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**Fidelity and Fairness:
Mulieris Dignitatem's Wisdom Relating To Marital Commitments,
Covenants, Contractual Relationships and the Roman Catholic
Church[®]**

by
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ABSTRACT

“[A] man shall leave his father and mother and be joined to his wife, and the two shall become one flesh, so they are no longer two, but one flesh [there remains in force the law which comes from God himself:] [t]herefore, what God has joined together, [let no man put asunder]”²

“‘The Church herself is a virgin, who keeps whole and pure the fidelity she has pledged to her Spouse.’ This is most perfectly fulfilled in Mary. The Church, therefore, ‘imitating the Mother of her Lord, and by the power of the Holy Spirit, . . . preserves with virginal purity an integral faith, a firm hope, and a sincere

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²Matthew 19:6 (New American Bible), available at <http://uscbb.org/nab/bible/matthew/matthew19.htm>.

charity.”³

In secular terms, a contract is a “promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.”⁴ In a spiritual context, the contract of marriage is both a covenant and a sacrament between a man and a woman, with inherent obligations of fidelity – the commitment to promise keeping – and to fairness – the commitment to giving from one spouse to the other their due and to equitably allocate the marital resources. With other covenants and contractual relationships guided by faith and reason, there too exists a similar commitment to fidelity and fairness.

This note will illuminate the clarity, wisdom, and beauty expressed in the Roman Catholic Church’s magisterium relating to marital commitments, covenants, and contractual relationships, so inspirationally expressed by His Holiness Pope John Paul II some twenty years ago in his Apostolic Letter - *Mulieris Dignitatem* - On The Dignity And Vocation Of Women. In so doing, the Supreme Pontiff acted in his capacity of *magister*, or teacher, fulfilling a duty towards the people of God to enlighten them, so they might serve each other, and serve the Word itself, especially in relations between men and women.

Marital Commitments, Covenants, Contractual Relationships and the Church

³John Paul II, *Apostolic Letter, Mulieris Dignitatem, of the Supreme Pontiff John Paul II on the Dignity and Vocation of Women on the Occasion of the Marian Year* (Aug. 15, 1988), available at http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_15081988_mulieris-dignitatem_en.html [hereinafter John Paul II, *Mulieris Dignitatem*].

⁴SAMUEL WILLISTON, WILLISTON ON CONTRACTS § 1:1 (Richard A. Lord ed., 4th ed 1990); RESTATEMENT OF CONTRACTS § 1 (1932); RESTATEMENT (SECOND) OF CONTRACTS 1 n.1

Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. “Gender equality is the opposite of gender inequality, not of gender difference.”⁵ It is completely consistent with how God chose His people to keep His Revelation, and how He trained the Chosen People to fulfill its mission: “God created man in his image; in the divine image he created him; male and female he created them.”⁶

Christ pledged to protect the teachings of the Church to men and women alike when he said: “Whoever listens to you listens to me. Whoever rejects you, rejects me. And whoever rejects me rejects the one who sent me.”⁷

Attorney-author Eugene Harper has written how Aquinas synthesized Aristotle's philosophy with the teachings of Christ to change *Eudaimonia* to beatitude, the first principle of practical reason being "good is to be done and pursued, and evil . . . avoided," and the cardinal virtues finding perfection through the Christian virtues of faith, hope and love.⁸

The breadth of the Roman Catholic Church’s magisterium, or teaching authority regarding marital commitments, covenants and contractual relationships, would be worthy of a doctoral dissertation - in other words, well beyond the scope of this conference paper.

(1981), *cited in* JOSEPH CALAMARI and JOHN PERILLO, CALAMARI AND PERILLO ON CONTRACTS 1 (5th ed., West 2003).

⁵Fact sheet on Equality Between Women and Men, Council of Europe Homepage, Sept. 2008, *available at* http://www.coe.int/t/e/human_rights/equality/01._overview/2._background_documents/001_Factsheet.asp.

⁶*Genesis* 1:27 (New American Bible); *see also* Catholic Encyclopedia Online, *Genesis*, *available at* <http://bible.tmtm.com/wiki/Genesis>.

⁷*Luke* 10:16 (New American Bible), *available at* <http://www.usccb.org/nab/bible/luke/luke10.htm>, *cited in* William G. Most, *The Holy Catholic Church; the Communion of Saints* (1990), *available at* <http://www.ewtn.com/faith/Teachings/chura4.htm>

Ever since its issuance, those who read and heed *Mulieris Dignitatem*'s words have found the beauty and truth inherent in its passages as they serve each other, and serve the Word itself, in advancing fundamental fidelity and fairness between men and women.⁹

His Holiness Pope John Paul II wrote:

[T]he dignity and vocation of women - a subject of constant human and Christian reflection - have gained exceptional prominence in recent years. This can be seen, for example, in the statements of the Church's Magisterium present in various documents of the Second Vatican Council, which declares in its Closing Message: "The hour is coming, in fact has come, when the vocation of women is being acknowledged in its fullness, the hour in which women acquire in the world an influence, an effect and a power never hitherto achieved."¹⁰

Inherent to the cardinal virtues of faith, hope and love is a promise of commitment to do good for others and with others – a promise that transcends one's own physical and spiritual self to require a pure and unalloyed commitment to God and the Community which He created. Regarding this purity of purpose, His Holiness Pope John Paul II wrote further that:

The Church herself is a virgin, who keeps whole and pure the fidelity she has pledged to her Spouse. This is most perfectly fulfilled in Mary. The Church, therefore, "imitating the Mother of her Lord, and by the power of the Holy Spirit. . .preserves with virginal purity an integral faith, a firm hope, and a sincere charity."¹¹

In secular terms, a contract is a "promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way

⁸Eugene Harper, *The Conception of the Human Person*, 75 ST. JOHN'S L. REV. 297 (2001).

⁹John Paul II, *Mulieris Dignitatem*, *supra* note 3.

¹⁰*Id.* at 16.

¹¹*Id.* at 15.

recognizes as a duty.”¹² In a spiritual context, the contract of marriage is both a covenant and a sacrament between a man and a woman, with inherent obligations of fidelity – the commitment to promise keeping – and to fairness – the commitment to giving from one spouse to the other their due and to equitably allocate the marital resources. With other covenants and contractual relationships guided by faith and reason, there too exists a similar commitment to fidelity and fairness.

Scholar Susan Brinkmann found that *Mulieris Dignitatem* created a “renaissance” for Catholic women in their commitments towards each other and with men; it fostered the notion that “[m]en and women were not created to compete with each other, but to complete one another.”¹³ Contrary to the “man eating feminism” of the 1980’s, Brinkmann found His Holiness Pope John Paul’s writing of a “[F]emininity [which] informs everything she does: the way she loves, works and thinks, whether at home or in the public square. Far from being a weakness, John Paul II said, this is woman’s ‘genius.’”¹⁴

Citing author Dawn Eden, Brinkmann further said that “[b]elonging to a husband, a father, a brother,” she said, were mistakenly believed to be about “submitting to another’s power.”¹⁵ To the contrary, Eden said, “The pope is all about celebrating our dependence upon others as being a representation of our dependence upon God. It’s in showing the world how we receive the love of God that we become truly feminine.”¹⁶

¹²PERILLO, *supra* note 4, at 1.

¹³Susan Brinkmann, *A Renaissance for Catholic Women*, COLUMBIA MAGAZINE, Aug. 1 2008, available at <http://www.kofc.org/un/publications/columbia/detail.cfm?id=547808>.

¹⁴*Id.* at 300.

¹⁵ *Id.*, cited in Dawn Eden, *Ladies’ Knight*, The Dawn Patrol Website, Aug. 5, 2008, available at <http://dawneden.blogspot.com/2008/08/ladies-knights.html>.

¹⁶*Id.*

Bishop William E. Lori has written that as women and men form a communion of love, the couple, “[C]ooperates with God in the procreation of new human life. This truth, etched into the design of creation, is at the heart of the Church’s teaching against contraception expressed in Pope Paul VI’s 1968 encyclical *Humanae Vitae* (Of Human Life).”¹⁷

Bishop Lori goes on to explain how human love imitating divine love must move away from being “calculated, measured or exchanged as a commodity.” In a full, faithful, and fair manner of dealing with each other, women and men should strive to make their love “holy, moving toward the eternal.”¹⁸

In This World If Not Of This World: Comparing and Contrasting U.S. Law and Mulieris Dignitatem

What should the *magisters*, the teachers, and the leaders, elected and otherwise, do with respect to advancing a pure, faithful, inspired genius of femininity coexisting in a world of / with male or “masculine” presence? The paradox of living in an ordered, lawful society, yet freeing oneself from worldly affairs, is nothing new. Of note to Catholicism and our system of common law rooted in English heritage, King Alfred the Great of England (871-899) said in his Preface to the *Cura Pastoralis*:

Thanks be to God almighty that we now have any supply of teachers. Therefore I command you to do as I believe you are willing to do, that you free yourself from worldly affairs as often as you can, so that wherever you can establish that wisdom that God gave you, you establish it. Consider what punishments befell us in this world when we neither loved

¹⁷ William E. Lori, *Male and Female He Created Them*, COLUMBIA MAGAZINE, Aug. 1, 2008, (citing Pope John Paul VI, *Encyclical Letter Humanae Vitae, of the Supreme Pontiff Paul VI, On the Regulation of Birth*, July 25, 1968, available at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html).

¹⁸*Id.*

wisdom at all ourselves, nor transmitted it to other men; we had the name alone that we were Christians, and very few had the practices.¹⁹

From the time of the Saxons to the time of American Colonies belonging to the British Empire, a certain male-dominated attitude pervaded law and society. At its very inception, the nascent nation's state of the law and the dignity and rights of women were captured in these words from Abigail Adams to her husband in March 31, 1776: "In the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favorable to them than your ancestors."²⁰

In response, the future President of the United States, John Adams wrote, "I cannot but laugh. Depend upon it, we know better than to repeal our masculine systems."²¹

It would not be until August 18, 1920 that the Nineteenth Amendment to the U.S. Constitution would correct that alluded-to inequality of participation in governance. The Nineteenth Amendment prohibits each of the states and the federal government from denying any citizen the right to vote because of a citizen's sex.²²

¹⁹*Preface to Pastoral Care* (Geza Kallay trans., Eötvös Loránd University - Budapest 2008), available at

http://seas3.elte.hu/coursematerial/KallayGeza/Preface_to_Pastoral_Care.doc.

²⁰Abigail Adams, *Remember the Ladies*, in THE WAY WE LIVED 130 (2004), cited in Rachael Pifer, *Abigail Adams and the Doomed Rhetoric of Revolutionary Era Women*, DRAKE UNDERGRAD. SOC. SCIENCES JOURNAL (2005), available at <http://www.drake.edu/artsci/PolSci/ssjrn/2005/pifer.pdf>.

²¹Letter from John Adams (Mar. 31, 1776) in ALICE S. ROSSI, THE FEMINIST PAPERS: FROM ADAMS TO DE BEAUVOIR, (1973), cited in Roberta W. Francis, *The History Behind the Equal Rights Amendment*, available at <http://www.equalrightsamendment.org/era.htm>.

²²U.S. CONST. amend XIX. The new Constitution's promised rights were fully enjoyed only by certain white males. Women were treated according to social tradition and English common law and were denied most legal rights. In general they could not vote, own property, keep their own wages, or even have custody of their children. In 1923, Alice Paul proposed the first "Equal Rights Amendment," or "ERA," proposing that "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction" and that "Congress shall have power to enforce this article by appropriate legislation." See, e.g., Alice Paul, *Original Equal Rights Amendment*, available at <http://www.now.org/issues/economic/eratext.html>. By 1972 the ERA evolved into

Given the liberty, and necessity of, brevity's sake, there has been an expansion, development and a (d)evolution (depending upon one's perspective) of American women's legal rights within the family, in the workplace, and in society as a whole during the 20th and early 21st Centuries. In particular, since the 1980s, domestic violence including rape, incest and battering, child custody, child support, and marriage and divorce law generally have all been redefined in the U.S. as women's experiences.²³

Mulieris Dignitatem speaks of "God's *instituting marriage* as an indispensable condition for the transmission of life to new generations, the transmission of life to which marriage and conjugal love."²⁴ The Church's teaching "maintains *that beneath all changes there are many realities which do not change and which have their ultimate foundation in Christ*, who is the same yesterday and today, yes and forever."²⁵

While the U.S. Constitution's First Amendment provides "Congress shall make no law respecting an establishment of religion,"²⁶ U.S. jurisprudence has long recognized the importance of marriage as a social institution which is favored in

language stating that (1) "Equality of Rights under the law shall not be denied or abridged by the United States or any state on account of sex;" (2) "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article;" and (3) "This amendment shall take effect two years after the date of ratification." *Id.* The Equal Rights Amendment passed the U.S. Senate and then the House of Representatives, and on March 22, 1972, the proposed 27th Amendment to the Constitution was sent to the states for ratification. The ERA was reintroduced in Congress on July 14, 1982 and has been before every session of Congress since that time without obtaining passage by a two-thirds in each house of Congress or ratification by 38 states. *Id.*

²³U.S. Report under The International Covenant On Civil And Political Rights: Art. 23 - Protection of the Family, July 1994, U.S. Department of State Electronic Research Collection, *available at*

http://dosfan.lib.uic.edu/ERC/law/Covenant94/Specific_Articles/23.html.

²⁴John Paul II, *Mulieris Dignitatem*, *supra* note 3.

²⁵*Id.*

²⁶ U.S. CONST. amend I.

law and society. As early as 1888, marriage has been described as an American institution, which is the foundation of society "without which there would be neither civilization nor progress."²⁷

One eloquent decision from 20th Century American jurisprudence set forth the inexplicable tie between the bounds of marriage, religion and the state:

While we may speak of marriage as a civil contract, yet that is a narrow view of it. The consensus of opinion in civilized nations is that marriage is something more than a dry contract. It is a contract different from all others. . .It marks the line between the moral of the barnyard and the morals of civilized men, between reasoning affection and animal lust. In fine, it rises to the dignity of a status in which society, morals, religion, reason and the state itself have a live and large interest.²⁸

Mulieris Dignitatem notes regarding the sovereignty of God and the society of mankind, that:

*In calling only men as his Apostles, Christ acted in a completely free and sovereign manner. In doing so, he exercised the same freedom with which, in all his behaviour, he emphasized the dignity and the vocation of women, without conforming to the prevailing customs and to the traditions sanctioned by the legislation of the time.*²⁹

Recognizing a different sort of sovereign authority with regards to marriage, the U.S. Supreme Court found that state laws are subject to certain constitutional limitations; namely, those laws which violate the right to marry also violate a fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment.³⁰

²⁷*Maynard v. Hill*, 125 U.S. 190, 211 (1888).

²⁸*Bishop v. Brittain Inv. Co.*, 129 S.W. 668, 676 (Mo. 1910), cited in U.S. Report, *supra* note 23.

²⁹John Paul II, *Mulieris Dignitatem*, *supra* note 3.

³⁰*See, Loving v. Virginia*, 388 U.S. 1 (1967). In that case, the U.S. Supreme Court struck down a Virginia law that prohibited interracial marriages. The Court held that the Virginia

Mulieris Dignitatem does not per se recognize a right of privacy within relations between women and men, observing instead that man was alone amongst surrounding creatures before woman:

In the description found in Gen[esis] 2:1 8-25, the woman is created by God "from the rib" of the man and is placed at his side as another "I", as the companion of the man, who is alone in the surrounding world of living creatures and who finds in none of them a "helper" suitable for himself.³¹

The U.S. Supreme Court by way of contrast (and, to some, with vexatious expansiveness), has observed a "penumbra of constitutional privacy rights" between women and men. Such "penumbra," or body of rights held to be guaranteed by implication, include not only the right to marry, but also a right to privacy within marriage.³²

Mulieris Dignitatem exhorts people of faith to consider that, "[T]he child's upbringing, taken as a whole, should include the contribution of both parents: the maternal and paternal contribution. In any event, the mother's contribution is decisive in laying the foundation for a new human personality."³³

In the U.S., marital support rests equally upon husband and wife and should be shared equally in proportion to their individual abilities.³⁴ In fact, with regards to Mulieris Dignitatem's "prevailing customs and ... traditions sanctioned by the

statute limiting the right to marry, "similar to those in effect in 15 other states at the time, discriminated on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment." U.S. Report, *supra* note 23.

³¹John Paul II, *Mulieris Dignitatem*, *supra* note 3.

³²*Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (overturning Connecticut state statutes forbidding the use or sale of contraceptives to married persons).

³³John Paul II, *Mulieris Dignitatem*, *supra* note 3.

³⁴*See, e.g.*, CAL. CIV. CODE § 5100 (1983); CONN. GEN. STAT. ANN. § 46b-37 (1986). In 1978, the Supreme Court invalidated a state law that authorized alimony payments only for wives as a violation of the Equal Protection Clause of the Fourteenth Amendment. *Orr v. Orr*, 440 U.S. 268 (1979) *cited in* U.S. Report, *supra* note 23.

legislation of the time,”³⁵ equality of woman and man includes in many states a constitutional prohibition of any denial or abridgment of rights on account of sex. U.S. courts have held it is a “form of sexual discrimination to impose the duty of support solely on husbands.”³⁶ All states have adopted the "best interests of the child" standard in deciding custody matters between two biological parents.³⁷ Courts typically consider a number of factors in determining what is in the child's best interests.

According to the U.S. Supreme Court:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder . . . And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.³⁸

Mulieris Dignitatem speaks of women – and men sharing in “*a common responsibility for the destiny of humanity:*”

Therefore the Church gives thanks for each and every woman: for mothers, for sisters, for wives; for women consecrated to God in virginity; for women dedicated to the many human beings who await the gratuitous love of another person; for women who watch over the human persons in the family, which is the fundamental sign of the human community; for women who work professionally, and who at times are burdened by a great social responsibility; for "perfect" women and for "weak" women - for all women as they have come forth from the heart of God in all the beauty and richness of their femininity; as they have been embraced by his eternal love; as, together with men, they are pilgrims on this earth, which is the temporal "homeland" of all people and is transformed sometimes into a "valley of tears"; as they assume, together with men, a common responsibility for the destiny of humanity according to daily necessities

³⁵John Paul II, *Mulieris Dignitatem*, *supra* note 3.

³⁶*See, e.g., Rand v. Rand*, 374 A.2d 900 (1977); *Henderson v. Henderson*, 327 A.2d 60 (1974), *cited in* U.S. Report, *supra* note 23.

³⁷*See, e.g., In re Marriage of Ellerbroek*, 377 N.W.2d 257 (Iowa App. 1985); *Pikula v. Pikula*, 374 N.W.2d 705 (Minn. 1985) *cited in* U.S. Report, *supra* note 23.

³⁸*Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

and according to that definitive destiny which the human family has in God himself, in the bosom of the ineffable Trinity.³⁹

In a less eloquent – but nonetheless potent manner – Title I of the Employee Retirement Income Security Act (ERISA), helps to ensure the equality of rights for spouses through payment of joint and survivor pension annuities (unless the spouses consent to another form of payment or absent other planned protections).⁴⁰ Promoting a “healthier balance between work and family responsibilities, ensuring that family development and cohesiveness are encouraged by this nation's public policy,” the U.S. Congress enacted the Family and Medical Leave Act of 1993 (FMLA).⁴¹

Mulieris Dignitatem noted the changes in man’s understanding of the bonds of marriage, moving away from the Mosaic “certificate of divorce,” as considered at *Matthew* 19:7, where:

Jesus answers: "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so." Jesus appeals to the "beginning," to the creation of man as male and female and their ordering by God himself, which is based upon the fact that both were created "in his image and likeness". Therefore, when "a man shall leave his father and mother and is joined to his wife, so that the two become one flesh", there remains in force the law which comes from God himself: "What therefore God has joined together, let no man put asunder."⁴²

Reflective of a secular society, U.S. jurisprudence has traditionally allowed divorce upon a showing of one of several fault-based grounds such as adultery, desertion, or cruelty. Today, every state grants "no-fault" divorces, with most states provide for both a no-fault basis and a fault basis for dissolving marriages.⁴³

³⁹ John Paul II, *Mulieris Dignitatem*, *supra* note 3.

⁴⁰Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq. (1974).

⁴¹Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 et seq. (1993).

⁴² *Matthew* 19:6 (New American Bible), *Matthew* 19:7, *Matthew* 19:8

⁴³U.S. Report, *supra* note 23.

In The World Beyond the U.S. If Not Of This World: Comparing and Contrasting International Law and Mulieris Dignitatem

Mulieris Dignitatem says that “[f]rom the very beginning of Christianity men and women have set out on this path, since the evangelical ideal is addressed to human beings without any distinction of sex.”⁴⁴

What is the state of international law and the preservation of the dignity of women and advancement of fidelity and fundamental fairness? Author Hadar Harris has noted that,

“[R]egional bodies, such as the Inter-American, European and African systems for the promotion and protection of human rights have also adopted specific conventions and declarations aiming to promote gender equality and to eliminate discrimination.”⁴⁵

One such convention is the European Convention on Human Rights (ECHR); Article 14 of the ECHR prohibits discrimination based on sex in relation to the rights of the Convention.⁴⁶

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁴⁷

Protocol No. 12 of the European Convention on Human Rights (ECHR), which entered into force in April 2005, represented further advances in building equality

⁴⁴John Paul II, *Mulieris Dignitatem*, *supra* note 3..

⁴⁵Hadar Harris, *Current Processes for Assessment of Women's Human Rights in International Law*, The American Society of International Law Insights 050316 (2005), <http://www.asil.org/insights050316.cfm>.

⁴⁶The European Convention on Human Rights, Rome, Italy, Nov. 4, 1950.

⁴⁷*Id.*

between women and men. It secured a general prohibition on discrimination by any public authority of any right set forth by law and not only rights and freedoms of the ECHR on the grounds of sex, amongst other bases:

Article 1 – General prohibition of discrimination

The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁴⁸

Protocol 12 has not been without controversy. Protocol entered into force April 1, 2005 and has (as of November 2006) been ratified by 14 member states.⁴⁹ Several member states — namely Andorra, Bulgaria, Denmark, France, Lithuania, Malta, Poland, Sweden, Switzerland and the United Kingdom – have not ratified Protocol 12.⁵⁰ The United Kingdom’s objections are threefold: first, the protocol “does not make it clear whether ‘rights set forth by law’ include international as well as national law;” second, it is asserted that the protocol “does not follow the case law of the European Court of Human Rights in allowing objective and reasonably justified distinctions;” third, “it does not make provision for positive measures.⁵¹

In 1988, the Council of the European Union (a/k/a the “Committee of Ministers”) affirmed in their Declaration on Equality of Women and Men that “equality of women and men. . . a sine qua non of democracy and an imperative of social justice,” and that sex-related discrimination is an impediment to the recognition, enjoyment and exercise of human rights and fundamental freedoms.⁵²

⁴⁸ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, Italy, Nov. 4, 2000, ETS No. 177, Protocol No. 12.

⁴⁹ *Id.*

⁵⁰ Review of the Implementation of the Human Rights Act, Department of Constitutional Affairs, July 2006, available at http://www.justice.gov.uk/docs/full_review.pdf

⁵¹ Sandra Fredman, *Why the UK Government Should Sign and Ratify Protocol 12*, 105 EQUAL OPPORTUNITIES REV. 21, 23 (2002)(citing Written Answer 37, Parliamentary Under-Secretary of State, Home Office (Lord Bassam of Brighton)(Oct. 11, 2001)).

⁵² The Council of Europe adopted the Declaration on the Equality of Women and Men, through the Committee of Ministers on November 16, 1988 during its 83rd session.

Mulieris Dignitatem examined how, “in the same context as the creation of man and woman,” that, “the biblical account speaks of God's instituting marriage as an indispensable condition for the transmission of life to new generations, the transmission of life to which marriage and conjugal love are by their nature ordered: ‘Be fruitful and multiply, and fill the earth and subdue it.’”⁵³

A controversial convention with regards to the “transmission of life,” and the “culture of life” has been the December 18, 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁵⁴ CEDAW entered into force as an international treaty on September 3, 1981 after the twentieth country had ratified it. The U.S. signed CEDAW on July 17, 1980, but has never ratified it.⁵⁵

According to the American Society of International Law, CEDAW is the treaty with the most reservations, or unilateral statements excluding or modifying certain provisions in the treaty,⁵⁶ but by the tenth anniversary of the Convention in 1989,

Council of Europe Declaration on the Equality of Women and Men (1988), *available at* http://portal.unesco.org/shs/en/ev.phpURL_ID=4143&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html.

⁵³ John Paul II, *Mulieris Dignitatem*, *supra* note 3.

⁵⁴ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, U.N. Department of Economic and Social Affairs, *available at* <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> [hereinafter CEDAW].

⁵⁵ As a highly controversial Jesuit commentator, and former Congressman from Massachusetts, the late Fr. Robert Drinan, S.J., wrote before his death that
Resistance to the [CEDAW] in the United States echoe[d] rejection of the Equal Rights Amendment. That proposal would [have added] equality of women to the U.S. Constitution. The Equal Rights Amendment was approved by a two-thirds vote of both houses of the U.S. Congress. But after years of deliberations and controversies, 35 of the 38 states necessary voted to approve the Amendment.

See Robert Drinan, *U.N. Pledge of Equality for Women Deserves U.S. Support*, NATIONAL CATHOLIC REPORTER, Feb. 2, 2007, *available at* http://findarticles.com/p/articles/mi_m1141/is_/ai_n27148960.

⁵⁶ Harris, *supra* note 45.

almost one hundred nations agreed to be bound by its provisions, with 185 of the 192 countries in the United Nations having ratified it to date.⁵⁷ In pertinent part, CEDAW specifies in Article I that:

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁵⁸

Also of relevance, CEDAW Article 15, specifies that:

States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. . . .

States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.⁵⁹

Numerous countries have made significant reservations, "particularly . . . for issues of personal status (such as marriage, divorce, inheritance, custody of children), which continue to be governed by religious or customary law that often discriminates against women."⁶⁰ Well-founded fears and apprehensions may exist with regards to the (mis)application and (mis)interpretation of CEDAW, especially with respect to advancing anti-life, liberal agendas. Nevertheless, it is possible for signatory nations to make reservations, understandings and/or

⁵⁷ CEDAW, *supra* note 54.

⁵⁸ *Id.*

⁵⁹ *Id.* at art. 15.

⁶⁰ Harris, *supra* note 45.

declarations could be in those instances where the domestic law is in conflict with the international convention or treaty.⁶¹

CONCLUSION

His Holiness Pope John Paul II inspirationally closed his Apostolic Letter, praying, “Mary, who ‘is a model of the Church in the matter of faith, charity, and perfect union with Christ,’ obtain for all of us this same ‘grace.’”⁶²

May that grace, an indispensable gift from God for development, improvement, and character expansion, guide individuals, couples, organizations, and societies towards harmonious, if not shared, conceptualizations of fidelity and fairness in spiritual and secular commitments, covenants, and contractual relationships.

⁶¹ Without a doubt controversial in practical implementation as well as theoretical interpretation, CEDAW, in its plain textual language grants no enforcement authority to the United Nations. CEDAW does not mention “contraception” or “abortion” or “termination of life” anywhere in its text. *See* CEDAW, *supra* note 54. The American Bar Association (ABA), considered by some (to include the Federalist Society) as having a liberal bias, has commented that “CEDAW does not address the matter of abortion and, according to the U.S. State Department is ‘abortion neutral.’ Many countries in which abortion is illegal--such as Ireland, Burkina Faso and Rwanda--have ratified CEDAW.” *See* American Bar Association, Section of Individual Rights and Responsibilities, *Convention on the Elimination of All Forms of Discrimination Against Women*, American Bar Association Website, available at http://www.abanet.org/irr/fear_fact.html. As the professional association of American lawyers, the ABA further opines,

[T]he Convention makes clear that it is aimed only at discrimination that is directed specifically against women. A same-sex marriage claim would include a charge that both men and women who want to marry individuals of their own sex are being discriminated against... There is no provision in the Convention that would compel the U.S. Congress to pass same-sex marriage laws in order to comply.

Id.

⁶² John Paul II, *Mulieris Dignitatem*, *supra* note 3.