

GENDER
New Issues in Law, in Communication,
In Our Culture

Presented by Gary Erdos
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In an attempt to get into the topic of this paper “GENDER: New Issues: In Law, In Communication, In Culture” I would like to proceed by telling stories. Story telling is what I do for a living with the hope that the listener finds her or himself somewhere in the story and is able to draw some conclusions by their participation in that story. Hopefully, these can be conclusions that the listener hasn’t considered earlier. Too, I would claim culture as a stronger suit in my deck of cards than questions concerning issues of law or communications, if by these the original questioner wanted to know the drift of this topic in relationship to either of those professions. For those shortcomings, I apologize in advance and gently offer the opportunity for a quick and honorable exit before we have committed any more time together. Gender is one of those topics in which we all have a stake, particularly as we all have one – gender, that is. But I suspect that we don’t always take the time to ponder what that experience might mean to us personally and how those stories and experiences shape us. I hope that in some of what we discuss this afternoon we will all find that we know more about this topic that we previously thought, simply by being alive in what has shaped up to being an incredibly interesting time in which to live. As a small aside, it is my tendency to use the first person in papers such as this. This was a habit I began in my first master’s thesis and one I found quite helpful in my doctoral dissertation. I hope you don’t find it too distracting.

I

I grew up in Butler, Pennsylvania, a mill town slightly northwest of Pittsburgh. This was the sort of place where hard men did hard things. Men worked – generally in a mill, which was in equal measure hot, dangerous and profane. Even those men who had vocations outside of a mill – doctors, lawyers, even clergy – somehow shared this defining experience. Even the men who ran these factories – in my case Pullman Standard Railroad Car Company and ARMCO Steel, experienced the floor of these factories personally. This is important because no one, including myself [having been born in 1963 I grew up at the very end of the heyday of mill economics], would have remotely considered this world one that was suitable for a lady, specifically because of its heat, danger and profanity. We all knew girls/women who said that they wanted to do these jobs but boys/men questioned the reasonableness of them doing these sorts of vocations – not to mention the sanity of anyone who actually wanted to work in these places. Interestingly, these same questions would be asked and played out as women entered similarly “men-only” career paths such as the military academies and, in particular, careers such as flying Navy fighter jets. In towns such as Butler, Pennsylvania, the acceptable career paths for women were generally assumed to be teaching or nursing. A few precocious women went on to other various careers, but even as late as the first half of the 1980’s it was assumed by more than a few people that these would generally be relatively short-term vocations. The fact that it concerns me to even raise these topics out of genuine concern over giving offense to any woman or colleague hearing this paper is a sure sign of the, in my opinion, positive direction this topic has taken in the past fifty years.

There are a couple curious outliers to this story, though, my mother being one of these. In World War II, my mother enlisted in the United States Marines. She was always clear in her mind why she chose the Marines – the women’s Corps was not given, in her telling, a silly acronym such as WACs or WAVES but were called Women Marines. And, my mother was not a nurse, orderly or secretary. She was a welder. She rebuilt bomber and fighter airplanes, particularly Dauntless dive bombers and the Corsair heavy fighter. She had applied for and had been accepted into a program to learn to fly so she could shuttle planes from Quantico, Virginia to bases in San Francisco. The war ended before she was able to enter the training. When the movie “Flashdance” premiered in 1983, it was a farce to imagine a woman as a welder in a heavy mill, yet my mother did this very job forty years earlier. Perhaps it was in those repair facilities as well as those factories, staffed with the countless women who built those planes and tanks that won World War II that our current gender views were truly born.

But here’s a strange little aside. I remember vividly that, in 1972, when a woman ran for and was elected to the Church Council [governing body] of our prominent Lutheran Church, my own mother – not my father – was vehemently opposed to this action. What I find even more interesting is that within the next seventeen years, my own mother would be the president of the Church Council of that same parish. Time and change, slowly or swiftly follow their inexorable path into the future.

I would use this as a segway to a bit about my own vocation. As you probably know the role of clergy has been strictly segregated by gender for most of its history. Yes, there have been any number of notable women who have played formative roles in the story of Christianity – the Virgin Mary, the women at the tomb of Jesus, Clair of Assisi, Kathryn Kuhlman, Mother Theresa and a collection of sisters, ordinary believers and saints who have moved the Christian story forward, to name a few – my own vocation has not historically been as open to women in positions of named and visible leadership. In the not too distant past it was as nearly impossible to name a woman who was a pastor as it was to name a church whose Sunday School was staffed only by men. In my business, the presence of women in ordained leadership roles has generally been limited to Sunday Schools and the occasional overseas missionary. As someone reflected on this when I was on seminary, it seemed that many women who married pastors would in our time now probably be pastors. For many women the road to ministry was through the parsonage of the church served by their husbands.

While the Quaker tradition recognized the leadership of women in congregations since the beginning of the eighteenth century, the first woman to be formally ordained in the United States was Antoinette Brown who was ordained by her Congregationalist Church in 1853.¹ Generally, many traditional mainline Protestant denominations would begin actively and regularly ordaining women in the 1970’s, with my own Lutheran tradition beginning to do so in 1970. While there had been some tradition of women as pastors/clergy for a very long time, this move was, to put it mildly, slightly controversial in those traditions. I can remember this as still somewhat controversial in 1985 as I began

¹ <http://religioustolerance.org/femclrg13.htm>

my own seminary education. What is interesting is that thirty years later women serving in the role of ordained leaders of a congregation is relatively commonplace. Yes, prejudices continue to exist but it seems that it is not a newsworthy event that a woman is the new pastor of the local congregation.

What is interesting, though, is that while women have gained acceptance in many places as ordained leaders of congregations, only one of three students in Master of Divinity programs – the usual requirement for most denominations in order to be considered for ordination. In evangelical traditions, ones that tend to be a bit more theologically conservative, this number is approximately one in five.² The article clearly reveals a desire of the author to see this ratio grow to something closer to one to one. Even more interesting, this is reported by “Christianity Today,” a magazine aimed primarily at the evangelical community.

II

As noted earlier I attended Grove City College from 1981 to 1985 pursuing a degree in economics. My principal teacher and, in many ways, mentor was an economist Hans Sennholz. Dr. Sennholz was a passionate free marketer and a European, giving him some rather different insights to American culture and life. In a class on wage and value he explained that at least in the time up to the early 80’s, women earning lower wages made economic sense. He went on to explain that an employer would naturally pay women a lower wage either out of the reality of them stepping out of the workforce for any amount of time to have children or out of the anticipation that their work would be interrupted by childbearing. [As an aside, that explanation could sound plausible in 1983 and completely wrong in 2015. Attitudes can change and change relatively quickly.] Dr. Sennholz was also quick to point out that when the day came that women changed this pattern, wage patterns would naturally and by necessity change as well. I had the opportunity to be with Dr. Sennholz soon after Carly Fiorina became CEO of Hewlett-Packard and we talked about his lecture in 1983. It was his opinion at that time that Fiorina proved his point; as a woman who hadn’t actively step out of the workforce she rose to the top by her work. He did lament and comment on her pursuit of celebrity, commenting that celebrity was a far more dangerous perch than that of a CEO.

Grove City College was a vantage point to observe an interesting gender related phenomena just starting to take hold in the United States. Title IX is a portion of the United States Education Amendments of 1972. The portion of the law that we know at Title IX was co-authored by Indiana Senator Birch Bayh. The pertinent portion of the law states that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

² <http://www.christianitytoday.com/women/2013/may/seminary-gender-gap.html>

discrimination under any education program or activity receiving federal financial assistance.³

Title IX finds its roots in the Civil Rights Act of 1964, as that act did not include a prohibition on related to sex discrimination. At the same time, work was continuing on the Equal Rights Amendment to the U.S. Constitution. The sections of work being done by Congress related to education would be introduced by Senator Bayh into the Higher Education Act of 1965 when it was on the floor for reauthorization in February 1972.⁴ It is interesting that Title IX would become best known for its impact on high school and collegiate activities,⁵ Title IX nowhere mentions athletics.⁶

It is not hard to see the effect that Title IX has had on sports in general and even opportunities for women in a broader way. The shifts that happened in women's sports since Title IX is really quite remarkable and while it is very possible that these changes could have taken place without federal legislation and court orders, it is hard to imagine them happening quite as quickly. As a casual observer, it would seem that Title IX accomplished much for women's causes that was sought in such legislation as the Equal Rights Amendment, even without the passage of that particular piece of legislation. The cultural importance of sports, anything that changes the nature of sport, particularly sports related to educational endeavors - particularly colleges and universities - is going to have a profound cultural effect. Suddenly, it is not only the parents of Little League boys and Pop Warner dads who dream of athletic scholarships, free rides, as the dreams usually play out in the adjacent bleachers. Now, those dreams include girl's softball and soccer, girl's swimming and tennis and fencing. Girl's volleyball and basketball takes on as much importance to families and boys basketball and baseball. Title IX effectively changed the hopes and dreams of families and, one could argue, the image of boys toward girls.

So what could a small, liberal arts college in western Pennsylvania have to do with a cultural shift like Title IX? As a private institution that historically never received direct federal funding for any of its programs, Grove City College refused to sign off on Title IX codes of conduct with the Department of Education. The College steadfastly believed that this legislation had nothing to do with them, as they were truly a private institution. The College had no demonstrable history of sexual discrimination [although it did have truly bad athletic teams!]. The case, *Grove City College v. Bell* swung on the fact that the College refused to sign an assurance of compliance. What Grove City had done, though, was enroll students who received federal Basic Education Opportunity Grants, also

³ Public Law No.92-318, 86 Stat. 235 (June 23, 1972), codified at 20 U.S.C. sections 1681-1688.

⁴ 118 Congressional Record 5802-3 (1972).

⁵ Sports Illustrated would feature the 40th anniversary of Title IX on its cover on May 7, 2012. The magazine saw this act as one of the most important legal acts in sporting history.

⁶ A very good summary of Title IX and its history can be found at http://www.en.wikipedia.org/wiki/Title_IX.

known as Pell Grants. The case finally wound its way onto the docket of the United States Supreme Court in 1984. The College lost its appeal in a 6-3 decision. Interestingly the language of Justice Powell's concurring opinion lays out some of the, should we say, silliness of this case:

“[T]he [government] has prevailed, having taken this small independent College, which it acknowledges has engaged in no discrimination whatever, through six years of litigation with the full weight of the Federal Government opposing it. ... ‘it should also be noted that there was not the slightest hint of any failure to comply with Title IX, save the refusal to submit an executed assurance of compliance with Title IX. This refusal was obviously a matter of conscience and belief.’”⁷

What was interesting in the Grove City case was that the court found that only the financial aid and admissions offices - those directly touched by the money of the Pell Grants was subject to federal regulation and oversight. The result of this decision was that it made many institutions' athletic programs outside of the oversight of Title IX regulations, a victory for opponents of the legislation and reducing the scope of Title IX. The effects of all of this was short-lived, as the Civil Rights Restoration Act of 1988 extended Title IX coverage to all programs of educational institutions that receive any federal assistance, direct or indirect.

What made all of this interesting to watch from “the inside” was the effect that conversations about creating a more “gender neutral” field of opportunity. One of the tangible effects of Title IX has been a shift of the number of post-high school degrees conferred on women as compared to men. In every category, from Associate's to Doctor's degrees and across ethnic and racial groups more women receive post-high school degrees than do men. For Bachelor's degrees conferred in 2010, this number stood at 57.4% for women and 42.6% for men.⁸ What is interesting is that Grove City College has maintained a nearly equal ratio of degrees conferred to men and women over these same years. While the goals of Title IX and many of its subsequent results have certainly helped in making a “more level playing field,” and in many instances giving opportunities to women who might otherwise not have enjoyed them, it is not hard to see the long tail of the government stretching into hitherto unimagined places. Dormitory facilities as well as non-sporting activities such as bands and clubs fall under the legislation's provisions.

As an aside, legislation and what we might call “culture war” fights have a way of occasionally playing themselves out in strange ways. One example of this is a small personal story and relates, finally, to Grove City College. My niece, the daughter of my brother - he and his wife were 1972 graduates of Grove City College - attended Grove City College from 1999-2002. Sarah was a competitive swimmer at the college and by 2000 had set new swimming records for the school and her division in six events. At a

⁷ *Grove City College v. Bell*, 465 U.S. 555, 578, 579 (1984).

⁸ <http://www.nces.ed.gov/fastfacts/display.asp?id=72>.

meet, my brother notices that there were banners listing the men's swimming records in the natatorium, but none listing the women's records. My brother offered to pay for a banner listing the women's swimming records. His offer was refused.

III

We could all go on with stories that speak of our experiences of these things over the past thirty years. [One of the benefits of being the presenter is that I get to tell *my* stories!] I would like to skip you forward a number of years to 2014. For any of us who have paid attention questions about gender have transcended the simple difference between men and women. They have come to include questions of sexual identity as well. Homosexuality falls into this category and has found a way to produce some rather tumultuous conversations, particularly in religious communities. But one interesting and, in my opinion, unexpected turn in these conversations has happened at of all places - traditional women's college. The schools; Mount Holyoke College, Wellesley College, Smith College, Bryn Mawr College and Barnard College - also known as the "Seven Sisters" have had to ask the question, essentially, who is a woman? The schools have had to deal with questions surrounding transgendered students, particularly those who have been in the process of changing genders. In a women's college can you have a man who is a student? What if you change while you are a student? What if you are in the process of changing while you are applying? Who should be allowed to apply? Who should be denied because of this? Who should be asked to leave? These questions have roiled the student bodies at these institutions and they have found it challenging to make decisions that honor the ideals set forth in all of these sorts of discussions. In the last six months, two articles about these challenges have made it to the New York Times. Ruth Padawer's article "When Women Become Men at Wellesley," published on October 15, 2014⁹ and John Leland's "Barnard Considers Policy for Transgender Students" published on December 12, 2014¹⁰ chronicle the recent experience of these two schools in this matter. Not only do the articles chronicle situations I would suspect many of us never really anticipated thirty years - or maybe even ten years - ago, the reader comments give a fascinating look at the wide range of public opinion on such topics.

Women's colleges are not the only areas in which these questions are being asked. The University of Vermont now recognizes a third gender: transgender. This reflects a growing question at various colleges and universities and they attempt to catch up with the students entering their institutions. "Today, a growing number of students are embracing the idea that when it comes to classifying gender, there should be more than

⁹ <http://www.nytimes.com/2014/10/19/magazine/when-women-become-men-at-wellesley-college.html?module=Search&mabReward=relbias%3As%2C{%221%22%3A%22RI%3A6%22}>

¹⁰ http://www.nytimes.com/2014/12/13/nyregion/barnard-weighs-policy-for-transgender-students.html?ref=topics&_r=4

two options.”¹¹ Dating sites, such as OkCupid and Facebook recognize up to fifty ways to identify gender. In many ways, this makes the questions at places such as Wellesley and Barnard feel almost quaint. The Army needs to find ways to work with Chelsea Manning, formerly known as Pfc. Bradley Manning, who is going through gender change processes and hormonal treatment while imprisoned by the U.S. Army for espionage related issues. And, of course, I would offer one more name to you; Bruce Jenner. To say that these represent cultural shifts feels merely quaint. In many ways, questions relating to issues surrounding gay marriage feel much more simple. Perhaps this is one of the reasons we are reaching some sort of cultural consensus on that issue?

IV

In her book, *The Great Emergence*, Phyllis Tickle, the former religion editor of *Publishers Weekly* tries to understand our post-modern age through a religious lens. It seems to make some sense to consider some of what she has to say. America has tended to think of itself as a “religious” nation. In fact, religious participation has persistently been part of our public discourse. Part of that discourse has included what we might think of as a Protestant religious view with its understanding of the authority of the Bible. Even in a relatively secular time we know that many parts of community is trying to answer questions of gender in relationship to what they believe the Bible is saying. As she is trying to understand how and why some of our conversations about gender have been so complicated and often divisive, she came to this helpful evaluation:

As we know, *sola scriptura* had answered the authority question in the sixteenth century and, more or less, had sustained the centuries between the Great Reformation and the latter half of the nineteenth century.

The first such blow to Luther’s resolution to the authority question came in this country with the Civil War and the years preceding it. While the Bible does not order up slavery, it certainly does acknowledge it as an institution... It is naïve and reductionist to ignore the fact that America’s Protestant Churches almost all split in two, violently and on theological grounds, over the issue of scriptural teachings about slavery

Because the business of one person’s owning another person is neither morally defensible nor economically sensible in an industrialized society, we got over this major blow to *sola scriptura*. It was a slow and sometimes exquisitely painful recovery, but we did recover, until the Great War rattled our bars again, this time over gender instead of race... a woman being subject to a man may have been the biblical truth but the biblical way simply could not stand up to the grinding, day-by-day onslaught of domestic pressure. In a relatively short time, women got the vote.

¹¹ <http://www.nytimes.com/2015/02/08/education/edlife/a-university-recognizes-a-third-gender-neutral.html>

By midcentury, a far more intractable question had arisen, however; that of divorce.

The next assault in this progression of assaults was the ordination of women to the Protestant clergy.

Clearly the battle of “Scripture only” was being lost. Now there was only one more tool left in sola scriptura’s war chest. Enter “the gay issue.”

To approach any of the arguments and questions surrounding homosexuality in the closing years of the twentieth century and the opening ones of the twenty-first is to approach a battle to the death. When it is all resolved-and it most surely will be-the Reformation’s understanding of Scripture as it had been taught by Protestantism for almost five centuries will be dead. That is not to say that Scripture as the base of authority is dead. Rather it is to say that what the Protestant taught about the nature of that authority will be either dead or in mortal need of reconfiguration. And that kind of summation is agonizing for the surrounding culture in general... Such an ending is to be staved off with every means available and resisted with every bit of energy that can be mustered. Of all the fights, the gay one must be-has to be-the bitterest, because once it is lost, there are no more fights to be had. It is finished. Where now is authority?¹²

While Tickle’s first concern is the state of churches, particularly in the United States, we do have the sense that the turmoil that churches have been over the issues of gender and its larger relational questions have also been questions that have caused turmoil culturally as well. Thinking about these same questions, yet from a different perspective the British philosopher Terry Eagleton writes, “religion follows the trajectory of art and sexuality, those other two major constituents of what one might call the symbolic sphere. They, too, tend to pass out of public ownership into private hands as the modern age unfolds. The art which once praised God ... is now for the most part a question of individual self-expression.”¹³ Sooner or later, many of these questions evolve into questions of privacy. So often, questions related to gender appear to be strictly part of the private realm, behind closed doors and all. But while many of the questions raised by today’s topic ultimately find their way into the public sphere. These questions matter. How we resolve them matter not only in the privacy of our homes but also in relationship to how we live with one another in the public square.

At the beginning of his work The Judge in a Democracy, Ahron Barak reflects that, “The law regulates the relationship between people. It reflects the values of a society.”¹⁴ Sooner or later, the law and the actions of institutions catch up with people where they

¹² Tickle, Phyllis, *The Great Emergence: How Christianity is Changing and Why* (Grand Rapids, Michigan: Baker Book House, 2008), 98-101.

¹³ Eagleton, Terry, *Culture and the Death of God* (New Haven: Yale University Press, 2014), 2.

¹⁴ <http://pup.princeton.edu/chapters/s8145.html>

are. What was normative in 1984 feels really strange now. The law and our institutions sometimes feel slow to change, many times to detriment of those who are not being protected by the law. These are hard and lamentable things. We can also look at instances where law and institutions get too far ahead of a critical mass of people and the culture. In this, *Roe v. Wade* comes to mind. Here, the struggle seems to only be protracted.

V

How do we make sense of these sorts of things? What feels like ages ago, I remember sitting at church organizational meetings at which the topic was gay ordination, a topic that has roiled many a denomination over the past thirty years or so. The discussion eventually rolls around to a pastor or bishop saying that they have a nephew or niece who was gay or lesbian and, well, they “just can’t vote against them.” Emotion is really no way to do good theology. Emotion really isn’t a way to make good decision or maybe even good laws. But as we think about these things I have come to think that emotion can lead us to larger ways of looking at the world. Emotions poke us where reason can’t. I really don’t know if I would want my granddaughter working in a steel mill. It’s a hard, hot, dirty job. But my own mother was an illustration of how a woman, when given an opportunity and a desire for something new, can do a hard job usually reserved for men in an environment that values hardness and toughness. It really wouldn’t have bothered me if that had been a girl I had been watching on those fields or those fencing strips or that pool instead of my sons. And, in fact, I’m absolutely certain that if I had been blessed with girls instead of boys I, their father, would have insisted, demanded even, they have their chance. If it had been my daughter instead of my brother’s, I’m fairly certain I would have had a banner made with her accomplishments and found some other girl to help me string it across the sign to the entrance of the college. Emotion and feelings and relationships matter and they shape us more than we imagine. In an editorial in the *New York Times Sunday Review* for February 22, 2015, Gail Collins writes about the Supreme Court Justice Ruth Bader Ginsberg and toward the end of the article of the upcoming court case regarding gay marriage in the next several months. She speaks of Ginsberg as unable to see Court retreating from what has already been said about this issue. Collins quotes Ginsberg, in theorizing about the relative speed with which the country has already accepted gay rights, “We all knew and liked and loved people who are gay.”¹⁵

¹⁵ <http://www.nytimes.com/2015/02/22/opinion/sunday/gail-collins-ruth-bader-ginsberg-has-no-interest-in-retiring.html>

Works Cited

- Collins, Gail. "Ruth Bader Ginsberg Has No Interest in Retiring." *New York times*. New York times, 22 Feb. 2015. Web.
- Eagleton, Terry. *Culture and the Death of God*. New Haven: Yale UP, 2014. 2. Print.
- Grove City College v. Bell, 465 U.S. 555, 578, 579 (1984). N.d. Print.
- Leland, John. "Barnard Considers Policy for Transgender Students." *The New York Times*. The New York Times, 12 Dec. 2014. Web. 27 Feb. 2015.
- Padawer, Ruth. "When Women Become Men at Wellesley." *The New York Times*. The New York Times, 18 Oct. 2014. Web. 26 Feb. 2015.
- "Sample Chapter for Barak, A.: The Judge in a Democracy." *Sample Chapter for Barak, A.: The Judge in a Democracy*. N.p., n.d. Web. 27 Feb. 2015.
- Scelfo, Julie. "A University Recognizes a Third Gender: Neutral." *The New York Times*. The New York Times, 07 Feb. 2015. Web. 26 Feb. 2015.
- "The Seminary Gender Gap." *Her.meneutics*. N.p., n.d. Web. 26 Feb. 2015.
- Tickle, Phyllis. *The Great Emergence: How Christianity Is Changing and Why*. Grand Rapids: Baker Book House, 2008. 98-101. Print.
- "When Churches Started to Ordain Women." *When Churches Started to Ordain Women*. N.p., n.d. Web. 26 Feb. 2015.
- Wikipedia*. Wikimedia Foundation, n.d. Web. 26 Feb. 2015.
- 118 Congressional Record 5802-3, 1972.