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A Communication

The Unknowns of Equal Rights

From James and Andrea Fordham, who, working as a research team, have made a special study of the press coverage of women's issues:

Failure of the Equal Rights Amendment to become law in 1975 is probably a good thing. The legal issues and implications of the legislation are largely unknown to the American public, because the press so far has not reported them. A continuing weakness of the press is that coverage of processes such as election campaigns and constitutional amendments too often focuses more upon slogans and antics of adversary posturing than upon issues.

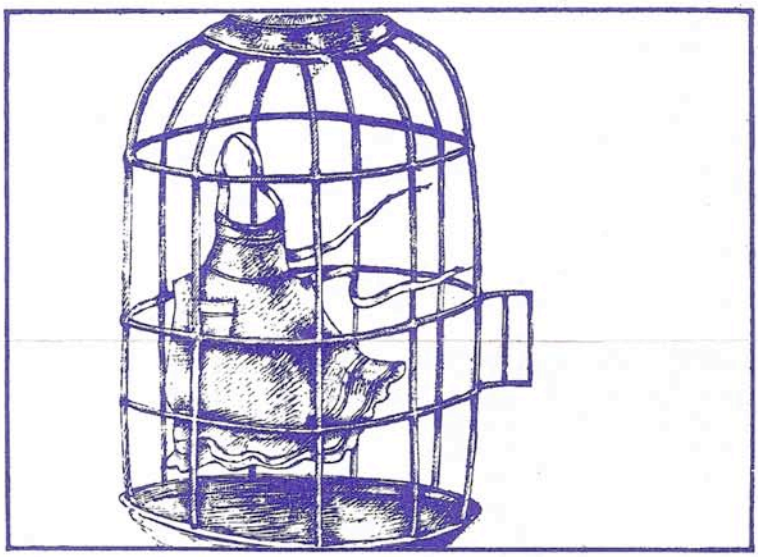
In recent months, we have studied reportage of the ERA debate and a broad array of background documentation. We have found that there are profound issues raised by the apparently simple language of the amendment which have been obscured by the national ERA lobby and neglected by the press.

This condition appears to result from strategies of the national ERA lobby—coordinated by the political consulting firm of Bailey, Deardourff and Eyre, and aided by funds and staff of the federal government—which has promoted the notion that ERA is no more than an innocuous declaration of virtuous intentions to be tacked onto the Constitution.

It is more. The serious issues of the ERA debate arise from the fact that amending the Constitution is a crucial legal act with legal implications, objectives. Debate in the Congress and state legislatures has centered upon implications for the state laws. Yet serious discussion of these issues has been conspicuously absent not only in the printed media but on television as well. This exchange on a recent talk show between two experienced ERA adversaries is a good example of how the public's awareness of ERA issues has been stifled:

Mrs. Phyllis Schlafly (ERA opponent)—"It will wipe out the state laws which make it the obligation of the husband to support his wife. Now, these laws exist in every one of the 50 states, and they are basic to the family and the marriage contract. You can't have these laws under ERA, because you can no longer have an obligation that imposes an obligation on one sex that it doesn't impose on the other. This will take away rights that women have now."

Mrs. Carolyn Bond (ERA proponent)



By Geoffrey Moss for The Washington Post

—"Well, that's just not right. It is up to a husband now to decide in what manner and to what degree he is to support his wife. There is no law that forces anyone to take a job. There is no law that forces a man to support his wife."

Marriage, of course, is not simply the loose personal association without legal rights and responsibilities that doctrinaire feminists often proclaim it to be. Every state does indeed have laws stating that a husband must provide a home for his wife and children, must support, protect and maintain them. The statutes of Missouri, where Mrs. Bond resides with her husband, the governor of the state, declare that a husband who neglects or refuses to provide adequate food, clothing, lodging or medical attention for his wife is guilty of a misdemeanor and shall be punished.

Those whose profession is to report the news and comment on events of the day should be alert to the possibility raised by legal scholars that the terse language of this amendment may be deceptive in its apparent simplicity. History shows that the Supreme Court does not necessarily interpret the law the way legislators expect. The Court has inferred vast federal powers from the Constitution which could not have been anticipated by its drafters. Any lawyer knows that the more brief, simple and vague a law, the more room there is for confusion and misinterpretation. Who could have guessed when the Fourteenth Amendment was ratified in 1868 for the purpose of protecting the Negro from discrimination that 18 years later the Supreme Court would decree that a corporation is also a person and apply the equal protection clause to businesses?

Questions of the effects ERA is likely to have upon state laws such as those relating to marriage are fundamental to rational consideration of the amendment. Another legal implication unknown to most people is the prospect that Section 2 of ERA would pass authority in numerous matters (such as marriage and divorce) from state control to that of Congress and the federal courts. State laws protecting working women may also be affected. The questions of whether or not ERA would require women to fight beside men in combat, or share public toilet facilities with men have also been among those matters of serious legal speculation raised by distinguished constitutional scholars, lawyers and legislators.

The point is that no one knows for sure how ERA will affect existing laws. Proponents often pretend they know exactly how it will all work out. Opponents usually describe the dire effects they anticipate with an air of great certainty. But if anything is certain about the consequences of ERA, it is that many new court tests under the amendment will occur, that some will reach the Supreme Court,

and that *nobody* can predict how the Supreme Court justices will rule. This is why the people should be provided with opportunity to understand and discuss the issues involved in ERA now, before it is law.

No one familiar with the federal laws already on the books can take it for granted that ERA will add anything to the rights of women. Discrimination in employment on the basis of race, color, religion, national origin or sex is already prohibited by the Civil Rights Act of 1964, Executive Order 11246 and the Equal Employment Opportunity Act of 1972; equal pay for equal work is already guaranteed to every employee by the Equal Pay Act of 1963; discrimination on the basis of sex in education is prohibited by the Education Amendments of 1972; and the Depository Institutions Amendments Act of 1974 states: "It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction." And women, of course, are persons every bit as much as corporations under the 14th Amendment to the U.S. Constitution, which guarantees "equal protection of the laws" to every "person."

To anyone who is aware of the existence of all of this legislation outlawing discrimination against women, it sounds strange to hear the fictions voiced by ERA advocates. "I'm for women taking our place in the world with equal pay," asserts Betty Ford when asked why she supports ERA, and "I really do believe everyone should have an equal opportunity. I believe this should be true in terms of race, color, creed and sex."

It is possible that the willingness to believe uncritically in ERA as a kind of ultimate weapon against sexual discrimination stems from frustration over the conspicous difficulties of enforcing the flood of Federal anti-discrimination laws passed in recent years. The backlog of cases pending at the Equal Employment Opportunity Commision is over 100,000 and climbing—but there is no way ERA will make the tasks of processing cases and enforcing these laws any less monumental. Perhaps the national press should investigate and report more thoroughly on this critical dilemma. Wherever it focuses our attention, the press should strive to lift the level of our awareness of significant social issues above such catchwords, deceits and irrationalities as have obscured our news of the ERA.