of work they do has long been a subject of feminist legal theory. See, e.g., CHAMALLAS, *supra* note 10, at 187–189 (arguing that women's jobs are devalued, and paid as much as twenty percent less in 1980s studies).

33. *Id.* at 192–93 (discussing devaluation of women's household labor and noting studies demonstrating that working women still do disproportionately more housework than men in the same households).

34. See, e.g., THOMPSON, *supra* note 2, at 102 (describing the "hermeneutics of suspicion" shared by feminists and Lutherans); Carl H. Braaten, *God in Public Life: Rehabilitating the Or-*

their own experiences or statistical or other "material" investigations of social patterns. The Lutheran emphasis on the way in which sin infects both reason and the will³⁵ requires deep skepticism about what we have designated as "just" or "equal" and how we have come to know the conditions of work and home life. Lutherans believe that the ways in which we construct and determine what "the world is," including our most scientific methodologies, are pervasively scarred by our will to re-vision things to justify ourselves and to assimilate what we know and what we see to our own finitely understood self-interest.³⁶

In this view, women are no more exempt from the sin of self-justification and self-regard than men, even if the ways in which these sins are manifested may be somewhat different. One implication of this view is that, notwithstanding Victorian sentimental views that women are innocent souls,³⁷ any account of work that essentializes and prefers women's strengths and virtues without admitting their vices and weaknesses must be viewed with suspicion.

Lutheran theologian Mary Solberg describes the yield of this hermeneutic of suspicion in ways that any postmodern feminist would find resonant: our knowing is necessarily limited, interpreted, partial, and contested.³⁸ One might say, in Lutheran terms, that broken knowledge is as much due to our own sin as the sinful structures around us;³⁹ our natural finitude, moreover, limits humans' ability to understand themselves through experience or any form of human knowledge.

The metaphor that reminds Lutherans, conversely, that the finite is not the infinite, that we cannot know the full truth either through empirical observation or through intuition or abstract reasoning is this: God absconds; God hides from us.⁴⁰ Our work is but a set of the masks of God; however,

ders of Creation, FIRST THINGS, Dec. 1990, at 34 (noting that natural law is always suspect because it is discovered by human reason obscured by evil); SOLBERG, *supra* note 5, at 77–79, 98–99 (noting, *inter alia*, Luther's view that God cannot be known "through theology" without revelation, and that "even good theology was an imperfect, stumbling, and sometimes internally contradictory—but above all, human—attempt to describe, clarify, and interpret what God revealed to/through faith in the daily living of it").

35. See MICHAEL G. BAYLOR, *ACTION AND PERSON: CONSCIENCE IN LATE SCHOLASTICISM AND THE YOUNG LUTHER* 150 (1977).

36. For a lengthier discussion of Luther's view of the workings of the conscience, see Marie A. Failing, "No More Deaths": *On Conscience, Civil Disobedience, and a New Role for Truth Commissions*, 75 U.M.K.C.L. REV. 401, 420–422 (2006).

37. See, e.g., CHAMALLAS, *supra* note 10, at 124–25 (noting Victorian "portrait of femininity" that portrayed women as "innocent, fragile, vulnerable, sexless").

38. See Solberg, *supra* note 31, at 17–18.

39. See also THOMPSON, *supra* note 2, at 102 (noting how Lutherans call for a recognition of "the provisional nature of interpretation and the tendency of interpreters to presuppose and enforce cultural norms and ideologies").

40. See Gerhard O. Forde, *Naming the One Who Is Above Us*, in *SPEAKING OF THE CHRISTIAN GOD: THE HOLY TRINITY AND THE CHALLENGES OF FEMINISM* 110, 113–14 (Alvin F. Kimel, Jr., ed., Eerdmans, 1992) (noting that God is "[lying] in wait for us in our attempts to speak of him," that "God is . . . 'the absconder,' the one who wills not to be seen by us in his 'naked

when the masks are pulled off, God is not revealed but missing.⁴¹ Human beings will not see God's face or know God truly, except at the foot of the cross.⁴² Besides underscoring that no one has noetic privilege, whether she is the most saintly Christian or most accomplished scholar, this metaphor reminds us that our quest for understanding about our world is necessarily risky,⁴³ doomed indeed to a certain amount of failure, but necessarily undertaken.

C. *A Lutheran Interrogation of Secular Women's Ways of Knowing*

On the other hand, a Lutheran feminist might expect that any contextual exploration of women's situation in work and the family be fuller than those explorations traditionally demanded by secular feminists. That is, she might well demand that women's moral and spiritual lives, and their interactions with the divine as well as the material world, be part of the way in which women's experience is understood.⁴⁴ To understand the experience of a sexually harassed woman, for example, through the narrow lens of her interactions with her harasser in the workplace, without exploring how her relationships with her God and others may shape or alter her experience of oppression, is to trivialize a woman's life and give her harasser more power over reality than he deserves or even believes he has. As I will suggest, at the core of their experience, Christians, perhaps with others whose life experiences transcend material reality, understand themselves as beloved and free. This real experience will alter their interactions with even the most oppressive workplaces in which they find themselves.

One consequence of feminists' own success in undermining the Western philosophical project is that they, too, have gone on a hunt for some unshakable foundation for understanding the nature of social and economic relations between men and women—for something we can know truly about the core or essence of those relations. In that search, feminists have sometimes bitterly fought with those who claim to locate, sometimes in some remembered past, an ideal socioeconomic relation that represents the authentic women's experience.⁴⁵ Thus, feminists have attacked those, some of them religious people, who propose to order social relations according to

majesty'"); see also THOMPSON, *supra* note 2, at 22–25 (describing God's hiddenness, particularly in the cross).

41. See Paul Chung, *The Future of Martin Luther in Asian Context*, 42 *DIALOG* 62 (2003); MARTIN LUTHER, 14 *LUTHER'S WORKS: SELECTED PSALMS 114* (Jaroslav Pelikan ed., Concordia Pub. House 1958) (noting that human works are "the masks of our God, behind which He wants to remain concealed and do all things").

42. See SOLBERG, *supra* note 5, at 83–87.

43. See Pederson, *supra* note 5, at 9.

44. See, e.g., SOLBERG, *supra* note 5, at 36–37 (noting how traditional epistemologies "erase, exploit, [and] marginalize" women and the demand for women to be included as legitimate "knowers" and subjects of knowledge).

45. See, e.g., Taub & Schneider, *supra* note 11, at 13–15 (describing the ideology of separate spheres).

theories of complementarity between men and women.⁴⁶ And they have resisted the identification of physical or emotional attributes or functions as characterizing the "essence of womanhood," stressing the vast diversity in women's character, biology and experience.⁴⁷

With other feminists, Lutherans would agree that neither any past nor any current social and economic order is the natural order for relations between women and others in this world. To be sure, Lutheran doctrine evinces a robust sense of natural law.⁴⁸ In discerning that law, however, Lutherans part company with those who assume that some historical or idealized social and economic relationship reflects the natural order of work and the family.⁴⁹ Given their view of the pervasiveness of sin, Lutherans would be likely to warn that both past and future orders can only rightly be understood as the frail, broken and limited embodiments of just relations at best.⁵⁰ Thus, the relationship between work, women and the family that we see around us, whether in highly industrialized societies or in agrarian communities, is highly unlikely to reflect God's plan for human community given the intransigence of human sin, such as the desire to dominate and to create hierarchies of worth. To rest any hope for our future in any "good old days"—whether they are captured in ciphers such as the 1950s or the 1960s—is not only unrealistic but likely to be the product of corrupted wishful thinking.

Christian feminism, however, would logically counsel feminists to be wary of the many false gods which beckon as feminists work to achieve workplace and family justice for women. A Christian feminist might protest that the familiar ideological foundations upon which feminist thinkers have attempted to construct a way forward turn out, upon reflection, to be unstable. For example, some feminists have embraced the fact of human and cultural difference as a foundation upon which the problem of gender domination can be resolved.⁵¹ By making pluralism the watchword of the femi-

46. See, e.g., ROSEMARY RADFORD RUETHER, *WOMANGUIDES: READINGS TOWARD A FEMINIST THEOLOGY* 61–65 (1985) (describing the historical way in which women's difference is used to subordinate them); BAER, *supra* note 9, at 40 (describing the way gender difference is used to create hierarchy); THOMPSON, *supra* note 2, at 97–99 (describing feminist challenges to Christian hierarchies).

47. See, e.g., CLARE DALTON, *Where WE Stand: Observations on the Situation of Feminist Legal Thought*, in *FEMINIST LEGAL THEORY FOUNDATIONS* 32, 34–37 (D. Kelly Weisberg ed., 1993) (describing the potential drawbacks as well as benefits of discussing "women's experience").

48. See GEORGE W. FORELL ET AL., *LUTHER AND CULTURE* 14–16 (1960).

49. See, e.g., ROBERT BENNE, *THE PARADOXICAL VISION: A PUBLIC THEOLOGY FOR THE TWENTY-FIRST CENTURY* 76–77 (1995) (noting Lutheran and Augustinian views that humans are in a fallen state and without positive law human beings would "act like beasts," particularly, in collectives).

50. *Id.* at 90–92 (noting the error of Reformed and Catholic views that salvation is possible through political or social transformation, or through transformation by the Church).

51. See, e.g., CHAMALLAS, *supra* note 10, at 56–57 (describing cultural feminism's attempts to argue for changes in law based on female values and virtues).

nist project, or in Christian terms, uncritically embracing as good the diversity of creation, some feminists may hope to bridge the divide between persons and to demolish the hierarchies of worth that have bedeviled women.⁵²

Such feminists can encounter serious dilemmas as they attempt to both embrace human diversity and challenge the social construction of women's place in public work and the family in many cultures around the world that saddle women with the most burdensome and least rewarded forms of work. Must a feminist who has staked her philosophical position on the embrace of diversity simply accept a social order in which women are denied the right to accumulate or own property, to engage in public work that pays enough to support their children, or to find a level of work that does not put them in an early grave? If a Western feminist mounts a critique of such orders, is she being hegemonic or paternalistic, or imposing her culture's views on other cultures instead of respecting their differences?⁵³

A Lutheran feminist would likely respond to this problem by arguing that diverse social and economic structures throughout the world must be interrogated with a two-fold approach. On one hand, feminists must be prepared to be critical of difference, of those structures that oppress women and children in both family and work life after a careful study of the meaning, tragedy and joy of those women's and their children's lives. If women are dying early in some cultures because they shoulder too many of the burdens and receive too few of the needed benefits of work, the claim that this situation must be tolerated in the name of diversity has no moral standing.

On the other hand, feminists must be careful not to re-create hierarchies of worth by too quickly describing particular forms of women's work or women's situations as demeaning, void of dignity, or inconsistent with the abstract notions of equality that have fueled change in Western countries.⁵⁴ To ground our investigation of women's work in the realization that all humanly-created social and economic structures participate in both the goodness of creation and the corruption of sin makes such a reflexive critique possible. That reflexivity enables feminists to speak as sisters with

52. See, e.g., Martha Minow, *The Supreme Court 1986 Term, Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 80 (1987) (arguing that the celebration of difference can permit "new bases of connection" between peoples, therefore emphasizing our common humanity).

53. See, e.g., Phoebe A. Haddon, *All the Difference in the World: Listening and Hearing the Voices of Women*, 8 TEMP. POL. & CIV. RTS. L. REV. 377, 383 (1999) (noting that "although many global feminists continue to press the universality of human rights, charges of imperialism and ethnocentric myopia have figured prominently in discussions about human rights and women and are conspicuous in the discussion of [female genital mutilation]").

54. See, e.g., Shelley Wright, *Women and the Global Economic Order: A Feminist Perspective*, 10 AM. U. J. INT'L L. & POL'Y 861, 873 (1995) (noting that a feminist focus on the unfairness of women's traditional roles in third world cultures may paint women as victims or individuals, "replicating . . . economic and social constructions which oppress women and trap them in positions of exploitation").

oppressed women in naming the injustice that pervades their work and family relations, while training a self-critical eye on both the terrible flaws of their own cultures and the hierarchical and self-congratulatory assumptions that infect their own critique.

In a Lutheran feminist view, other feminists may be tempted too easily to gravitate toward power as the essential attribute of human relations and as the solution for liberating women from oppression in work and family life.⁵⁵ Oppression, in the view of many dominance feminists as well as other egalitarian feminists, is captured in the political, social and economic power that men have exercised over women.⁵⁶ If only, they seem to suggest, women can overcome men's power and achieve power over their individual lives and bodies, or within social, political or economic structures, egalitarian workplaces and family life can be theirs.⁵⁷

Because Lutheran and other Christian feminists recognize God's hand in the ongoing creation of the world, however, they would most likely reject the descriptions of those dominance feminists or others who portray male-female relations in the workplace as essentially or immutably organized around the subordination of female victims by males, as a power dynamic that is unbreakable.⁵⁸ Just as Lutherans recognize the natural order not as an eternal verity but as a dynamic set of relationships continually being re-created by God, so they recognize that God moves with us through history, re-creating even oppressive social structures into tentatively more just ones.⁵⁹ These historical revisions of social structures are, of course, only tentatively more just because they are being constantly re-transformed by sinners into new unjust structures. Lutherans, at least when they are being properly Lutheran, avoid the temptation to declare the triumph of God's justice. Because God is always and essentially other than us, God is always sitting in judgment of this world and pronouncing its sins.⁶⁰ Thus, women must view warily each innovation in workplace equality, whether it is freeing them for deeper participation in public life through more equal educational opportunities or publicly acknowledging their need to balance their work and home responsibilities; every innovation is potentially subject to deforming influences by both men and women, fathers and mothers. Indeed,

55. See SOLBERG, *supra* note 5, at 110–11 (critiquing a theology of glory that focuses on power over others).

56. See CHAMALLAS, *supra* note 10, at 45–46, 49–50, 52–53 (describing MacKinnon's dominance theory, her proposal to focus on eradication of sexual dominance, and some feminists' concerns that dominance theory emphasized victimization and not women's agency).

57. *Id.* at 49–50.

58. See SOLBERG, *supra* note 5, at 110–11 (noting that theologies of glory, based on power as domination, can be questioned).

59. See, e.g., SOLBERG, *supra* note 5, at 138 (discussing the importance of "hope in God's transformative solidarity with the world in its brokenness," which guides "our knowing and our doing" in the world).

60. See, e.g., Kvam, *supra* note 5, at 45–46 (describing Luther's discussion of the way in which all human descendants live "in the aftermath of the sentence that God pronounced").

those women who are prepared to recognize that sin is a continuing fact of life and that the structures of sin are constantly changing may be more empowered to speak truthfully about the ways in which women subordinate each other as they achieve platforms of power previously occupied only by men.

A Lutheran feminist might, then, engage this problem of understanding the world of work as it affects women and their families by acknowledging that women or feminists have no privileged stance when it comes to understanding how social and economic structures affect the interplay of work and family simply because they are women.⁶¹ They can claim no new founding principle upon which a just workplace or just society can be securely built. Indeed, we shall never find any completely secure noetic methodology in this world upon which human beings can stand. Ultimately, for a Lutheran feminist, when all human constructions have been deconstructed for what they are—violent, hegemonic, self-aggrandizing, partial—no substitute theory or narrative will arise that will obviate the problem of human sin and finitude in the interpretive process.

Thus, all perspectives must interrogate each other to identify the sin that lies within them. Women, like all others, must interrogate the imbalance in their own perspectives—their over-preoccupation with the evils that they themselves endure as well as their willingness to overlook the evil they do to others and to be indifferent to the evil suffered by those at some remove from their own daily lives. And, critically, they must confess their willingness, in their legitimate search to name their own oppressors, to overlook the reality of the freedom and dignity conferred upon them by God that overwhelms any oppression, significant or not, which they suffer.

II. INTERROGATING RELATIONALITY: SUBORDINATION, WOMEN'S WORK AND SELF-SACRIFICE

As I will argue here, feminist jurisprudence and Christian theology share an ontological vision that is characterized by relationality. This vision rejects a moral view of persons as “authentic [selves who are] autonomous, unified, free, and self-made, standing apart from history and affiliations, choosing [their] lifeplan for [themselves].”⁶² Professor Susan Stabile has described this relationality with respect to the vertical (God-human) and horizontal (human-human) dimensions always recognized in the Christian tradition:

With respect to our relationship to God, it is not just that we are relational, but that we are loved and exist as persons capable of

61. See SOLBERG, *supra* note 5, at 41, 43 (noting the importance of recognizing women's possible participation in structures of oppression even while including them as epistemological subjects).

62. IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 45 (1990).

loving. We live in relation to, and in dependence on, a living God who is love and who loves each of us into being. And we exist endowed with the capacity to realize self "through a sincere gift of self." With respect to our constitutive relationship to others, that human beings are relational by nature means "that [our] personal good—far from being opposed to the common good—is actually achieved through [our] participation in and contribution to this communal good." Our self-realization is achieved in community.⁶³

Work is an exercise in relationality, responsiveness both to the Giver of all life and the natural and human objects of one's work. Elsewhere, I have argued that human beings participate in four concrete relations as they work, each of them laced with the ambivalence of goodness and evil: their relationships with a co-creating, active God (the vertical relationship), with their co-workers and with those for whom they work (the horizontal relationship), and with the objects of their work.⁶⁴

In this section, I will focus on only two difficulties which arise out of the ambivalence of women's relationships with God and with those for whom they work. First, women may be either victims or perpetrators of evil because men or women forget that they are co-creators with God. Second, in their desire to care for others, women may fail to acknowledge that they are also creatures, limited in their ability to respond to the needs and desires of others with whom they are in a relationship.

A. *Women as Co-Creators and the Problem of Responsible Agency*

In recognizing that women are co-creators with God, Lutheran feminism recognizes that women are responsible agents, that is, that they are actively involved in the world and morally accountable for the action they take. Christian feminists claim that just work enables each person, in her daily life, to be both an active agent and a responsive recipient, loving and being beloved of God and others in her full dignity as a person created in the image of God.⁶⁵ At the same time, Christian feminists must be the realists among the hopeful, recognizing that in a fallen creation, women as both agents and recipients will work in conditions that reflect both great opportunity and great finitude. In each work situation, they will encounter the goodness that inheres in God's active participation in the ongoing creation of the world and the evil that necessarily accompanies human striving.⁶⁶

63. Susan Stabile, *Can Secular Feminists and Catholic Feminists Work Together to Ease the Conflict Between Work and Family?*, 4 ST. THOMAS L.J. 343, 434-35 (2007).

64. See Marie A. Failing, "Too Cheap Work for Anybody But Us": *Toward a Theory and Practice of Good Child Labor*, 35 RUTGERS L.J. 1035, 1090-110 (2004).

65. See Pope John Paul II, *Laborem Exercens*, No. 4 (Dec. 16, 1996), available at <http://www.cin.org/jp2ency/laborem.html>.

66. See Marc Kolden, *Work and Meaning: Some Theological Reflections*, at 2 <http://www.lutherscm.edu/mkolden/Work%20&%20Meaning.pdf> [hereinafter Kolden, *Work and Meaning*];

At the base of all understandings of human work on this earth is the recognition that human beings are constantly creating creatures of an innovating God who hides in the shadows of humans' work, his hiddenness exacerbating workers' anxiety and insecurity.⁶⁷ In Lutheran terms, women and men co-create with God, and God constantly works at creation through them. They work on this earth as God's partners in the tasks of changing and preserving this world.⁶⁸ That this work is co-operative may be hidden from our consciousness as we go about our daily life,⁶⁹ but the influence of God's work upon us is ever-present.

Feminists are understandably squeamish about how Christians have traditionally talked about their co-creative responsibilities with God. In the Catholic documents on work such as *Rerum Novarum* and *Laborem Exercens*, for example, the language of dominion over and the command to subdue the earth⁷⁰ is prominent, emphasizing that the world's resources are available to human use insofar as they "come[] within the range of man's influence and of his striving to satisfy his needs."⁷¹ When such language is coupled with ancient (albeit non-Christian) understandings that women and children are lesser beings than free men,⁷² these essays seem to justify the very subordination that feminists have staked their lives on eliminating. Moreover, in its resonance with physical force, the language of subduing or dominating seems directly at odds with the egalitarian, reciprocal relationships that feminists advocate with other persons and the natural world.

Yet, Christian scholars have argued that these texts certainly do not justify the subordination of some humans by others.⁷³ And while it would be too much to gainsay the hierarchical implications of the language used to

Marc Kolden, *The Christian's Calling in the World*, Part 4, <http://www.luthersem.edu/mkolden/resources/The%20Christian's%20Calling%20in%20the%20World.htm>; MARC KOLDEN, *Luther on Vocation, in 3/4 WORD AND WORLD* 382, 386 (1983), available at http://www.luthersem.edu/word&world/Archives/3-4_Luther/3-4_Kolden.pdf.

67. See THOMPSON, *supra* note 2, at 146 (noting that the "hidden, subversive presence of God emerges in the most unexpected of places" and "inevitably leads to anxiety among those struggling toward faithful existence before God").

68. See Kolden, *Work and Meaning*, *supra* note 66, at 1; Marc Kolden, *The Idea of Christian Vocation in Light of Feminist Critiques*, at 3, http://www.luthersem.edu/mkolden/ST3423/FEMINIS_CRI.pdf. [hereinafter Kolden, *The Idea of Christian Vocation*].

69. See Kolden, *The Idea of Christian Vocation*, *supra* note 68, at 3.

70. See Pope Leo XIII, *Rerum Novarum*, No. 6, (May 15, 1891), available at <http://www.ewtn.com/library/ENCYC/L13RERUM.HTM>; Pope John Paul II, *Laborem Exercens*, *supra* note 65, at No. 4).

71. Pope John Paul II, *Laborem Exercens*, *supra* note 65, at No. 4.

72. See RICHARD SENNETT, *FLESH AND STONE: THE BODY AND THE CITY IN WESTERN CIVILIZATION* 41-44 (W.W. Norton & Co. 1994).

73. See, e.g., Theodore Hiebert, *Rethinking Dominion Theology*, 25 *DIRECTION* 16, 21-24 (1996), available at <http://www.directionjournal.org/article/?922> (arguing that the Genesis texts may be read to require humans to mimic God's benevolent exercise of power in accordance with divine intentions and act as stewards of creation).

describe humans' responsibility toward the natural world,⁷⁴ as a worked-out practice, these Christian directives need not necessarily take only the negative connotations that feminists associate with it. As the Catholic documents suggest, the divine offer of the world's rich resources to human beings ensures freedom from their own necessity, from the very limitations of skeleton and muscle that constitute the human creature. Without such divine generosity, human existence, much less human freedom—our ability to transcend the work of physical survival to create the artifacts of human civilization and to contemplate human truth—could hardly exist.⁷⁵ Without the divine permission for human beings to make use of their external world, human history and culture could not exist.⁷⁶ Indeed, without our right to actively engage the material world's riches, human purpose toward an end such as justice would be impossible.

Nevertheless, with secular feminists, Christian feminists would acknowledge how quickly those who are given power over the earth's human and material resources exploit them for their own purposes,⁷⁷ often hiding behind a false justification. In Christian terms, it is critical to recognize how work becomes fallen when workers forget their interdependence with their co-creator, or their existence, at one and the same time, as the creatures of a loving God.

The subordination in work and family that many women have experienced over the centuries cannot simply be traced to their own inadequacies or poor judgment in looking after their own self-interests. We need to frankly acknowledge how much of this subordination is the result of men's misuse of the gifts of this creation. We might even say that, forgetting their responsibility to their divine partner, men who have been given political, legal and social responsibility to create and sustain forms of public life have come to imagine their own positions and desires as equal to their Creator's. The phenomenon of workplace sexual harassment is a good illustration of what comes when human beings distort their creative responsibility to destroy those whose lives have been placed in their charge, when they confuse domination and desire.⁷⁸ These supervisors have forgotten not only the intrinsic dignity and worth with which each of their workers is endowed but

74. *Id.* at 18–19 (noting that the Hebrew word for dominion is *radah*, establishing a hierarchy of power and authority and granting humans the right to govern creation).

75. Pope John Paul II. *Laborem Exercens*, *supra* note 65, at No. 5.

76. *See id.* at No. 6.

77. For secular feminist examples, see LEVIT & VERCHICK, *supra* note 7, at 24 (describing dominance feminist arguments that patriarchy gives men dominance and privilege, while subordinating women); MINOW, *supra* note 4, at 236–37 (describing ways in which majority women's power to stereotype leads to exclusion and control of minority women).

78. *See, e.g.*, Jane Dwasi, *Kenya: A Study in International Labor Standards and Their Effect on Working Women in Developing Countries: The Case for Integration of Enforcement Issues in the World Bank's Policies*, 17 *WIS. INT'L. L.J.* 347, 357 (Dwasi claimed that "endemic" non-remedied sexual harassment in the Kenyan workplace "traps women in situations where they are helpless and desperate," because of the potential loss of jobs, promotions or salary increases, and

also the responsibility placed in their hands to care for the creation. We might even say that harassers have refused to consider how God the Creator would approach women workers, and transform their self-interested trajectory of power into stewardship of and for the creation.

Another form of sin sometimes identified with women as workers in public life and the family is that they forget they are made for responsible freedom. Women can forget their power as co-creators and deny any responsibility for the external world. Conceiving themselves as invisible in public life, in particular, women workers may come to be uncertain of, or even to deny, their agency. Lutheran theologian Marc Kolden reminds us that this form of sin is just as great as the "male" sin of distorting one's freedom to avoid responsibility for others' welfare.⁷⁹

[H]umans as portrayed in the Bible are a unity of spirit and body, of image of God and dust of the earth, of freedom and finitude. . . . This awareness gives rise to anxiety because humans know both their greatness and their fragility. . . .

[One way] in which the root sin of unbelief manifests itself . . . involves fleeing from freedom and responsibility, denying the human's unique relationship to God, and sinking into finitude. Here, it is not a creature's over-reaching, but an under-valuation of being created by God, in God's image. This has been called "sensuality" (better, sensateness) or despair (or sloth or conformity). It too is a form of saving the self, one might argue, by eliminating the perceived instability of being both free and finite and settling for finitude alone.⁸⁰

Even more powerfully, theologian Dorothee Soelle asks women to ask themselves:

Can I affirm myself as one who is made from dust? Can I say that my having been created is very good? How do I, as a person made from dust, respond to the ontological project of being created for freedom? . . . Is it possible for me to value my 'creatureliness' in the knowledge that my existence was willed prior to my birth, that I am not here on this earth simply by chance, that I am needed, that I am not a disposable object, and that I am designed for freedom and equality?⁸¹

Those who have studied the relationship between technology and human workers have documented the tragic effects when workers forget

demonstrates that "men do not believe in the autonomy and dignity of women as sellers of labor power." Dwasi noted the Kenyans' refusal to acknowledge sexual harassment).

79. Kolden, *The Idea of Christian Vocation*, *supra* note 68, at 6.

80. *Id.* at 5-6.

81. DOROTHEE SOELLE & SHIRLEY A. CLOYES, *TO WORK AND TO LOVE: A THEOLOGY OF CREATION* 29 (1984).

their own agency in the world.⁸² In Pope John Paul II's words, technology "can cease to be man's ally and become almost his enemy, as when the mechanization of work 'supplants' him . . . or when, through exalting the machine, it reduces man to the status of its slave."⁸³ To follow John Paul's claims directly, the tragic outcomes of sinful employment structures are not only evidenced in the harms of carelessly adopted technology but also the invisible damage caused by night work;⁸⁴ they extend to more serious life-threatening and reproductive-damaging dangers of industrial safety hazards⁸⁵ and agricultural poisons.⁸⁶ Over the decades of women's public work, many have also been damaged as moral persons, too quick to accept others' judgments that they are not capable of some kinds of public responsibilities, from executive oversight to heavy physical labor. Many of these more intangible forms of oppression are a direct result of women's acculturation into an acceptance of the view that they are not agents in public life. While many educated young women in modern industrialized countries are being raised without this self-imagination, I would venture to suggest that throughout the world as a whole, this view that women are not appropriate agents in public life still predominates.

To accept one's status as a creator, as one "designed for freedom and equality" carries with it the necessity to accept women's responsibility for the harm they cause as agents in the world. One of the conflicts that contemporary feminist jurisprudential scholars have brought to light—conflict between women as employers and employees—results from the increasing economic and social resources that professional women have access to in many countries.⁸⁷ Feminists debate, for example, whether women should hire other women to do their domestic work, from cleaning toilets to caring for children.⁸⁸ They ponder what responsibilities feminists have not only to treat their workers in an atmosphere of respect but also to provide remuner-

82. See MIROSLAV VOLF, *WORK IN THE SPIRIT: TOWARD A THEOLOGY OF WORK* 31–33 (2001).

83. See *Laborem Exercens*, *supra* note 65, at 5.

84. See, e.g., Christine Haight Farley, *Men May Work from Sun to Sun, but Women's Work is Never Done: International Law and the Regulation of Women's Work at Night*, 4 *CIRCLES: BUFF. WOMEN'S J.L. & SOC. POL'Y* 44, 52–53 (describing sleep deprivation and fatigue, and negative effects on family and social lives, including social isolation and loneliness, attributed to night work).

85. See, e.g., Dwasi, *supra* note 78, at 361, 363–64 (describing frequent workplace accidents in Kenya, deaths from fire in hazardous workplaces in Thailand and China, beatings and dusty workplaces endured by women in Honduras).

86. *Id.* at 361–62 (describing pregnancy-related stillbirths, birth defects, and breast cancer suffered by agricultural workers in developing countries, and hazards from snakes and other farm chemicals).

87. See, e.g., Donna E. Young, *Working Across Borders: Global Restructuring and Women's Work*, 2001 *UTAH L. REV.* 1, 4–5, 7–9 (noting increasing race and class segregation in domestic chores due to professional women's affluence).

88. *Id.* at 16–18 (describing emotional conflict in an African American professional woman who had difficulties with hiring other women of color to do domestic work).

ation beyond what existing labor laws require—e.g., a living wage rather than the minimum wage, adequate health insurance and other benefits, accommodations when their own workers' families need them in times of illness or trouble.⁸⁹

In accepting their status as agents, as co-creators, professional women in these situations can acknowledge their responsibility for those whom they employ. They can begin to confess their own indifference to the need, and exploitation, of those who serve them as domestic and service and child care workers, and instead change their employment practices to comport with these workers' needs and dignity. Similarly, accepting their status as agents in the private sphere, women can begin to acknowledge how they employ their power over family members, particularly their children, in distorted ways to meet their own desires for control of their circumstances, for recognition, and for satisfaction of their physical and emotional needs.

The legal implications of women's acceptance of their status as responsible agents are both jurisprudential and practical. On the practical level, Christian feminists should join with secular feminists in advocating for the equality of "women's work" such as child care and housekeeping vis-à-vis the legal protections now extended to "public workers," such as wage and hour protections, worker's compensation and unemployment benefits. On a jurisprudential level, Christian feminists need to engage secular feminists and other feminists of faith to consider how the analysis of gender subordination in work changes when women acknowledge their co-responsibility with men for forms of workplace oppression. For example, the light that has been shined on the evils of sexual harassment needs to be broadened to find theories of, and remedies for, other forms of workplace abuse that women supervisors as well as men engage in; feminists need to analyze the distinctive ways in which these forms of abuse make women's professional advancement difficult.

B. Women as Creatures and Women's Response to Need

Counterbalancing the difficulty women have in recognizing ourselves as agents, as co-creators, the Christian message calls women to acknowledge that they are creatures as much as created, limited in what they can accomplish as well as free to achieve. Modern women, in particular, have struggled with their sense of failure as they are overwhelmed with the physical and emotional needs of children, spouses, and those with whom they

89. *Id.* at 64–68 (noting that patriarchy claims must be re-thought in light of actions of women who benefit from the law's exclusion of domestic workers from many protections, and arguing that feminists must look at the global forces that influence the lives of both privileged women and foreign domestic workers); *id.* at 30–35 (describing the many protections that domestic workers cannot take advantage of, from minimum wage and maximum hour provisions to workers compensation coverage, unemployment benefits, civil rights, and health and safety laws in many states).

interact in the workplace.⁹⁰ Raised to be responsive and responsible, many women quickly find themselves in impossible situations as they try both to honor the heavy commitments naturally entailed by their relationships to others and meet the demands that those others place on them, some of which are perversely unrealistic.

In order for women to recognize themselves as creatures of God, they do not need to subordinate themselves to the domination of others' desires or even needs. Instead, women are called to freedom. To accept one's status as a creature is to accept with humility, if not always with joy, the finitude that the Creator places upon us in the act of making, the limitations of being a creature. It is to be actively conscious that our bodies, hearts and spirits are designed to be finite, in a way that accepts those limitations humbly and gratefully without turning away from responsible agency. By accepting their status as creatures, women can acknowledge the limits of their ability to participate in the many forms of work to which they are called without either walking away from their public callings because they cannot satisfy every demand of their family, or conversely, walking away from their responsibilities to spouses and children because acknowledging that these responsibilities cannot be perfectly fulfilled is too painful.

Moreover, if women can honestly recognize the inherent sinfulness and finitude that marks women's lives, they can begin to be honest about the costs of their many callings. For example, women can begin to admit how their professional victories and promotions come with a necessary price for their children and husbands and others without being overwhelmed by guilt because they cannot be as perfect as the Creator. They can begin to admit how their need to be thought perfect caregivers and nurturers can destroy their very ability to carry out those tasks by robbing women of their health, their emotional resources, indeed the very love that drives their responsiveness. They can acknowledge how their desire to meet every need and demand of loved ones can become a form of idolatry, not unlike the idolatry of those men who insist that their every need and desire be met by their wives, mothers or other loved ones.

Secular feminism has already led the way in developing legal responses to the problem of women's difficulties in accepting their limitations as creatures, such as family leave legislation. In addition to supplying a theological explanation for why such legislation is necessary and appropriate, Christian legal feminists can join with secular feminists in exploring the social and psychological forces that pressure women to forget their creaturely limitations. Moreover, Christian legal feminism offers potential resources for developing a theory about humane work environments that can

90. *See, e.g.*, SUSAN BROWNMILLER, FEMININITY 214–215 (1984) (describing the prevalence of maternal guilt); ANNE WILSON SCHAEF, WOMEN'S REALITY 70–71 (1981) (describing how women are made to feel guilty when they are not fulfilling their roles or doing what is expected).

begin to interrogate the systemic deprivations of spirit as well as body, permitted and encouraged by law, that modern workplace conditions foster.

III. FEMINISM AND PRIVATE WORK: FITTING AND WORTHY WORK

As suggested earlier, modern educated feminists face another dilemma in their relationship to work and the family, the influence of sin on a good creation: they face a Hobson's choice if they spend their energy in work that is meaningful because it is relational but is devalued by society. We might frame this dilemma by observing a recent culture wars clash between feminist Linda Hirshman and her conservative detractors, such as Focus on the Family's James Dobson, over what has traditionally been called "women's work."⁹¹ Hirshman argues:

The family—with its repetitious, socially invisible, physical tasks—is a necessary part of life, but it allows fewer opportunities for full human flourishing than public spheres like the market or the government. This less-flourishing sphere is not the natural or moral responsibility only of women. Therefore, assigning it to women is unjust. Women assigning it to themselves is equally unjust. To paraphrase, as Mark Twain said, "A man who chooses not to read is just as ignorant as a man who cannot read."⁹²

Accusing Hirshman of claiming that stay-at-home mothers are a "threat to civilization," Dobson has countered that "motherhood is just continuing to be assaulted by the media and the loony left." Dobson has gone on to talk about the "untouchable American values of motherhood, the flag" and apple pie,⁹³ implicitly suggesting that home-work for women, particularly the care of children, is of the highest value.

Even if unintentionally, Hirshman's views echo the ancient, non-Christian distinction, carried over into modern times by philosophers like Hannah Arendt and political movements like Marxism, about the relative worth of various forms of human endeavor. Arendt, for example, distinguished between the less worthy if necessary "labor," the work of survival, from putting food on the table to wiping babies' bottoms, and what she termed worthier human "work" and "action."⁹⁴ Marxists who offer a some-

91. Young, *supra* note 87, at 2 ("Work performed within the home, the work most associated with women's supposed 'natural' tendency toward nurturing, is the prototype of 'women's work.'").

92. Linda Hirshman, *Homeward Bound*, THE AMERICAN PROSPECT ONLINE, Nov. 11, 1995, <http://www.prospect.org/web/page.wv?section=root&name=ViewWeb&articleId=10659>.

93. See Dobson, *Mohler Invented Controversial Statements by Feminist Linda Hirshman*, MEDIA MATTERS FOR AMERICA, April 3, 2006, <http://mediamatters.org/items/200604030002>.

94. See HANNAH ARENDT, THE HUMAN CONDITION 83–85, 136–39 (Univ. of Chicago Press 1969) (1958). Arendt described "work," as the creation of objects for non-survivalist ends, such as beauty. She prized, above all, what she termed "action," public, especially political, words and actions that are more distinctively human because they can be remembered in history. Arendt relies heavily on the ancient Greeks, who understood women's work as "enslaving" and the ability to shove such work off to another as freeing. *Id.* at 83–84.

what converse hierarchy, prizing skilled over intellectual labor,⁹⁵ make the same error.

Christian feminism has something to contribute to the recognition of women's work as not only necessary but also worthy. Secular feminist accounts of the value of women's work, particularly the care of the family, struggle to offer a sustainable rationale for treating such work as equal to the work of public life.⁹⁶ As Hirshman's argument implies, the "diversity" or "choice" rationale that some offer to justify the equal value of women's work is essentially hollow: if work is valuable simply because women choose it, then it becomes impossible to critique any woman's choice of any work, informed or free or not. Under this theory, prostitution and pornography become as valuable forms of work as making a family dinner or running a corporation. Similarly, utilitarian justifications for the value of women's work—that is, this work is necessarily done by someone, therefore it has value—contain no critical edge. They permit work that entails difficulty and drudgery to be foisted upon women simply on utilitarian grounds and because they are the last to object.

By contrast, the Christian tradition has rejected any attempts to identify particular forms of work as more worthy than other forms of work, so long as that work serves the dignity of the human person and the purpose of human life. (Such a theory, of course, can distinguish between caring for children and engaging in prostitution.) The papal encyclical *Laborem Exercens* points out how, in the Christian story, the divine identifies with what is considered the most lowly work, Jesus serving as carpenter, as fisherman, feeder of others.⁹⁷ As the encyclical interprets, this example shows

that the basis for determining the value of human work is not primarily the kind of work being done but the fact that the one who is doing it is a person. The sources of the dignity of work are to be sought primarily in the subjective dimension, not in the objective one.⁹⁸

In my own Lutheran tradition, Martin Luther used the term "Beruf" (calling) to suggest that the value of one's work does not inhere in its own nature, but in the fact that it is done in service to the neighbor.⁹⁹ Although the person in freedom can choose not to answer this call, understanding that

95. See Arendt, *supra* note 94, at 87–89; VOLF, *supra* note 82, at 48 (noting how Marx celebrated the world of material production as compared with the work of the philosopher or politician). See also Pope John Paul II, *Laborem Exercens*, *supra* note 65, at No. 14 (noting the Marxist preference for the material and collective over the spiritual and personal).

96. See, e.g., BAER, *supra* note 9, at 5–6 (noting, *inter alia*, how women have been "stuck with what men left" and "forced to concentrate their energies within the 'private' sphere of marriage and family").

97. See Pope John Paul II, *Laborem Exercens*, *supra* note 65, at No. 6.

98. *Id.*

99. See Karlfried Froehlich, Marc Kolden & Peter Kruse, *Luther on Vocation*, XIII LUTHERAN QUARTERLY 195, ¶ 11 (1999), available at <http://www.elca.org/jlc/article.asp?k=438>.

one's work is the response to the cry of the other's need transforms the debate about what is worthy women's work. Instead of viewing work by the nature of the activity performed and setting up a facile distinction between memorable "action" and enslaving "labor," for example, the Christian view of work focuses on the dual dignity of the one who serves and the one who is served. The actions of the worker would be holistically prized: not just the motions or products of body or mind are considered; rather, the Christian view considers the intentionality and spirit with which the worker acts and the purpose or end which she serves. Similarly, we would not consider the ones for whom we work as simply the objects of our action, but as reciprocal partners in the giving and receiving of loving acts, vulnerable persons whose need gives dignity both to the worker's gift and the recipient's open hands.

This understanding, of course, does not escape the distortion of work by human sin, particularly, as both Hirshman's and Dobson's arguments seem to exemplify, because human beings reify certain forms of work as by their nature more valuable or more fitting for one gender or the other.¹⁰⁰ Dobson's implicit claim that women gain their essential value from motherhood¹⁰¹ is likewise a reification of work that does not respect the ongoing dynamic activity of God in creating unique persons, male and female. Certain conditions can alienate women workers, like any others, from their work because employers expect them to perform tasks not fitted to their talents or limits, what theologian Miroslav Volf calls their charisms or gifts of the Spirit.¹⁰² For example, sin may distort the worker's view, or the beliefs of those dependent upon her, about what her proper work is. The demand of the neighbor is not the same as the need of the neighbor. My child may expect me to pick up her clothes from the floor, but that does not mean I am called to do so.

Not only can ill-fitting work re-create subordinating hierarchies between the demander and the responder, but work becomes more stressful and less meaningful to a worker who completes tasks that are ill-fitted to her talents. One of my friends, Susan, is extremely handy around the house, my mother is a wonderful quiltmaker, my grandmother was a fine housekeeper. Try as I might, I cannot duplicate their efforts; I do not have these gifts. Betty Friedan's celebrated message to mid-twentieth century America can be read as echoing this Christian view, that America's then-social cult of domesticity was wasting gifts of so many of its middle class women, assigning them to domestic chores that they did not excel at, producing depression and a strong sense of meaninglessness.¹⁰³ On the other hand,

100. See Hirshman, *supra* note 92; Dobson, *supra* note 93.

101. See Dobson, *Mohler Invented Controversial Statements by Feminist Linda Hirshman*, *supra* note 93.

102. See VOLF, *supra* note 82, at 104-05, 111.

103. See BETTY FRIEDAN, *THE FEMINE MYSTIQUE* (W.W. Norton 2001) (1963).

women who excel at domestic work can be forced into public work that they are not suited for or even happy with, because the legally reinforced economic reward structures of Western capitalism value some forms of work over others and threaten extreme economic vulnerability to those who stay at home.

We should not, however, be tempted to assume that the cure for women's subordination is to simply call a truce to the Hirshman-Dobson debate, or the "mommy wars," and to demand that every woman be allowed to pursue her perfect calling with the respect due her. Given that our world is both good and fallen, in Christian terms, we need to recognize that all work, public and private, will participate in that fallenness—it will impose drudgery on us as well as fulfill our humanity.¹⁰⁴ Work in this world is difficult and demanding, it is "threatened by failures and wastes of time and often comes to nothing."¹⁰⁵ It involves an "unceasing measure of human toil and suffering, and also of the harm and injustice which penetrate deeply into social life within individual nations and on the international level."¹⁰⁶

Christian feminism can recognize, in a way that idealist theories cannot, that the injustice and hardship of women's work life is an inescapable part of human existence, that there will never be a world in which women do only that work that pleases and energizes them and contributes to their own well-being. Christian feminists can acknowledge that work is always relational, whether it is the work of wiping a child's bottom or merging a corporation. Such work, in a fallen world, will always be a mix of self-expression and self-abnegation, engendering meaningful social relations as well as oppressive, coercive relationships, reconciling humans with the natural world while participating in that world's despoliation by human selfishness.¹⁰⁷

Moreover, Luther's recognition that we are called to serve on behalf of the neighbor¹⁰⁸ reminds us that neither private work nor public work is intrinsically more valuable. Luther recognized that the neighbor we are called to serve can be as much of a stranger as a family member, and that his destiny is just as linked with ours as the destiny of our spouses, children, parents or siblings.¹⁰⁹ Recognizing that we are called to serve others beyond

104. VOLF, *supra* note 82, at 127–28.

105. *Id.*

106. *See, e.g.,* Pope John Paul II, *Laborem Exercens*, *supra* note 65, at No. 1.

107. *See* SOELLE, *supra* note 81, at 83–84 (describing opportunities for individuals through work to develop their faculties, create social relations and reconcile with nature).

108. *See* Kolden, *Work and Meaning*, *supra* note 66, at 4.

109. As one example of this responsibility for the neighbor, even if he is a stranger, when Luther was asked whether people should flee the plague, he replied that both governing authorities and private citizens must stay and help their neighbors, for anyone who does not run the risk of losing everything for the neighbor "but forsakes him and leaves him to his misfortune becomes a murderer in the sight of God." MARTIN LUTHER, *WHETHER ONE MAY FLEE FROM A DEADLY PLAGUE* (1527), *reprinted in* MARTIN LUTHER'S BASIC THEOLOGICAL WRITINGS 736, 743 (Timothy F. Lull ed., 1989).

ourselves, in both our private spaces and the public world, helps us to see how we as workers are dependent upon those for whom we work, that we need the recipients of our work just as much as they need us.¹¹⁰ As Soelle argues, work creates community, reminding workers that they can give as well as take, teach as well as learn, contribute as well as receive, be needed by another as well as receive what they need.¹¹¹

Christian feminist interrogations of social assumptions about the worth of women's work, whether they are triggered by feminists like Hirshman or social conservatives like Dobson, are not only valuable for exploding the "war" over women's private work by showing that both sides' social "truisms" are thin, inaccurate representations of women's dilemma. They also offer a new perspective and opportunity to resurrect discussions that have disappeared from public view in favor of an economic system in which both men and women are expected to do public work. Early feminist legal discussions, such as whether mothers should be paid to mother through family allowances or the distribution of the family's income to them before or during divorce, can gain new traction as Christian feminists explore the legal implications of theology on law.

IV. CONCLUSION

Christian feminist legal theory offers a new lens into the difficult dilemmas of women as workers, both in public work and in their work as parents, spouses and members of families. To a significant extent, what Christian feminist legal theory has to offer traditional secular feminists is solidarity: on many issues in which secular feminist theory has led the way in devising new legal strategies to improve social respect and care for women workers, Christian feminists are in agreement. They can dig from the well of their own religious commitments to energize the discussion of ideas that have been stalled in modern social life, providing a more compelling argument to new audiences not already aligned with the secular feminist project, and more effectively countering conservative claims about the nature and role of women workers in modern life.

As I have suggested, however, just as the Gospel upends every human presumption to know the truth about human existence and every attempt by humans to prefer their own security and worth above others', so too, the Gospel represents a threat to the various streams of secular feminist legal theory as it tries to articulate a truly feminist jurisprudence. It will continue to interrogate and demolish every attempt to found feminist jurisprudence upon any human resource or principle, just as it will demand the truth from

110. See WILLIAM MAY, *THE PHYSICIAN'S COVENANT: IMAGES OF THE HEALER IN MEDICAL ETHICS* 121-23 (2000) (noting the reciprocity between physicians and patients, each of whom need each other).

111. SOELLE, *supra* note 81, at 93, 96.

Christians who live on other evil foundations, such claims that speak falsely about reified "natural orders" and "worthy" human work that is separated from a God who makes things new every day. It will necessarily continue to challenge feminist claims that explicitly or implicitly raise women's experience, values, or gifts as essentially unblemished or superior to those of men or other women, just as it will demand that men's pride and greed be exposed. The Gospel will demand that feminists continue their introspection about the ways in which race, class, and geography allow some women to take advantage of the labor of others, just as it will demand that Christians take off their blinders to the economic, social, and political oppression they permit to exist in this world. And most importantly, the Lutheran witness to the Gospel demands that feminist lawyers and legal theorists, just like Christians, not simply say, but do. Luther demanded of Christians a life, like his own, that was a continual call to prophesy and repentance, a living witness about the oppression of this world, but more importantly, action on behalf of the neighbor: he demanded a "faith active in love."¹¹² Christians and feminists and lawyers must demand no less.

112. GEORGE FORELL, *FAITH ACTIVE IN LOVE: AN INVESTIGATION OF THE PRINCIPLES UNDERLYING LUTHER'S SOCIAL ETHICS* 189 (1954).