

INTRODUCTION

PATRIARCHAL RELIGION, SEXUALITY, AND GENDER: AN INTRODUCTORY ESSAY

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*Women and male homosexuals are united in their queerness*¹

—Andrea Dworkin (*Woman Hating*)

*The Revolution, as we live it and as we imagine it, means destroying the Immovable Structure to create a world in which we can use our holy human energy to sustain our holy human lives . . . to create a world—a community on this planet—where instead of lying to survive, we can tell the truth and flourish.*²

—Andrea Dworkin (*Woman Hating*)

I am very proud to introduce the inaugural Symposium issue of the *Wake Forest Journal of Law & Policy* on the subject of patriarchal religion, sexuality, and gender. The Symposium was held at the Wake Forest University School of Law on September 17, 2010. While many people, certainly the *Journal's* current board and staff, have worked very hard to make the *Journal* a successful reality, two women deserve special mention. Melanie Johnson Raubach and Alicia Luchetti came to my office about two years ago and asked for my help in proposing a journal that would focus on issues of law, gender, and sexuality. As the *Journal* took shape, its mission grew broader, encompassing all areas of law and policy, but its foundation on feminist principles remains incontrovertible. It is fitting that

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1. ANDREA DWORKIN, *WOMAN HATING* 90 (1974).
2. *Id.* at 203.

Alicia Luchetti, still a student at Wake Forest Law, has shepherded this Symposium.

I. CONCEIVING THE SYMPOSIUM

When a student contingent from the *Journal* returned to me for help in materializing an inaugural symposium, I immediately thought of the fantastic work I had been reading by David A.J. Richards and Nicholas Bamforth. In their book, *Patriarchal Religion, Sexuality, and Gender*, Professors Richards and Bamforth do the important work of exploring “new natural law” theory and exposing its faultiness.³ In my view, new natural law theory is simply the most recent sado-theory conjured to ensure the subordination of Gays in the name of a divine—translated to a “natural”—order.

Unquestionably, new natural law is part of a larger political project; and yet, certainly in a testament to its insidiousness, the project is only seldom analyzed at every level of its existence. In her marvelous little treatise on the politics of disgust as a legal catalyst, philosopher Martha Nussbaum begins with an analysis of the pseudo/sado-scholarship of anti-Gay muckraker Paul Cameron, whose work, as Nussbaum notes, is mostly published in and disseminated through trumped-up “academic journals” invented by his or other anti-Gay groups. Essentially, Cameron utilizes the politics and language of disgust to urge the caste-based exclusion of Gays from civic life. His “studies” purport to reveal homosexuality as a pathogen and homosexual sex acts as extremely dirty, disease-ridden public health risks; as he has said, “Screen and quarantine until we come up with a cure. . . . Homosexuals were hung 300 years ago in our society.”⁴ Or, as his associate Bill Banuchi, executive director of the New York chapter of the Christian Coalition put it, “Gays should be required to wear warning labels.”⁵

3. DAVID A.J. RICHARDS & NICHOLAS BAMFORTH, *PATRIARCHAL RELIGION, SEXUALITY, AND GENDER: A CRITIQUE OF NEW NATURAL LAW passim* (2008).

4. MARTHA C. NUSSBAUM, *FROM DISGUST TO HUMANITY: SEXUAL ORIENTATION AND CONSTITUTIONAL LAW 7* (2010).

5. *Id.* This is a throwback to earlier disgust campaigns against Gays. For example, Anthony Comstock, nineteenth-century founder of New York City’s Society for the Suppression of Vice, said,

These [homosexual] inverts are not fit to live with the rest of mankind. They ought to have branded in their foreheads the word ‘Unclean,’ and as the lepers of old, they ought to cry ‘Unclean! Unclean!’ as they go about, and instead of the [sodomy] law

As important as it is to recognize Cameron and his allies for who and what they are, it is equally important to locate them as a subsidiary of a wider, well-organized, extremely well-funded movement aimed at perpetuating Gays as a pariah caste and reversing hard-won and, generally, meager legal advances. Cameron and his ilk are unusual in that they are, in fact, recognized by most liberal academics, like Nussbaum, as the pseudo/sado-scholars that they are. But it would be a mistake to think of the larger gaynocidal project as merely a product of fringe politics. The emergence of the new natural lawyers is testament to the reality in the mainstream academy of a virulent gaynocidal politics that passes as acceptable scholarship in ways that similar “scholarship” about Blacks or Jews never would today.⁶ In the same way that good cops never seem to want to name the crooked cops, most liberal intellectuals refuse to name the purveyors of pseudo/sado-scholarship. In her discussion of *Romer v. Evans*, for example, Nussbaum names a “few genuinely eminent intellectuals,” whose testimony about the depravity of Gays was integral to the state’s case.⁷ John Finnis, at Oxford and Notre Dame, Robert George of Princeton, and Harvey Mansfield of Harvard, all testified for the State of Colorado in an effort to justify the most sweeping and baldly anti-Gay legislation since sodomy laws themselves, and, it must be said, the most obviously caste-motivated legislation since Jim Crow. Robert George, for example, in his *Romer* testimony, essentially argued for the state-enforced homelessness of Gays as a class.⁸

At bottom, the new natural law theory on which George and others rely in order to pathologize Gay identity and to defend Gays’

making twenty years imprisonment the penalty for their crime, it ought to be imprisonment for life.

SHANNON GILREATH, *SEXUAL POLITICS: THE GAY PERSON IN AMERICA TODAY* 13 (2006) (quoting Comstock) (citation omitted).

6. Some scholars, like Professor Robin Fretwell Wilson, do not believe this comparison should be made. It is certainly inconvenient when the object of one’s scholarship is justification for sexual apartheid. Wilson has written:

While the parallels between racial discrimination and discrimination on the basis of sexual orientation should not be dismissed, it is not clear that the two are equivalent in this context. The religious and moral convictions that motivate objectors to refuse to facilitate same-sex marriage simply cannot be marshaled to justify racial discrimination.

Robin Fretwell Wilson, *Matters of Conscience: Lessons for Same-Sex Marriage from the Healthcare Context*, in *SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS* 77, 101 (Douglas Laycock et al. eds., 2008).

7. NUSSBAUM, *supra* note 4, at 109.

8. *Id.* at 109–10.

low caste subordination is little more than reworked Catholic theology presented as legal scholarship, and it arose in direct response to relatively recent advances by women and Gays in the areas of sex, contraception, and sexuality.⁹ The emergence of new natural law argument is testament to the enduring need of people to hate, but also of their need for the hate to seem just. Natural law jurisprudence ingeniously moves the hate from the realm of men to the realm of God—of nature—thus ensuring that the stigma is as eternal as it is inescapable. The presence of such a “scholarly” enterprise points to the principal difference in the condition of Gays vis à vis all other subordinated groups today, which is that Gays’ low-caste status is actively endorsed and maintained at every level of the social strata, from small town mayor to U.S. President, from backwoods preacher to prestigious academic.¹⁰ Of all those America categorically and institutionally despises, Gays are the most discernibly a caste—the victims of continuous, systematic violence and institutionalized defamation by attackers held in high esteem as priests, doctors, lawyers, politicians, and teachers.

It was for these reasons that Professors Richards and Bamforth’s work, rooting out the ulterior motives of new natural law and exposing its gratuitous meanness in a systematic, rigorous way, is so important and why I very much wanted their work as the centerpiece of the *Journal*’s first symposium. I should also note here what a professional and personal delight it was for me to welcome Professor Richards, in particular, to Wake Forest and to the Symposium. David was doing some of the early theorizing about Gay rights when it really took guts to write about Gay people and the issues we face. And his work is formative of the discipline of queer theory. I and so many others are in his debt.

9. The Catholic tradition on which natural law jurisprudence draws has never been very good at getting the nature/natural thing right. After all, the Catholic hierarchy did claim as a central principle of the natural order that the sun revolved around the Earth. What’s different now? Well, the implication is that, “this time we got it right—trust us.” The implacability of power represented by new natural law theory as well as the unmitigated gall its proponents have in claiming a traditional defense of power on other terms, rendering their arguments not merely faintly ridiculous but absurd, makes one encountering new natural law uncertain whether to laugh or cry.

10. The fact that purveyors of sado-scholarship have fancy titles after their names or teach at prestigious universities should not confuse us. The word *prestige* is derived from the Latin *praestigiae*, meaning “illusion” or “trick.” This should make us suspicious, at least in some cases, of *prestigious* universities and their products.

II. SEXUALITY AND GENDER: THE CONNECTION

When Mary Daly said that “patriarchy is itself the prevailing religion of the entire planet,” she told a momentous truth.¹¹ The obvious woman-hating entailed in a religious ethos in which, as Daly said, “God is male” and “male is God,” is an important rallying point for radical feminism.¹² But one might as surely observe the thoroughly heterosexual mythos of patriarchal religion and conclude that if God is heterosexual, then heterosexual is God. Certainly, Gays share with women a heritage of oppression through the Church. Thus, this Symposium also explores our, in Andrea Dworkin’s parlance, union in “queerness.” In many ways, the oppression of Gays by the Church today echoes the oppression of women, down to the Thomistic assertion that women are simply “misbegotten” males reflected in the Church’s assertion that Gays are “disordered” heterosexuals in need of reordering.¹³ This denial of existentiality is the cruelest insult.

Moreover, women and Gays are linked by the lie that women and men are unfailingly complementary, a bedrock assertion of Church authority for which there is, needless to say, no conclusive proof. Through the assertion of a “divine plan” of male-female coupling, women are subordinated to men and Gays are subordinated to heterosexuality generally. This, too, is the work of new natural law theory.¹⁴ When this kind of human servitude—this moral slavery¹⁵—

11. MARY DALY, *GYN/ECOLOGY: THE METAETHICS OF RADICAL FEMINISM* 39 (1978).

12. MARY DALY, *BEYOND GOD THE FATHER: TOWARD A PHILOSOPHY OF WOMEN’S LIBERATION* 19 (1973).

13. See *Letter on the Pastoral Care of Homosexual Persons*, SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH (Oct. 1, 1986), available at <http://www.ewtn.com/library/curia/cdfhomop.htm>; see also SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *DECLARATION ON CERTAIN QUESTIONS CONCERNING SEXUAL ETHICS* § 8 (1975) (“[H]omosexual acts are intrinsically disordered and can in no case be approved of.”). This is what José Gabilondo has named the “axiomatic heteronormativity” of Catholic doctrine. José Gabilondo, *When God Hates: How Liberal Guilt Lets the New Right Get Away with Murder*, 44 WAKE FOREST L. REV. 617, 626 (2009). The Catholic catechism also states that the homosexual “inclination” is “objectively disordered.” In this case, as in most, the objective measure of the objective is little more than the say-so of patriarchal power.

14. See generally Sherif Girgis, Robert P. George & Ryan T. Anderson, *What is Marriage?*, 34 HARV. J.L. & PUB. POL’Y 245, 245–287 (2010). This example contains the typical vermicular definitional imprecision presented as precision. “Nature” is what the writers say nature is in the context of circuitous argumentation designed to mask apartheid in operation. The authors’ argument about “real” marriage, as opposed to any Gay imitation of it, is contrived in terms of “nature” and “naturalness” but is, of course, really an argument that, stripped of its philosophical pretenses, would read something like this: “Marriage is a

is packaged and marketed under mystical terms, discrimination on account of it is particularly insidious. New generations of religious people are falling prey to it, even in a supposedly modern age, because religionists, following the tried-and-true plan of targeting the undereducated and superstitious, have begun exporting divine hatred to developing nations where people are most susceptible to promises of a better eternal life in exchange for legalism and blind obedience in this temporal life. A perfect example of this is the coalition of American pastors who exported virulently anti-Gay religious politics to Uganda, where Gays may be subjected to the death penalty.¹⁶ Meanwhile, even liberal Presidents patronize their prayer meetings.¹⁷ So many horrors of this kind go unanswered in the United States because of the peculiar American project that aims to split religious expression off from the discrimination, oppression, and physical torment it produces. When discrimination is packaged as religious expression, most Americans, especially most liberals, take a hands-off approach. Some “liberals” even call for special accommodations for religiously motivated bigotry.¹⁸

And so, to the reality of women and Gays’ shared existential servitude in the name of divine or “natural” revelation, Professor Jane Caputi bends her formidable talents. Specifically, Professor Caputi explores the relationship between the “pornification” of popular culture and patriarchal religious myth. Certainly, Professor

sacrament reserved for holy people; the Church says Gays are not holy people; therefore, marriage and the holy, heterosexual way of life, ordained by God and sanctioned by the Church, must be maintained by excluding Gays from marriage and keeping the distinctions between the holy and unholy crisp and easily-discernible.” The argument can be dressed up as one about the naturalness of heterosexuality based on observations about procreation, but, missing of course, is the admission that heterosexuality and procreation are, in fact, religious imperatives and are being valued in this context solely because of this fact, and not for the (convenient) fact that they can be observed in the natural world. In new natural law jurisprudence, “nature” is merely a motif for manipulation. The academic pretentiousness of presenting the argument in any other terms is enviable in degree of *chutzpah* and, certainly, career-making.

15. See DAVID A.J. RICHARDS, *IDENTITY AND THE CASE FOR GAY RIGHTS: RACE, GENDER, RELIGION AS ANALOGIES* 56 (1999) (coining the term “moral slavery”).

16. See John Kron, *Uganda Panel Gives Setback to Anitgay Bill*, N.Y. TIMES, May 9, 2010, at A12, available at <http://www.nytimes.com/2010/05/09/world/africa/09uganda.html>.

17. See Cathleen Falsani, *Uganda Hangs Over National Prayer Breakfast Once Again*, HUFFINGTON POST (Feb. 1, 2011, 7:37 PM), http://www.huffingtonpost.com/2011/02/01/the-god-factor-national-p_n_817151.html.

18. See Shannon Gilreath, *Not a Moral Issue: Same-Sex Marriage and Religious Liberty*, 2010 U. ILL. L. REV. 205, 211 (2010) (noting that some scholars argue that discrimination against homosexuals is permissible if based on religious grounds).

Caputi's analysis will be controversial. My aim in this Introduction is not to pre-chew her analysis for a jittery readership, but simply to observe that what Caputi does here through radical feminist analysis is to probe the very foundations of the patriarchal world order and to call for nothing short of patriarchy's ultimate overthrow. This project makes for uncomfortable conversations.

Caputi exposes the social creation of women through the pervasive patriarchal narrative of woman as both virgin and whore, in which women are made for sex and defined by sexual capacity (although certainly not by sexual agency), a message enforced through the Right's Bible and the Left's pornography, which proceed from a strikingly similar central storyline. The story of the Virgin Birth of Christ, for example, has all of the hallmarks of the pornographic script. Father-God approaches *his woman*, of course a virgin and essentially rapes her.¹⁹ Feminists have long understood that pornography consumers are watching a rape; rarely has anyone understood that Bible readers may be reading about one. In any event, the focus of the dynamic of the Virgin Birth rape myth is on the Holy Ghost, which "came upon" Mary and left her pregnant. The focus on the Holy Ghost in this respect is equivalent to the focus of most porn on the thrusting penis. The Holy Ghost is, in Caputi's analysis, the god-phallus.²⁰ Mary's "[do] unto me according to thy word" is taken as consent, making the parallel I draw here to rape as incredible as it is (needless to say) offensive. But that is not so different from the pornographic world either, where rape is obfuscated by the "fact" that the woman is ostensibly being paid or that she smiles or verbally affirms that she enjoys what is done to her. Caputi's rigorous investigation of patriarchal religion's pornographic foundations—and-or pornography's religious motifs—will leave every reader unsettlingly enlightened.

III. PATRIARCHY: THE WORLD

Finally, all three principal Western mythologies—Christianity, Judaism, and Islam—are patriarchal. In his Symposium contribution, Professor Hassan El Menyawi argues that same-sex love is actually compatible with Islamic law and tradition. Professor

19. My analysis here, of course, supposes that rape happens when meaningful consent is not given or cannot be given (for a host of reasons involving power imbalance).

20. See, e.g., Jane Caputi, *Re-creating Patriarchy: Connecting Religion and Pornography*, 1 WAKE FOREST J.L. & POL'Y 293 (2011).

El Menyawi's activism in Egypt resulted in his arrest, torture, and finally exile by the regime of former President Mubarak. Perhaps, now that Mubarak has fallen and the call for democracy has reached a fevered pitch, Professor El Menyawi's work will help to ensure that Gay Egyptians finally have a fighting chance in their country—in a new Egyptian political and legal order. Professor El Menyawi's article will be published in Volume 2 of the *Journal* in 2012.

The process of inventing and materializing this Symposium was not always easy, particularly for the students who comprise the *Journal's* editorial board and staff—and this is to say nothing of the logistical difficulties of getting an international group of busy scholars together in one place. The theories presented here are not always easy to hear or to read, especially for the devout religious adherent who encounters them. Some students vigorously dissented from the ideas—some or all—found in these pages. Yet the students remained committed to facilitating the ability of the authors to share their views, unmodified, in this forum.

On this point, I would be remiss were I to fail to acknowledge the lack of “balance” present here, in the sense that no new natural law theorists or religious traditionalists were invited to respond or to defend their positions. The composition of this Symposium, including what it excludes, was an intentional effort on my part as the Symposium's organizer. Despite the remarkable and enviable ability of religionists to propagandize themselves as an embattled, endangered minority—no mean public relations feat, to be sure—the facts are not on their side. Religionists have a powerful lobby and a powerful bully pulpit. They are generally successful at propagating and, indeed, institutionalizing their views.²¹ In reply to the likely liberal criticism of a lack of “balance”—a criticism born of liberals having fetishized ecumenism for ecumenism's sake—I would simply ask where you have seen the institutionalized religious interests engaged and refuted here making equal time for the theorists speaking from the pages of this Symposium. By presenting a critique of patriarchal religion and its artifices, unqualified by the liberal apologetics that passes for academic engagement of religion these

21. See, e.g., COLO. CONST. art. II, §30b, ruled *unconstitutional* by *Romer v. Evans*, 517 U.S. 620 (1996). For further evidence of this, observe that anti-Gay marriage amendments have been successfully enacted in every state in which they have appeared on the ballot.

days, this Symposium is not only a project of particular importance, but also of particular bravery.