

Equal Rights in Retrospect

Deborah L. Rhode*

An objective common to much legal and historical research is, in L. B. Namier's phrase, "to achieve an intuitive sense of how things do not happen." To that end, this article examines a particularly illuminating sequence of failures.

In March 1972, Congress overwhelmingly endorsed an Equal Rights Amendment to the United States Constitution providing that "[e]quality of rights under the law shall not be denied or abridged by the United States or any state on account of sex."¹ At that time, the prospects for early and uneventful state ratification seemed overwhelming. Supporters of the amendment spanned a broad ideological spectrum, ranging from George Wallace to George McGovern, as well as the nation's six previous presidents.² An impressive array of national organizations, including such unlikely bedfellows as the ACLU, the Teamsters Union, the American Home Economics Association, and the Women's Christian Temperance Union, were on record as favoring the ERA. According to public opinion polls, a solid majority of Americans were equally

* B.A. 1974, J.D. 1977 Yale University; Associate Professor of Law, Stanford Law School.

I am grateful to Paul Brest, Ann Freedman, Lawrence Friedman, Robert Gordon, Thomas Grey, and Mark Kelman for their comments on an earlier draft, and to Catharine MacKinnon, who convinced me to undertake this effort. Daniel E. Cohn and Karen E. Wentzel provided valuable research assistance.

1. Proposed Amendment to the United States Constitution, Section 1, S.J. Res. 8, S.J. Res. 9 and H.R.J. Res. 208, 92d Cong. 1st Sess. (1971). The remaining sections of the amendment provided:

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. The amendment shall take effect two years after the date of ratification.

The amendment was approved by a vote of 354 to 23 in the House of Representatives and 84 to 8 in the Senate.

2. Other backers of the Amendment included Strom Thurmond and Spiro Agnew. See Timmesch, *The Sexual Equality Amendment*, N.Y. Times, June 24, 1973 (Magazine), at 69. For a more complete catalogue of the politicians and associations supporting the ERA, see J. Boles, *The Politics of the Equal Rights Amendment: Conflict and the Decision Process*, 196-202 app. D & E (1979); Wohl, *White Gloves and Combat Boots: The Fight for ERA*, 1 Civ. Lib. Rev., Fall 1974, at 77, 78.

supportive.³ Unsurprisingly, within a few months after Congressional approval, some twenty states had ratified the amendment. None experienced serious opposition, and women's groups were predicting endorsement from the necessary thirty-eight by the following spring.⁴

In Illinois, the momentum suddenly ceased. Phyllis Schlafly, a conservative downstate resident with no national prominence, launched a "Stop ERA" campaign that proved successful, first in Illinois, and then in enough other states to block ratification. With perhaps pardonable hyperbole, Schlafly characterized the achievement as the

most amazing David and Goliath victory of the 20th century . . . [a triumph] over the combined opposition of the White House, the

3. In June, 1982, just as the deadline for ratification expired, a Gallup poll revealed that 56% of those who had heard of the amendment supported it; 34% were opposed. Clymer, *Time Runs Out for Proposed Rights Amendment*, N.Y. Times, July 1, 1982, at 12, col. 3. Those results were consistent with surveys taken frequently over the preceding decade. In a 1975 Gallup Poll, 58% of respondents favored the amendment; 24% were opposed. See Brozan, *58% in Gallup Poll Favor Equal Rights*, N.Y. Times, Apr. 10, 1975, at 45, col. 3. A 1976 poll showed 57% in favor and 24% opposed. The Gallup Poll: Public Opinion 1972-77, at 447-684 (G. Gallup ed. 1978).

Such findings, however, require several caveats. First, it is by no means clear that those responding had a clear appreciation of the content or plausible consequences of the amendment. For example, in surveys of Utah and Oklahoma voters, when respondents read the language of the proposed Equal Rights Amendment without it being labeled as such, they approved the text by substantial margins. When asked whether they favored their state's passage of the ERA, a large percentage of those who approved the language opposed ratification. *Voters Opposed to ERA But Support Its Concept*, Salt Lake Trib., May 11, 1980, at A1; *The ERA Loses Two More Rounds*, Time, Feb. 1, 1982, at 18. Conversely, some of those responding favorably to the amendment in opinion polls might have opposed it had they been aware of its intended effect in areas such as military service. See note 106 *infra*. It also bears emphasis that these public opinion surveys afford no measure of intensity of concern. A somewhat larger percentage of opponents than supporters may have felt strongly about the issue. At least some observers in non-ratifying states perceived that to be the case. See text accompanying notes 245-46 *infra*.

However, one critical point, which the opinion polls reflected, was that more women than men opposed the amendment. See sources cited above and Gallup, *Women in America*, 128 Gallup Opinion Index 18 (1976). As Part II indicates, virtually all of the organized public opposition came from women. See text accompanying notes 36-44 *infra*.

4. *Women Foresee Approval of Sex-Amendment by May*, N.Y. Times, Aug. 27, 1972, at 27, col. 6. See also *Equal Rights Backers Organize New Drive for Amendment*, Chi. Trib., Aug. 26, 1973, at 21, col. 1 (quoting Peggy Lampl, Director of the League of Women Voters) ("We all assumed it would whip through like the 18 year old vote.").

Such projections seemed consistent with events in the 20 states giving early endorsement; debate was often perfunctory, in some instances occupying only minutes of legislators' attention. J. Boles, *supra* note 2, at 143, 178 n.1. Indeed, in its haste to become the second state to ratify, Nebraska neglected to pass Section 2 of the Amendment; Alaska overlooked Sections 1 and 3. See C. Felsenthal, *The Sweetheart of the Silent Majority* 234 (1981).

Congress, the Governors, television, radio, most newspapers, the universities, the schools, the unions . . . [and] the 'good-sounding' semantics of equal rights.⁵

This study explores the foundations of that improbable achievement. In the process, it seeks to provide some insight into the dimensions of symbolic politics in general and the significance of the equal rights controversy in particular. On one level, the ratification campaign presents an exceptionally rich and well-documented case history of the levels and limitations of constitutional discourse in political arenas. Drawing on a variety of primary and secondary sources,⁶ the article analyzes the complex linkages between legal argument and symbolic subtexts in shaping public opinion, and the significance that such opinion can assume in legislative decision making.

Moreover, the ERA debates are instructive for what they reveal not only about symbolic politics, but also about the status of American women. As subsequent discussion will suggest, ratification foundered on a complex set of ideological and political difficulties. On a conceptual level, the amendment faltered because of a deep-seated ambivalence about the meaning of equality and the means of attaining it in a society marked by vast disparities in the sexes' social roles and economic circumstances. On a practical level, the ERA failed because its most active proponents lacked sufficient adeptness, cohesion, and leverage to counteract opposition strategies.

The following discussion chronicles both those failures. It focuses closely, though not exclusively, on the Illinois campaigns; by Schlafly's own account, anti-ERA victories there were the most "dramatic . . . sensational . . . [and] unexpected."⁷ They captured national attention, catalyzed opposition, and set the agenda for subsequent debate.⁸ In tracing the contours of that debate, the article identifies a

5. B. Friedan, *The Second Stage* 231-32 (1981) (quoting Phyllis Schlafly).

6. In addition to books and articles concerning the Equal Rights Amendment, this study relies on press coverage of the controversy, contemporaneous publications released by interested individuals and organizations, correspondence to constituents by Illinois state legislators, and personal interviews with a number of proponents, opponents, state legislators and lobbyists. These interviews, as well as the collection of some primary source materials, were completed in 1973 in conjunction with an unpublished undergraduate thesis, D. Rhode, *The Defeat of the Equal Rights Amendment in Illinois: A Case Study in Symbolic Politics* (Jan. 1974). In a few instances, newspaper citations are incomplete due to omissions in the clipping files and archives from which the articles were drawn. The manuscript, notes, and primary source material are on file with the author.

7. Schipper, *The Truth Will Out: An Interview with Phyllis Schlafly*, Ms., Jan. 1982, at 89. See also Klemesrod, *Opponent of ERA Confident of Its Defeat*, N.Y. Times, Dec. 15, 1975, at 44, col. 1 (quoting Phyllis Schlafly).

8. See Klemesrod, *supra* note 7, at 44 (quoting Phyllis Schlafly) ("we'll stick with the same strategy . . . when you've got a good thing going you stick with it").

poverty of both social theory and practical politics within the feminist camp. Throughout the ratification struggle, ERA supporters proved unable to develop a convincing affirmative case for constitutional change; they never managed to cast the ERA as a step toward suppression of gender hierarchies rather than gender differences. Nor did they adequately confront the immediate consequences of mandating legal equality in a context of social and economic inequality.

Not only did proponents elide these core ideological issues, they failed to develop effective prudential strategies. Many ERA supporters became mired in legal technicalities or intemperate confrontations that trivialized their arguments, and provoked rather than deflected opposition. Too much energy was expended on rallies for the converted, too little on the more subtle arts of grass roots and parliamentary persuasion.

In addressing these conceptual and political failures, this article's causal account is necessarily incomplete. It makes no pretense of supplying a full explication of the economic, social, and psychological determinants of the amendment's defeat. Nor does the analysis purport to assess whether different strategies by ERA proponents might have altered the result. The effort is rather to distill broader insights about the dynamics of symbolic politics, some of which bear directly on choices now confronting the women's movement.

Moreover, quite apart from its implications for future political struggles, the ERA campaign merits analysis simply as an anthropological text. Few narratives offer so rich an account of this society's currently competing visions of social norms and legal institutions. Underlying the dispute over a single constitutional clause were a complex set of questions about whose vision of women's role should prevail, and on what terms.

I. An Overview of the Equal Rights Debate

A. *The Rationale for a Constitutional Amendment*

The recent ratification defeat reflects only the latest skirmish in a continuing struggle over the legal and social status of women. The first proponents of an equal rights amendment were members of the National Women's Party, the more militant wing of the suffragist movement. With support from a steadily increasing constituency, resolutions proposing an equal rights amendment surfaced in every Congressional term between 1923 and 1972.⁹ The text of the proffered amendment varied, with most

9. For accounts of the amendment's evolution, see W. Chafe, *The American Woman: Her Changing Social, Economic, and Political Role, 1920-1970* (1972); and sources cited in notes 10 and 15 *infra*. The political pressures culminating in the 1972 congressional endorsement are reviewed in J. Pole, *The Pursuit of Equality in American History* 314-20 (1978).

controversies centering on the implications for laws purportedly advantaging women.¹⁰ For example, in 1950 and 1953, the Senate passed the amendment, but added a qualification (the Hayden rider) providing that the measure "shall not be construed to impair any rights, benefits or exemptions now or hereafter conferred by law upon persons of the female sex."¹¹ As the Senate Judiciary Committee later noted, this caveat killed the amendment. Any such qualification was unacceptable to many proponents, who believed "[i]t is under the guise of so called 'rights' or 'benefits' that women have been treated unequally and denied opportunities which are available to men."¹² On similar reasoning, supporters resisted efforts to attach clauses exempting women from military service.¹³

Almost a half-century after its initial proposal, an equal rights amendment with no restrictive rider finally obtained congressional approval. The 1972 endorsement was both explicable and somewhat ironic in light of other governmental action. There was less necessity for a constitutional provision and correspondingly less logic in opposing it, given the proliferation of various state and federal statutes, executive orders, and judicial decisions prohibiting many forms of sex-based discrimination.¹⁴

ERA proponents, however, generally have taken the view that these actions by no means eliminate the need for constitutional recognition of women's equal status. Their argument rests on two grounds. The instrumental claim is that an amendment is the most effective way of

10. Some dispute also centered on the Amendment's enforcement provisions. An earlier version of the text and the objections it triggered are recounted in Freund, *The Equal Rights Amendment is Not The Way*, 6 Harv. C.R.-C.L. L. Rev. 234, 242 (1971).

11. 96 Cong. Rec. 738, 872-73 (1950), 99 Cong. Rec. 8954-74 (1953).

12. S. Rep. No. 1558, 88th Cong., 2d Sess. 2 (1964). For discussion of the role protective legislation has played in constricting women's mobility in the work force, see Taub & Schneider, *Perspectives on Women's Subordination and the Role of Law*, in *The Politics of Law: A Progressive Critique* 127-30 (D. Kairys ed. 1982); and A. Kessler-Harris, *Out to Work: A History of Wage Earning Women in the United States* 180-214 (1982).

13. See discussion in note 104 *infra*, and B. Deckard, *The Women's Movement: Political, Socioeconomic, and Psychological Issues* 391-94 (1975).

14. At the time of congressional endorsement, the most significant federal provisions included the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1976) (prohibiting discrimination on the basis of race, color, sex); The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (1976) (requiring equal pay for equal work); and Exec. Order No. 11246, 3 C.F.R. 167 (1965) (authorizing the Department of Labor and the Equal Employment Opportunity Commission, *inter alia*, to deny, terminate or bar future government contracts with employers discriminating on the basis of sex, and to require contractors and educational institutions to develop affirmative action plans for the recruitment, employment and promotion of women. For discussion of state statutes providing analogous protection, see Greenman, *Studies on Family Law: Women's Rights and State Legislatures*, Am. Fam. Inst. (1980), and sources cited in notes 60 and 95 *infra*.

obliterating the many sex-based classifications that persist under governmental auspices. Among the most frequently cited examples have been employment practices that restrict women's occupational advancement; policies of publicly-subsidized educational institutions that foster gender preferences or segregation; and welfare, credit, pension, domestic relations, and military service provisions that reflect sexual stereotypes.¹⁵ To seek legislative or judicial recourse against each discriminatory action would, in proponents' view, result in interminable delay and inordinate expense, and would afford no protection against future abuses.¹⁶ Moreover, court decisions under existing statutory and constitutional provisions have produced "uneven developments marked by sharply divided opinions."¹⁷ An equal rights amendment could nudge the judiciary toward more searching scrutiny of sex-based classifications, thereby providing the foundation and catalyst for a more egalitarian legal order.¹⁸

15. The most comprehensive discussion of the ERA's rationale and likely consequences is Brown, Emerson, Folk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871 (1971) [hereinafter cited as Yale Study]. See also Dorsen & Ross, *The Necessity of a Constitutional Amendment*, 6 Harv. C.R.-C.L. L. Rev. 216 (1971); U.S. Comm'n on Civil Rights, *The Equal Rights Amendment: Guaranteeing Equal Rights for Women Under the Constitution* (1981); and sources cited in note 16 *infra*.

16. Emerson, *In Support of the Equal Rights Amendment*, 6 Harv. C.R.-C.L. L. Rev. 225, 229-30 (1971); see also Epstein, *Consequences of the Equal Rights Amendment for the Professions, for the Roles of Professional Women and for American Society*, in *The Equal Rights Amendment Project of the California Commission on the Status of Women, Impact ERA: Limitations and Possibilities* 97, 99 (1976) [hereinafter cited as California Commission].

17. Ginsburg, *Sexual Equality Under the Fourteenth and Equal Rights Amendments*, 1979 Wash. U.L.Q. 161, 171. This result was partly attributable to the United States Supreme Court's refusal to view sex as a "suspect" classification that would trigger strict scrutiny. See *id.*; Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv. L. Rev. 1 (1972); and note 18 *infra*.

For a general critique of Supreme Court decisions in this area, see Powers, *Sex Segregation and the Ambivalent Directions of Sex Discrimination Law*, 1979 Wis. L. Rev. 55; Johnston, *Sex Discrimination and the Supreme Court*, 23 UCLA L. Rev. 235 (1975); and Note, *Toward a Redefinition of Sexual Equality*, 95 Harv. L. Rev. 487 (1981).

18. In *Frontiero v. Richardson*, 411 U.S. 677 (1973), the Supreme Court declined by a five to four vote to hold classifications based on sex, like those predicated on race, alienage, and national origin, as inherently suspect and therefore subject to the most rigorous judicial scrutiny. Speaking for himself and two other members of the Court, Justice Powell maintained that any such judicial categorization of gender distinctions would be premature, given the pending Equal Rights Amendment, "which if adopted will resolve the substance of this precise question." 411 U.S. at 692. The Court again declined to view sex as a suspect classification in *Mississippi Univ. for Women v. Hogan*, 50 U.S.L.W. 5068 (U.S. July 1, 1982).

It is plausible to suppose that a strong national endorsement of the ERA might have inclined members of the bench toward a less tolerant perspective on sex-based classifi-

In addition, many proponents view the amendment as a symbolic affirmation of women's equal status. Although subsequent discussion frequently will differentiate between instrumental and symbolic claims, it bears emphasis at the outset that the terms are not mutually exclusive. Many supporters who stress the ERA's symbolic salience do so in part because they believe it would affect social expectations and institutions. 'Only a constitutional amendment, some proponents maintain, "with its massive legal, moral, and symbolic impact, can provide the impetus for the necessary changes in the law."¹⁹ Moreover, it is often assumed that a constitutional legitimization of equal rights will affect private norms and practices beyond the reach of legal regulation. Although the amendment cannot of itself uproot such practices, it may prompt their re-examination.²⁰ From that perspective, the ERA is "more than a mandate for changing laws . . . [I]t is a symbol which, by dramatizing a need for equality, legitimizes that need . . . unite[s] women, [and] raise[s] their consciousness."²¹ Thus conceived, the amendment promises to accelerate a role redefinition that will expand opportunities available to both sexes.

Whether an Equal Rights Amendment is a necessary or effective means of realizing those objectives remains open to considerable dispute, as the analysis below reflects. Clearly, a significant constituency encompassing both constitutional scholars and committed feminists has always viewed the amendment as merely "symbolic, and a terrible waste of time."²² What has been less clear, and what many proponents have failed

cations. See Karst, *Equal Citizenship Under the Fourteenth Amendment*, 91 Harv. L. Rev. 1, 54 (1977); Ginsburg, *The Equal Rights Amendment is the Way*, 1 Harv. Women's L.J. 19, 21 (1978). But see *Nomination of John Paul Stevens to be a Justice of the Supreme Court: Hearings before the Sen. Comm. on the Judiciary*, 94th Cong., 1st Sess. 15 (1975) (statement of John Paul Stevens in his Supreme Court confirmation hearings) (suggesting that the ERA's effect would be largely symbolic, given existing prohibitions against sex discrimination under the fourteenth amendment). For a good overview of the empirical research regarding linkages between public opinion and judicial decision making, see, e.g., S. Goldman & A. Sarat, *American Court Systems: Readings In Judicial Process and Behavior* (1978).

19. Common Cause, *Equality of Rights . . . Shall not be Abridged on Account of Sex: Question and Answers* 1 (1972).

20. For an account of the functions of law in "designating public norms," see Gusfield, *Moral Passage: The Symbolic Process in Public Designations of Deviance*, 15 Soc. Prob. 175, 177, 178 (1967). For an analysis of this function of the Equal Rights Amendment, see Kirp, *The Uneasy Case for ERA*, Christian Sci. Monitor, Oct. 12, 1973, at E15, col. 3; and B. Brown, A. Freedman, H. Katz & A. Price, *Women's Rights and the Law: The Impact of the ERA on State Laws* v-vi (1977) [hereinafter cited as B. Brown].

21. *Introduction*, California Commission, *supra* note 16, at 1, 4. *Accord*, Greenberg, *The ERA in Context: Its Impact on Society*, in B. Brown, *supra* note 20, at 1, 11.

22. *Only 24 Words in Equal Rights but Millions of Words About It*, Chi. Trib., Apr. 1, 1973, at 33, col. 1 (quoting Philip Kurland). See also Kurland, *The Equal Rights Amendment: Some Problems of Construction*, 6 Harv. C.R.-C.L. L. Rev. 243 (1971);

adequately to appreciate, is that substantial numbers of women question the amendment's ends as well as means. Indeed, much of the ERA animus stems less from the provision's alleged legal effects—which appear technical and uncertain—than from its perceived symbolic impact. That impact, as opposition leaders paint it, is to enshrine a “liberationist” vision of an androgynous society.²³ Such a society, on the terms Schlafly and her followers conceive it, would force women to renounce their traditional roles, privileges, and priorities. A symbolic validation of that world view threatens the status of those who have ordered their own lives by different standards.

At its most fundamental level, the equal rights controversy was a struggle over symbols. Those who dismissed the amendment as superfluous largely missed the point. Often when societal consensus is least attainable, the public pressures to announce it through symbolic governmental action are most intense.²⁴ As political theorist Murray Edelman has noted,

Insofar as people's hopes and anxieties are salient to politics, they turn on status in society and on security from perceived threat. For the great mass of political spectators, cues as to their group status and security . . . can come chiefly or only from government acts.²⁵

To both sides in the ratification struggle, the ERA was such a cue, although there were pronounced internal divisions as to its precise content. At the most abstract level, however, there was consensus. For proponents, the ERA was a significant affirmation of equality as well as a means for attaining it. For opponents, many of whom had been denied the opportunities that the amendment sought to realize, it represented a threat to current status and future security. That threat was one proponents failed adequately to allay, first in Illinois, and then in the national arena.

Freund, *supra* note 10. Over the last century, opponents have stressed similar themes. See, e.g. W. Chafe, *supra* note 9, at 123 (quoting Mary Anderson, of the Women's Bureau, in 1942) (“It is not practical. It deals with abstract rights, not real rights”), (quoting Cornelia Bryce Pinchot, in 1939) (“I want equality yes . . . but I want equality that is a fact, not an empty phrase.”). So too, some contemporary feminists have expressed concern that the amendment could become a vacuous palliative, a means of paying lip service to egalitarian ideals while deflecting attention from more meaningful structural changes. See Z. Eisenstein, *The Radical Future of Liberal Feminism* 220-21 (1981).

23. See discussion in the text accompanying notes 119-66 *infra*.

24. Gusfield, *supra* note 20, at 188.

25. M. Edelman, *Politics as Symbolic Action: Mass Arousal and Quiescence* 8-9 (1971). See generally K. Burke, *Language as Symbolic Action* (1966); K. Burke, *A Rhetoric of Motives* (1950).

B. The Chronology of Defeat

When two female legislators introduced the Equal Rights Amendment in the Illinois House of Representatives in April, 1972, every indication was that discussion would be perfunctory and ratification immediate. Serious opposition had not surfaced in any of the twenty states that had already endorsed the federal text. There was no reason to expect Illinois to be an exception. Just two years earlier, state voters had adopted a new constitution with an equal rights provision similar to the federal text.²⁶ Moreover, ninety-three male representatives, comprising a larger than necessary constituency for passage, offered to co-sponsor the measure. Anticipating no difficulties, the two original proponents declined assistance.

The reversal was sudden as well as unanticipated. Within a month, Phyllis Schlafly had assembled a slate of arguments and a constituency of vocal opponents that supporters could not begin to counter. The amendment received seventy-five votes, fourteen short of passage and eighteen less than the initial offers of sponsorship.²⁷ Astounded by the result and incensed by the accompanying rhetoric (including one legislator's reference to "bra-less, brainless broads"),²⁸ supporters hastily rallied. Local members of the National Organization for Women (NOW) and the Federation of Business and Professional Women coordinated lobbying efforts, arranged media coverage, distributed literature, and solicited funds. In what struck some as one of history's lesser ironies, the Playboy Foundation underwrote mailing and duplication expenses.

This counteroffensive won the next battle but quickly faltered. The amendment cleared the Senate in May but fell seven votes short of passage in the House that June.²⁹ Supporters viewed the setback

26. Section 18 of the Illinois Constitution Bill of Rights, ratified in December, 1970, provides:

The equal protection of the laws shall not be denied or abridged on account of sex by the state or its units of local government and school districts.

Ill. Const. art. I, § 18.

Phyllis Schlafly, however, has contended that this provision permits more sex-based classifications than would the proposed federal amendment. That argument has not received much attention from the scholarly community. For a general discussion of Schlafly's claim, see Felsenthal, *How Feminists Failed*, Chicago, June 1982, at 143.

27. *Illinois Rejects Women's Rights OK*, Chi. Trib., May 17, 1972, § 1, at 1, col. 5.

28. J. Boles, *supra* note 2, at 160 (quoting Thomas Hanahan) (Hanahan's reference was to the protest staged before a Miss America pageant, at which feminists deposited offending undergarments into a large garbage receptacle.).

29. Elmer, *Women's Rights Bid Fails*, Chi. Trib., June 16, 1972, at 1, col. 8.

as fundamentally irrational. As Gloria Steinem noted in a press conference,

Strange, Illinois already has an equal rights clause. So these men vote against the amendment. It's an odd attitude against the rest of the country. Like, 'we're all right but the rest of you can be damned.'³⁰

Subsequent events followed a similar pattern. In the decade preceding the June 1982 deadline for ratification,³¹ the amendment failed eight times in Illinois, almost always by closely divided votes.³² During the time allotted, a total of thirty-five states ratified the amendment and five rescinded their ratification, generally by narrow margins.³³ Despite increasingly sophisticated forms of proponent pressure, including well-funded campaigns against particular legislators and a national boycott of conventions held in recalcitrant states, the deadline expired without the requisite thirty-eight state endorsements.³⁴

30. *Gloria's in Town Drumming ERA*, Chi. Daily News, Mar. 23, 1973, at 19 (quoting Gloria Steinem). Two other non-ratifying states, Utah and Virginia, have equal rights provisions in their constitutions.

31. In 1978, Congress extended the date for ratification to June 30, 1982. H.R.J. Res. 638, 95th Cong., 2d Sess., 124 Cong. Rec. H 8, 26, 264-65 (House), S34, 314-15 (Senate) (1978). A lower federal court judge held that extension invalid, but during the pendency of the appeal, the 1982 limit expired without the requisite state endorsements. Accordingly, the Supreme Court dismissed the case as moot. *Idaho v. Freeman*, 529 F. Supp. 110 (D. Idaho 1981); *stayed*, 102 S. Ct. 1272 (1982), *dismissed as moot sub. nom.* National Org. for Women Inc. v. Idaho, 103 S. Ct. 22 (1982).

For discussion of the legal and policy issues implicated by the deadline extension, see Ginsburg, *Ratification of the Equal Rights Amendment: A Question of Time*, 57 Tex. L. Rev. 919 (1979); and Rees, *Throwing Away the Key: The Unconstitutionality of the Equal Rights Amendment Extension*, 58 Tex. L. Rev. 875 (1980).

32. See B. Friedan, *supra* note 5, at 24; J. Boles, *supra* note 2, at 149-61; Felsenthal, *supra* note 26, at 139-42, 152-55.

33. The fifteen states that never ratified were Nevada, Utah, Arizona, Oklahoma, Missouri, Arkansas, Louisiana, Illinois, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia. The five states that attempted to rescind their ratifications were Idaho, Nebraska, Tennessee, Kentucky, and South Dakota. A lower federal court judge upheld the legality of those rescissions in a decision that the Supreme Court ultimately declined to review on grounds of mootness. *Idaho v. Freeman*, 529 F. Supp. 110 (D. Idaho 1981); *stayed*, 102 S. Ct. 1272, *dismissed as moot sub. nom.* National Org. for Women Inc. v. Idaho, 103 S. Ct. 22 (1982).

For discussion on some of the margins of defeat in non-ratifying states, see J. Boles, *supra* note 2, at 141 n.37; and note 256 *infra*. In Illinois, the General Assembly losses ranged from 2-12 votes. See *ERAmerica, Status of ERA Ratification: 27th Amendment* (July 1980); Lentz, *House Unit Rejects ERA Bid*, Chi. Trib., June 24, 1982, § 1, at 3, col. 1.

34. NOW reportedly spent some \$15 million in its 1981-1982 "Countdown Campaign." Felsenthal, *supra* note 26, at 139. The legality of the boycott under federal antitrust laws was upheld in *State of Missouri v. National Org. for Women*, 620 F.2d 1301 (8th Cir. 1980),

Supporters have reintroduced the amendment in Congress, but with little expectation of favorable action in the current political climate.³⁵ Nonetheless, many proponents believe that to relinquish the struggle now would simply reinforce opponents' core assertion that America rejects equal rights as an appropriate societal aspiration. Yet other feminists, many of whom actively campaigned for the ERA, question the wisdom of its further pursuit. Why not invest limited political resources in seeking tangible legislative changes, rather than a symbol that has become a lightning rod for anti-feminist animus? No meaningful response to that question is possible without some better understanding of the circumstances that prompted it. To that end, Parts II and III chronicle the rise of ERA opposition, and the inadequacy of proponents' responses in both public and legislative arenas.

II. The Public Response

A. The Participants

Disentangling the roots of public opposition to the Equal Rights Amendment presents considerable difficulties, given the broad range of interests at issue, and the inevitable divergence between participants' actual and expressed concerns. Since the following analysis will focus largely on the debate over sexual equality, it bears note at the outset that there were additional dimensions to the struggle. For some pivotal figures in the anti-ERA movement, the issue may have seemed a useful vehicle for pursuing other objectives.

Certainly that claim is often made with respect to Phyllis Schlafly and certain conservative organizations that promulgated her views. To some extent, Schlafly's background invites such speculation, since her personal life does not square easily with her professed ideology. A graduate of law school and a Harvard masters program in political science, Schlafly has written several books, edited a monthly newsletter with a circulation of about 10,000 and run for various local and national political offices.³⁶ Yet throughout the ERA campaign, she emerged as the

cert. denied, 449 U.S. 842 (1980). Analysis of the boycott's political efficacy appears in note 244 *infra*.

35. See note 260 *infra*. For discussion of supporters' gloomy prognoses, see *MacNeil-Lehrer Report*, WNET Thirteen, June 30, 1982, tr. at 4 (statement of Rep. Geraldine Ferraro); Collin, *As Symbol Issue Will Never Die*, Chi. Trib., June 27, 1982, § 2, at 1, col. 5 (remarks of House Sponsor D. Edwards [D.-Calif.]) ("In all candor there is not much hope it would be passed this session."). See also *id.*, § 2, at 2, col. 6 (quoting Eleanor Smeal, NOW president, predicting that struggle could take "ten, maybe 25 years").

36. See, e.g., Timmesch, *supra* note 2; Wohl, *Phyllis Schlafly: The Sweetheart of the Silent Majority*, Ms., Mar. 1974, at 54, 55; Fraker, *Women Versus Women*, Newsweek, July 25, 1977, at 34.

paramount defender of woman's "God-given right to stay home."³⁷

The anomaly has not escaped public notice. Gloria Steinem, in a Chicago press conference, remarked with no small measure of aggravation that Schlafly

keeps saying that she's a housewife and mother. She's never home. She has been all over the country talking against equal rights. It's very elitist of her to act as though she's the only woman as professionally capable as a man—and she *IS* a professional writer and talker—while the other women need privileges.

Every woman should have the same choices as Schlafly, the choice to have a child or not have a child, to stay home or hire someone to take care of her child, the choice to have a husband who'll support her.³⁸

What further irritated ERA proponents was hearing a "woman of Mrs. Schlafly's superior intelligence" make "simplistic misleading statements about the ERA . . . when she fully underst[ands] the complex realities"³⁹ To many proponents, the incongruities between Schlafly's life and rhetoric, coupled with her seeming disregard for facts, suggested that she had political objectives unrelated to the merits of ratification.⁴⁰ The "Stop ERA" campaign unquestionably

37. Moore, *Pros and Cons of ERA Battle*, Chi. Daily News, Mar. 1, 1973, at 5 (quoting Phyllis Schlafly).

38. *Gloria's in Town Drumming ERA*, *supra* note 30 (quoting Gloria Steinem). See also Letter to the Editor of the *Chicago Tribune Magazine* from Fay Ruth (June 24, 1973) ("Mrs. Schlafly does not herself live . . . [a] sheltered life. Why does she wish it upon other women?"); Wohl, *supra* note 36, at 54, 55 ("Schlafly's hardly one of the typical 'housewives' she claims to protect"); Egler, 3 *Women Each With Right Cause*, Chi. Trib., June 27, 1982, § 2, at 2, col. 1 (unidentified ERA supporter) (Schlafly is "a very liberated woman . . . She's independent, intelligent, well-educated and articulate. I've always found it very ironic that she is opposed to what she has gained.").

Of course, antifeminism among exceptionally successful women is by no means a rare phenomenon. For an analysis of such attitudes among "honorary males," such as Phyllis Schlafly, Florence Nightingale, Jane Addams, and Golda Meir, see C. Heilbrun, *Re-inventing Womanhood* 42-44, 107, 111, 118-19 (1979). See also Klein, *The Historical Background*, in *Women: A Feminist Perspective* 523, 539 (J. Freeman ed. 2d ed. 1979) (quoting Queen Victoria's appeal to all women of good will "to join in checking this mad, wicked folly of Women's Rights with all its attendant horrors . . .").

39. Letter to the Editor of the *New York Times Magazine* from Catherine East (July 25, 1972).

40. For example, Catherine East, Executive Secretary of the Citizens Advisory Council on the Status of Women, noted that "politically experienced" women who had known Schlafly attributed her ERA activity to a desire for "political power." *Id.* See also Shahanan, *Rights Plan Called Devious*, N.Y. Times, Mar. 15, 1973, at 21, col. 1 (statement of Rep. Martha Griffiths) (charging Schlafly with using the ERA "to build a right-wing political organization"); Herbers, *Women Turn View to Public Office*, N.Y. Times, June 28, 1982, at A1, col. 1, & B7, col. 4 (remarks of Oklahoma State Rep. Clela Detherage) (asserting that conserva-

conferred a good deal of public recognition and political leverage on Schlafly. It also provided a catalyst in mobilizing women for other conservative causes. So too, from the perspective of other organizations that participated in the campaign, such as the John Birch Society, the amendment may have assumed greatest importance as a means of forging political coalitions that would remain active on a variety of other issues.⁴¹

Although proponents frequently deplored the opposition's use of the ERA for other purposes, feminists also found ratification to be an effective organizational device. Over the past decade, membership in the National Organization for Women grew from 6,000 to 210,000.⁴² The visibility, strategies, and organizational structures that many women's groups developed in the ERA campaign will prove valuable in other contexts. As NOW president Eleanor Smeal asserted after the ratification deadline expired, "Not a moment of it was wasted, even if we never win."⁴³

Yet it seems improbable that most participants in the ERA campaign saw the issue as a vehicle to promote other personal or political

tives, especially Schlafly, had "seized on the amendment and made it a political tool" for a variety of right-wing causes).

41. See, e.g., *ERA Opposition is Attempt to Organize Women for Conservative Political Purposes*, *Women Today*, Apr. 30, 1973, at 1 (quoting Rep. Martha Griffiths to the effect that no one in the opposition "cares whether the ERA is ratified or not . . . [T]hey are using women to organize them for another purpose"); *id.* (quoting Rep. Margaret Heckler's description of the opposition as "misinformed people working with those who have political ambitions"); Wohl, *supra* note 36, at 86 (remarks of Irwin Suall) ("There is no doubt that the John Birch Society latched onto ERA . . . as an avenue to expand their influence"); Wohl, *supra* note 2, at 81 (remarks of Isabelle Shelton) ("In state after state, labor found that the troops Mrs. Schlafly had organized for a blitz campaign against ERA would stay behind . . . to use their new found legislative know-how to fight some of labor's pet programs"); Fraker, *supra* note 36, at 34 (noting that coalitions initially formed to block the ERA have now taken stands against abortion, day care, sex education, and related issues).

42. Interview with Michael Lewis, Assistant to the Secretary, National Organization for Women (Mar. 30, 1983) (citing figures for 1972 and 1982). Many of these members were reportedly "recruited during the last ditch effort to save the ERA." Van Gelder, *Electoral Politics or Civil Disobedience?*, *Ms.*, Jan. 1983, at 38, 39. The organization has an annual budget of \$13 million and a network of 81 political action committees. *Id.*

The ratification campaign may also have helped galvanize support for feminist issues among non-members. For example, a 1970 Gallup poll found women evenly divided on whether they supported the movement to secure greater equality. By 1974, they endorsed that movement by margins of two to one. W. Chafe, *Women and Equality: Changing Patterns in American Culture* 139 & n.14 (1978).

43. B. Friedan, *supra* note 5, at 202 (quoting Eleanor Smeal). See also J. Freeman, *The Politics of Women's Liberation* 222-23 (1975) (noting that, regardless of the outcome, the campaign was valuable in enabling feminist organizations to establish liaisons with politicians and the press, and in focusing national attention on women's issues). Accord, J. Gelb & M. Palley, *Women and Public Policies* 20 (1982).

ends. Almost all of the activists were women and relatively few seemed animated by desires for public recognition. If they had been so inclined, they might quickly have become discouraged by the frequently flippant or patronizing tone of media coverage. For example, a 1972 *Chicago Daily News* article offered the following account of one anti-ERA organization's efforts:

PIN-UP GALS FIGHT LIB LAW

"Wear a safety pin with pride—it shows you are all woman."

That's the motto of the International Anti-Women's Liberation League, which has come to Chicago to fight ratification by Illinois of the Equal Rights Amendment to the U.S. Constitution.

Mrs. Robert Pierce, Midwest director of the new group, invited the *Daily News* to cover its organizational meetings. . . . However, when very few women showed up for the two meetings, Mrs. Pierce barred reporters.

"These are just organizational meetings and we don't want the press to see how disorganized we are," said Mrs. Pierce.

[The group's literature] doesn't explain what wearing a safety pin has to do with being an "all woman."⁴⁴

On the whole, leaders of opposition groups were content to maintain a low profile. As one anti-ERA organizer put it, we simply wanted "to get the information out."⁴⁵ In Illinois, as in the nation generally, most opponents left the public proselytizing to Schlafly and made few visible bids for notoriety.⁴⁶ Indeed, pro-ERA lobbyists were often hard-pressed even to identify the opposition's activists. According to one Illinois volunteer:

The lines of communication are really blurred. Women would show up at the hearings with hand-made buttons and they also did an effective phone campaign, but I have no idea how they were mobilized.⁴⁷

44. *Pin-up Gals Fight Lib Law*, Chi. Daily News, Apr. 1972. See also text at notes 170-71 and 224-30 *infra*.

45. Interview with Darlene Deginhardt, in Chicago (Aug. 5, 1973).

46. See J. Boles, *supra* note 2, at 86. Throughout the ratification struggle, Schlafly remained the dominant opposition leader. She claimed 50,000 members in her Eagle Force organization and was credited with establishing large networks of anti-ERA groups in every state. See Fraker, *supra* note 36, at 34. Her role in other states is chronicled in J. Boles, *supra* note 2, at 67, 86-87, 115, 122, 153-54; and Wohl, *supra* note 36, at 55. The most prominent other opposition figure was Jackie Davison, founder of Happiness of Womanhood, a California-based organization with an estimated membership of 10,000. *Men or Mice? Lib Foes Raise Big Squawk*, Chi. Daily News, Nov. 11-12, 1972, at 16; Happiness of Womanhood, Inc., Meet Happiness of Womanhood Inc. 1 (undated, received 1973).

47. Interview with Barbara Clark, volunteer for ERA Central, in Chicago (July 18, 1973).

Although proponent organizers were more visible, few appeared intent on pursuing personal notoriety or political goals unrelated to ratification. No previously unknown supporters gained substantial national recognition in the ERA struggle, and many had no prior commitment to women's issues. Indeed, for large numbers of women on both sides of the campaign, the ERA was the first political issue with which they had become actively involved.⁴⁸ What is most interesting and ultimately most significant about the ratification debate is why these women entered the fray, and what responses their involvement triggered in public and legislative arenas.

B. The Arguments

The anti-suffragists published several periodicals and organized many societies but their activity was sporadic. It was their ideology [which] was significant.

The antis defined the context within which [pro-] suffragist ideas developed, posed the problems the suffragists had to solve, and asked the questions they had to answer.⁴⁹

A half century after the suffrage movement, the battle for women's rights was still occurring in that framework. Unprepared for the sudden "right-wing . . . blitz,"⁵⁰ proponents quickly found themselves on the defensive. It was a position from which they never fully emerged, in Illinois or elsewhere.⁵¹ Rather than stressing the ERA's potential benefits or underlying moral imperatives, proponents allowed Schlafly and her disciples to define the ratification agenda.⁵²

48. J. Boles, *supra* note 2, at 85-86, 95. For a profile of women who worked against the Equal Rights Amendment in Texas, see Brady & Tedin, *Ladies in Pink: Religion and Political Ideology in the Anti-ERA Movement*, 56 Soc. Sci. Q. 564 (1975).

49. A. Kraditor, *The Ideas of the Woman Suffrage Movement: 1890-1920*, at 12 (1971).

50. *Girding for the Equal Rights War*, Chi. Today, Mar. 8, 1973, at 5 (quoting Ann Scott, vice president for Legislation, NOW).

51. Midway through the 1973 campaign, a national Common Cause coordinator acknowledged:

A lot of times we just found ourselves in a crisis situation. They caught us by surprise. We spent our whole time responding to them and we almost got away from fighting for the amendment.

Equal Rights Backers Organize New Drive, Aug. 26, 1973, at 21, col. 1 (quoting Ann McBride, pro-amendment coordinator for Common Cause).

52. See J. Boles, *supra* note 2, at 186; O'Reilly, *Big-Time Players Behind the Small-Town Image*, Ms., Jan. 1983, at 38, 59.

The early Illinois campaign graphically illustrates the extent of opponents' control. The most common format for pro-ERA literature was a "Reality" sheet which restated key opposition arguments and juxtaposed proponents' rejoinders.⁵³ Similarly, in public presentations, supporters frequently framed their argument in purely responsive terms. For example, one of the state legislators co-sponsoring the amendment began a 1973 *Chicago Tribune* article with the following non-sequitur: "What will the Equal Rights Amendment do? First it will not affect private lives and social customs."⁵⁴ The remainder of the article proceeded in similar fashion. Not one affirmative argument interrupted the rebuttal.

As the discussion below will suggest, the frequent absence of a constructive position proved damaging throughout the ratification campaign. Once Schlafly and her followers established the terms of debate, proponents found themselves constantly arguing their weakest points.⁵⁵ Moreover, the failure to convey a persuasive affirmative case for constitutional change simply reinforced the opposition's primary instrumental claim: that on balance, the amendment threatened more than it promised.

1. The Instrumental Claims

Opponents' most firmly grounded, if not most salient, argument concerned the legal necessity for a constitutional amendment. As noted earlier, several distinguished constitutional scholars shared the opposition's view that the ERA would not significantly extend women's protection against discrimination in employment, education, and credit practices.⁵⁶ They also agreed that abuses not already subject to federal or state prohibition could be addressed by specific legislation.

53. A representative selection reads:

Myth: ERA will wipe out many protective labor laws which benefit women.

Fact: Most so-called protective labor laws serve to keep women in lower-paying jobs. Where these laws provide a benefit in health or safety they can be extended equally to men.

ERA Central, *What the Equal Rights Amendment Means* 1 (undated, received June, 1973).

54. Dyer, *Common Sense and Equal Rights*, Chi. Trib., May 27, 1972, at 12, col. 2.

55. As one New York supporter put it, "We found ourselves arguing about women being drafted and losing custody of their children, instead of discussing discrimination in housing, insurance and credit. . . . We cannot spend all our time telling opponents how wrong they are." Fraker, *supra* note 36, at 35, 38 (quoting B. Fasteau, New York lawyer).

56. See, e.g., Klemesrod, *supra* note 7, at 44, col. 2 (remarks of Phyllis Schlafly) ("It won't give women any rights to employment or education or in credit because those rights are already there, in the Equal Opportunity Act of 1972, the education amendments of 1972 and the Equal Credit Opportunity Act of 1974.").

For comparable views within the academic community, see sources cited in note 22

In responding to this point, proponents typically underscored the cost and delay of piecemeal challenges. According to an Illinois ERA Central publication,

There are thousands of laws on the books of our fifty states which discriminate against women. The opponents say to repeal them one by one. This would take 100 years; and the decisions would have to be made by a multiplicity of courts.⁵⁷

Or, as one New York proponent later contended, it would be like trying to enforce the Emancipation Proclamation "plantation by plantation."⁵⁸

There were a number of difficulties with this argument. Most obviously, as Schlafly and other opponents pointed out, not all problems of implementation would be removed by constitutional prescription; "[e]ven if the Amendment were passed, [women] still would have to press [their] grievance through the relevant [court or] agency."⁵⁹

Moreover, as the struggle wore on, proponents' response became less credible, given the increasing volume of specific legislative, administrative, and judicial actions striking down the most offensive forms of sex discrimination.⁶⁰ To be sure, as some supporters argued, these actions were vulnerable to reversal absent constitutional underpin-

supra. Critics have also submitted that it is easier to correct unintended adverse consequences of a statutory mandate than a constitutional interpretation. See Note, *Sex Discrimination and Equal Protection: Do We Need a Constitutional Amendment?* 84 Harv. L. Rev. 1499, 1520 (1971). In addition, some commentators have emphasized that the amendment would not reach the private spheres in which invidious sex-based prejudices are most firmly entrenched. See Kurland, *supra* note 22. Neither Schlafly nor her followers stressed this point, perhaps because they entertained greater reservations about the appropriateness or inevitability of such attitudes. See text accompanying notes 119-40 *infra*.

57. ERA Central, *supra* note 53, at 1. See also K. DeCrow, *Sexist Justice* 301 (1975); Ganuchau, *Why I Support the ERA*, 4 S.U.L. Rev. 16, 20 (1977).

58. MacNeil-Lehrer Report, *supra* note 35, at 4 (Rep. Geraldine Ferraro quoting Barbara Mikulski).

59. Cross, *Dialog: Phyllis Schlafly*, Chi. Trib., Nov. 9, 1975, (Magazine), at 26, col. 2 (quoting Phyllis Schlafly).

60. See note 14 *supra*. According to one 1980 study of state gender discrimination laws in areas such as employment, credit, housing, property and domestic relations:

States which have not ratified the ERA have been neither callous nor insensitive to women's rights. Rather, they have chosen an alternative approach to protect those rights, which has succeeded in combatting sex discrimination without mandating an absolutist approach regarding sex distinctions in areas relating to child welfare, marriage, [and] families

Greenman, *supra* note 14, at 14-15.

For a comprehensive account of the extent to which legislative, administrative and judicial actions track the amendment's likely effect, see H. Kay, *Sex-Based Discrimination*, 133-62, 314-19 (1981).

nings.⁶¹ But such responses missed the real thrust of Schlafly's point. Challenges to the amendment's necessity were not of themselves a potent mobilizing force. Few voters are likely to rise in protest against constitutional redundancy. In essence, the opposition's strategy was useful simply in undercutting assertions that the amendment was needed to combat invidious discrimination, and in lending some academic luster to the anti-ERA position. The core of Schlafly's instrumental challenge lay in her claim that women would have to relinquish tangible benefits in exchange for a vague promise of dubious value. Proponents' veiled reference to "thousands" of objectionable laws of unspecified effect did not meet that challenge. Nor did many of the vacuous and well-publicized histrionics before state legislatures, such as Carol Burnett's plea on behalf of her three daughters: "Unless they're protected by the constitution, what's going to happen to them?"⁶²

So too, analogies to the Emancipation Proclamation largely missed the mark. The evils of slavery were self-evident. The need for an equal rights amendment was not. Indeed, according to one public opinion survey of the early 1970's, seventy-five percent of male respondents and seventy-one percent of females considered the position of women in American society to be either "excellent or good."⁶³ Once Schlafly planted doubts about the ERA's implications for laws favoring women, proponents' failure to identify concrete countervailing benefits became critical. The absence of a persuasive affirmative case reinforced the kind of attitude expressed by one president of an Illinois women's Republican club:

My feeling is that it would wipe out protections that women now have . . . I think we are pretty well off the way we are.⁶⁴

The erosion of valuable benefits became one of Schlafly's most effective themes. In virtually every public statement, Schlafly reiterated

61. See, e.g., Chafetz, *The ERA and Redefinitions of Work: Toward Utopia*, in California Commission, *supra* note 16, at 108, 111; American Bar Association, *About the ERA* 2 (Apr. 1980) (discussing the importance of a constitutional "bedrock" for statutory protections). See also sources cited in notes 15 and 17 *supra*.

62. Felsenthal, *supra* note 26, at 142 (quoting Carol Burnett). Even otherwise dispassionate and carefully documented arguments were often punctuated by such assertions. See, e.g., R. Eisler, *The Equal Rights Handbook* 3, 5, 221 (1978) (failure to affirm the ERA "can only lead us into a nightmarish future," in which women's rights will "shrink and dwindle until they no longer exist" and "we are [unable] to withstand the authoritarian menace from within and without.").

63. *Slowdown Feared for Women's Rights*, Chi. Today, Mar. 1, 1973. See also W. Chafe, *supra* note 42, at 57 (arguing that the sense of solidarity among American women has traditionally reflected a shared commitment to "nurturant" values rather than "a collective awareness of injury and oppression").

64. *ERA: Pros and Cons*, Wilmette Life, Mar. 22, 1973, at 31, col. 1 (quoting C. Patterson).

her claim that the ERA "won't do anything to help women, . . . and it will take away from women the rights they already have."⁶⁵ Of the examples she cited, the two that proved most powerful concerned domestic support and military service exemptions.⁶⁶

According to Schlafly's August 1973 report, *The Precious Rights ERA Will Take Away From Wives*,

The Equal Rights Amendment will enunciate a radical new principle of *equality* in the matter of family support. This means that the wife's obligation to support her husband will be *equal* to the husband's obligation to support his wife. The obvious legal result is that a wife will lose her right to be supported and will have a *legal obligation* to go out to work to provide half the family income.⁶⁷

Throughout the ratification campaign, Schlafly underscored her prognosis of the ERA's devastating effect on domestic financial arrangements. The proposed twenty-seventh amendment, she informed a *Chicago Today* reporter, would "deny women the right to be supported by their husbands . . . [and] strike down good laws which guarantee that women can be full-time wives and mothers."⁶⁸ Her allegations in other states were of a similar character, and were echoed repeatedly by other opposition leaders.⁶⁹

These claims regarding support were among the most irritating to proponents. According to one *Chicago Tribune* reader:

Mrs. Schlafly's statements are at best distortions, at worst lies . . . [T]he idea that the ERA would force women to earn half of the family income is particularly ridiculous. There is nothing in the ERA that would force by law any personal financial arrangement.⁷⁰

65. Klemesrod, *supra* note 7, at 44, col. 1 (quoting Phyllis Schlafly).

66. Other frequent illustrations included protective labor legislation, preferential child custody statutes, single-sex educational programs, and gender-based insurance rates. See sources cited in notes 53 & 56 *supra*, and 67 & 69 *infra*.

67. P. Schlafly, *The Precious Rights ERA Will Take Away From Wives*, 7 The Phyllis Schlafly Report, Aug. 1973, § 2, at 1. See also Stop ERA, What the Equal Rights Amendment Really Means (undated, received June, 1973); P. Schlafly, *The Right to Be a Woman*, 6 The Phyllis Schlafly Report, Nov. 1972, at 1.

68. *Girding for the Equal Rights War*, Chi. Today, Mar. 8, 1973, at 22. See also *Setback for Women's Rights*, Chi. Daily News, May 19, 1972, at 12; *Senate Vote*, Chi. Sun Times, May 29, 1972; Schlafly, *ERA: Equal for Whom?*, Chi. Trib., Mar. 18, 1973, § 5, at 8, col. 6.

69. For representative samples, see, e.g., Fraker, *Women Versus Women*, *supra* note 36, at 34; Wohl, *supra* note 36, at 56; Timmesch, *supra* note 2, at 56. For an anti-ERA tract mirroring Schlafly's reports, see G. Whittenberg, *The E.R.A. and You* (1975).

70. Letter to the Editor of *Chicago Tribune Magazine* from Rhonda Stein (Dec. 7, 1975).

Congresswoman Martha Griffiths was of a similar view: either Schlafly "doesn't understand how the ERA would work" regarding support obligations "or she doesn't want to."⁷¹ Other proponents were less restrained. In a 1975 *New York Times* interview, Karen DeCrow, then president of NOW, came straight to the point:

She's a liar. . . . The fact is that the right to support is extremely limited. At least half the state laws in the United States do not say that the husband must support the wife.⁷²

A growing number of jurisdictions, including Illinois, have imposed support obligations in sex-blind terms.⁷³ Even in those jurisdictions mandating the husband's support, courts have consistently declined to enforce such obligations in on-going marriages.⁷⁴ As to post-marital support responsibilities, states have increasingly moved toward gender-neutral statutes.⁷⁵ Moreover, whatever the codified standards,

71. *Battle is Raging Anew Over the Equal Rights Amendment*, Chi. Sun Times, Mar. 11, 1973 (quoting Martha Griffiths).

72. Klemesrod, *supra* note 7, at 44, col. 2 (quoting Karen DeCrow). See also Salmans & Whitmore, *Women versus Women*, Newsweek, Nov. 3, 1975, at 25 (remarks of Bella Abzug) (referring to opposition's "campaign of lies and distortions"); R. Eisler, *supra* note 62, at 5 (adverting to strategies based on "skillfully merchandized falsehoods, on half truths and deliberate lies").

73. The Illinois domestic relations code provides that:

Every person who shall, without any lawful excuse, neglect or refuse to provide for the support or maintenance of his spouse, said spouse being in need of such support or maintenance, or any person who shall, without lawful excuse, desert or neglect or refuse to provide for the support or maintenance of his or her child or children under the age of 18 years, in need of such support or maintenance, shall be deemed guilty of a Class A misdemeanor

Ill. Ann. Stat., ch. 40, § 1101 (Smith-Hurd 1980). See also *id.*, ch. 23, §§ 10-1, 10-2 (Smith-Hurd Supp. 1982-1983) ("A husband is liable for the support of his wife and a wife for the support of her husband.") Both provisions were in force in 1972 when Schlafly made her observations.

For references to other state provisions, see H. Kay, *supra* note 60, at 189-94, and sources cited in note 76 *infra*.

74. Proponents frequently made that point. See Timmesch, *supra* note 2, at 68-69 (remarks of Rep. Martha Griffiths) ("There has never been a court in the United States that would interfere in a marriage to require a husband to provide support."). Accord, Ganucheau, *supra* note 57, at 32.

For representative examples of judicial reluctance, see, e.g., *Brewer v. Brewer*, 259 Ala. 149, 66 So. 2d 450 (1953); *Smith v. Smith*, 86 Ohio App. 479, 92 N.E.2d 418 (Ohio Ct. App. 1949). See also Yale Study, *supra* note 15, at 945 ("Many courts flatly refuse to enter a support decree when the husband and wife are living together. In most such cases the husband, as head of the family, is free to determine how much or how little of his property his wife and children will receive.").

75. The proposed Uniform Marriage and Divorce Act, which many states have adopted in substantial part, requires issues of post-marital support to be determined on a sex-neutral

only a very small percentage of divorced women in fact obtain any spousal support awards, and fewer still are able to collect anything close to adequate payments following termination of their marriages.⁷⁶

Such factual qualifications, however, rarely penetrated the ratification debate. They were almost never discussed by opposition leaders, some of whom took considerable liberties with legal authority. Most notably, Schlafly's references to cases, treatises, and law review articles were often misleading or erroneous, and public corrections had little discernible effect on her statements.⁷⁷ Worse still, from proponents' perspective, such corrections often had no greater effect on her audience.

Despite repeated rebuttals in pro-ERA publications, speeches, and press statements, misperceptions about support responsibilities persisted. Schlafly's predictions remained the received wisdom in many communities, particularly those with large numbers of non-working wives.⁷⁸ Illinois legislators continued to receive letters from middle-aged

basis, depending on the needs and abilities of the parties. See Kanowitz, *The ERA: The Task Ahead*, 6 Hastings Const. L.Q. 637, 648 & n.48 (1979).

76. Weitzman, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards*, 28 UCLA L. Rev. 1181, 1221, 1225, 1254-55 (1981) (finding, *inter alia*, that in Los Angeles and San Francisco counties of California only 17% of divorced women were awarded spousal support in 1977; that the average amount is "too meagre to be considered a bona fide means of support;" and that within six months of a divorce, one in six men was already in arrears in payment). For comparable findings, see Bureau of the Census, U.S. Dep't of Commerce, *Child Support and Alimony*: 1978, at 1, 12 (1981); Seal, *A Decade of No Fault Divorce*, 1 Fam. L. Advoc. 10, 11-14 (1979); and N. Gordon, C. Jones & I. Sawhill, *Child Support Payments in the United States* 25-26 (Urban Institute Working Paper 992-1003, Oct. 1, 1976). The difficulties in enforcing male support obligations are comprehensively reviewed in D. Chambers, *Making Fathers Pay* (1979).

77. For example, the authors of the Yale Study have testified to constant misuses of their work. According to one coauthor, Thomas Emerson:

What they have done is to take quotes out of context, cut off sentences, leave out parts of paragraphs, twist it around, and essentially make whole sections mean what they don't mean at all.

Wohl, *supra* note 36, at 85 (quoting Thomas Emerson). Another of the Yale coauthors, Gary Falk, recalls publicly correcting Schlafly's misinterpretation of the article in her testimony before the Tennessee legislature and then hearing her "repeat the same inaccuracies" in West Virginia testimony a month later. *Id.* at 86. Schlafly also circulated statements by Senator Ervin which seriously misconstrued the Yale Study. See Citizens Advisory Council on the Status of Women, *ERA: Senator Ervin's Minority Report and the Yale Law Journal* 1 (1972).

For discussion of Schlafly's misrepresentation of a judicial decision regarding support obligations, see *id.* at 56 (remarks of Judith Arreen, Associate Professor of Law, Georgetown University).

78. For example, the president of a women's Republican Club in one of Chicago's most affluent North Shore suburbs reported that most members were opposed to the ERA because they believed it would jeopardize "property rights, and your rights as a wife." *ERA*:

housewives, acknowledging that the amendment was "all right for a younger woman," but adding that they had never had a job and were unsure how to support themselves if the ERA passed.⁷⁹ Other correspondents with "rocky marriages" were concerned about the amendment's effects on alimony and child support.⁸⁰ And in many other states, the ERA's perceived threat to financial security proved equally difficult to allay.⁸¹

Yet at least some of these difficulties were of proponents' own making. A few feminists complicated life for their more diplomatic colleagues by conceding and even embracing Schlafly's dire assessments. Thus, for example, ERA proponent Dr. Joyce Brothers assured Schlafly in a televised debate that "[t]he idea that a woman can sit home and be supported by her husband has long ago died out."⁸² "Forty million women are being supported by their husbands today" was Schlafly's rejoinder.⁸³ Whether or not the figure was accurate is largely beside the point. Substantial numbers of television viewers undoubtedly were in the position Schlafly described, and did not appreciate hearing that they were an endangered species.

Many other proponents were equally ineffectual advocates, although for different reasons. When responding to opposition arguments regarding a wide range of protective legislation, including support statutes, pro-ERA leaders frequently became mired in details that their audience was neither inclined nor equipped to absorb. Much proponent literature included long exegeses on state domestic relations, insurance, credit, or labor laws, complete with full bibliographic references and turgid quotations.⁸⁴ So too, in press interviews, those responding to

Pros and Cons, *supra* note 64 (quoting E. Neely).

79. Interview with Sen. Eugenia Chapman, in Chicago (Aug. 13, 1973) (quoting constituent letters); interview with Sen. Esther Saperstein, in Chicago (July 25, 1973) (recounting similar correspondence).

80. Interview with Sen. Eugenia Chapman, *supra* note 79.

81. See J. Boles, *supra* note 2, at 4, 103. See also Van Gelder, *The 400,000 Vote Misunderstanding*, Ms., Mar. 1976, at 67; G. Whittenberg, *supra* note 69, at 23-24; Beck, Howard & Maier, *Last Hurrah for the ERA?*, *Newsweek*, July 13, 1981, at 24.

82. Felsenthal, *supra* note 26, at 140 (quoting Joyce Brothers).

For other feminist statements of the same genre, see, e.g., *id.* at 140 (remarks of Vivian Cornick, visiting professor, University of Illinois, at Champaign-Urbana) ("Being a housewife is an illegitimate profession."); *id.* at 139 (remarks of Kate Millet) ("The care of children is infinitely better left to the best trained practitioners The family, as the term is presently understood, must go.").

83. *Id.* at 140 (remarks of Phyllis Schlafly).

84. The following example is not atypical:

THE TRUTH IS—This alleged "law of domestic relations" [cited by the opposition] is not enforced by the courts for a marriage that is still intact. In a series of cases from jurisdictions all over the United States, courts have consistently refused to interfere with the ongoing marriage relationship by

Schlaflly's crisp and comprehensible assertions often supplied overly detailed descriptions of prevailing statutory obligations and the full context from which Schlaflly had drawn misleading excerpts.⁸⁵

That such extended rejoinders failed to dislodge opposition claims is scarcely surprising. As political analysts have noted, one of the distinguishing and effective features of extremist rhetoric is its simple, unambiguous ascription of causes and consequences.⁸⁶ Many proponents felt they could not creditably capture the amendment's likely instrumental results in such uncomplicated terms. As a result, they often found themselves enmeshed in tedious explanations.⁸⁷ Such accounts were poorly calculated to reach women swayed by opposition rhetoric, most of whom neither desired nor attempted to explore the legal intricacies underlying either side's claims.

So too, proponents' repeated invectives against opposition leaders were ill-suited for the constituency most in need of persuasion. In one of the more celebrated but by no means unique instances, Betty Friedan informed Schlaflly that "I'd like to burn you at the stake."⁸⁸ In a similar vein, Presidential adviser Midge Costanza suggested that Phyllis Schlaflly

adjudicating whether a husband was supporting his wife in a suitable fashion. (*Brewer v. Brewer*, 259 Ala. 149, *McGuire v. McGuire*, 157 Nebraska 226, *Smith v. Smith*, 86 Ohio App. 479.) Every court has held that in order to enforce her support rights, a wife must be separated from her husband.

Illinois law, however, does hold a wife and her husband *equally* responsible for debts to creditors. Within the ongoing marriage "the expenses of the family and of the education of the children shall be chargeable upon the property of both husband and wife, or either of them in favor of creditors, therefore, and in relation thereto they may be sued jointly or separately." Ill. Rev. Stat. Ch. 68 Section 15.

The child support law which originally placed responsibility for a family only on fathers was specifically changed 44 years ago to make the expenses of the family chargeable to both parties. *Purity Baking Co. v. Industrial Commission*, 334 Ill. 386 (1929).

ERA Central, What is the Stop ERA Movement and Why Are They Saying All Those Terrible Things About Us (undated, received June, 1973).

For comparable examples regarding other forms of protective legislation, see *id.* and publications cited in notes 53 *supra*, and 102 *infra*.

85. See, e.g. Wohl, *supra* note 36, at 56 (quoting proponent's description of a judicial opinion that Schlaflly had mischaracterized). The press was not always interested in the details. See, e.g., Timmesch, *supra* note 2, at 69 (acknowledging but not detailing one supporter's ability to discuss various state and federal statutes regarding prison sentences, pension benefits, welfare payments and educational practices).

86. See S. Lipset & C. Raab, *The Politics of Unreason: Right Wing Extremism in America, 1790-1970*, at 3 (1970).

87. Wohl, *supra* note 2, at 81. See also note 84 *supra*.

88. Felsenthal, *supra* note 26, at 156 (quoting Betty Friedan).

and Anita Bryant would make "a fine set of bookends for Hitler's *Mein Kampf*."⁸⁹ Profiting perhaps from such examples, one Chicago supporter counseled that the "only way to debate Mrs. Schlafly is to jump up and down and shout 'Liar Liar Liar.'"⁹⁰

It is difficult to conceive of poorer advice. To the average member of her audience, Schlafly did not seem disingenuous. Insofar as the debate turned on issues of credibility, proponents were at a decided disadvantage. As public opinion surveys at the time suggested, the feminist movement did not project a favorable image to most American women.⁹¹ By contrast, Phyllis Schlafly, with her polished presentations, conventional appearance, and apparent legal expertise, made an excellent impression on middle-class audiences.⁹² Challenges to Schlafly's sincerity, particularly those framed in strident tones, were as likely to alienate as to persuade the uncommitted.

Moreover, the harangues against opposition misstatements were counterproductive in a still more fundamental respect. The preoccupation with Schlafly's inaccuracies deflected attention from the substantive issues and underlying sources of public opposition. As Betty Friedan noted midway through the campaign, "[w]hile lies were spread by ERA opponents, they fed real fears of women."⁹³ Too often proponents focused on the lies rather than the fears.

Those fears warranted serious attention on several levels. As to the support issue in particular, housewives' concerns were by no means as groundless as many proponents supposed. Although pro-ERA activists

89. *Id.* (quoting Midge Costanza).

90. Fraker, *supra* note 36, at 35 (quoting Diane Smith, Director of Chicago Central Loop YWCA).

91. See Van Gelder, *supra* note 81, at 67 (citing national survey findings that 65% of American women support "most of the efforts to strengthen and change women's status in society," but only 17% have a positive image of the women's movement and its major organizations). Cf. L. Harris & Assoc., The 1972 Virginia Slims American Women's Opinion Poll 4, 11 (1972) (reporting that 39% of women described themselves as sympathetic, and 49% as unsympathetic to the women's movement; men were evenly divided, with 42% on each side).

92. See, e.g., Wohl, *supra* note 36; Letter to the Editor of the *Chicago Tribune Magazine* from Mary Hollis (June 24, 1973):

I was pleased to see the article on Phyllis Schlafly. She is doing a magnificent job for the hundreds of women who disagree with the Lib Movement! We are busy with our homes and families but she has taken her time and efforts and given us a voice.

Moreover, Schlafly was often able to cite her adversaries' ad feminem approach as evidence of their vulnerability on the merits. See C. Felsenthal, *supra* note 4, at 301 (quoting Phyllis Schlafly's frequent rejoinder: "If my opponent had any substantive case for ERA, she wouldn't have to spend so much of her time attacking me.").

93. Nemy, *Feminists Reappraise Direction and Image*, N.Y. Times, Nov. 8, 1975, at 1, col. 6 (quoting Betty Friedan).

generally assumed that gender-neutral statutes would be written and enforced to protect the interests of the non-working spouse,⁹⁴ experience with such legislation has not entirely confirmed those assumptions. For example, although they have avoided the stereotyping embedded in their antecedents, most sex-blind codes have not addressed the structural inequities and enforcement problems of greatest concern to divorced women.⁹⁵

On a more general level, proponents also failed adequately to confront the consequences of legal equality in a context of social inequality. For many older women, who had followed traditional role patterns and now lacked marketable skills or independent incomes, the prospect of gender-neutral property dispositions seemed more a threat than a benefit. From their perspective, the amendment offered an unpalatable and unnecessary exchange. Proponents never convincingly explained that sex-blind statutes need not overlook domestic contributions. The perception lingered that full-time homemakers would have to pay the price of expanding some abstract set of opportunities that they had never experienced and would never enjoy.⁹⁶

94. For proponents' assumptions regarding the fairness of sex-blind support provisions, see, e.g., Citizen's Advisory Council on the Status of Women, *The Equal Rights Amendment and Alimony and Child Support Laws 10-11* (1972); ERA Central publications cited in notes 53, 84 *supra* and note 102 *infra*; Weitzman, *Legal Equality in Marriage: The ERA's Mandate*, in California Commission, *supra* note 16, at 184; U.S. Comm'n on Civil Rights, *supra* note 15, at 12.

95. Thus, Stanford sociologist Lenore Weitzman found that California's formal "equal division" rule for the property of divorcing couples in fact disadvantaged women because: so many assets (particularly benefits resulting from job training, seniority, etc.) were not subject to division; child or spousal support awards were initially inadequate and quickly eroded by inflation; and noncompliance with court awards was pervasive. See Weitzman, *supra* note 76, at 1264-65. California's experience appears representative. See B. Brown, *supra* note 20, at 137-45. See also note 77 *supra*.

For other assessments of sex-blind statutes and state constitutional provisions on domestic relations laws, see Kurtz, *The States' Equal Rights Amendments and Their Impact on Domestic Relations Law*, 11 Fam. L.Q. 101 (1977); Comment, *Equal Rights Provisions: The Experience Under State Constitutions*, 65 Calif. L. Rev. 1086 (1977). But see U.S. Comm'n on Civil Rights, Statement on the Equal Rights Amendment 4 (1978) (on the basis of a study of the 16 states with constitutional amendments "virtually identical to the proposed Federal amendment it is . . . clear . . . that the ERA is the appropriate remedial action to . . . assure men and women equal justice before the law.").

Compare also the relatively positive assessment of Maryland statutes and Pennsylvania constitutional provisions in U.S. Comm'n on Civil Rights, *supra* note 15, at 12-13; and Legislation, *The Maryland Equal Rights Amendment: Eight Years of Application*, 9 Balt. L. Rev. 342, 353-63 (1980); with the more sobering evaluations of New York, California, Hawaii, and Indiana laws, e.g., B. Friedan, *supra* note 5, at 19; Weitzman, *supra* note 76; B. Brown, *supra* note 20, at 141-42.

96. Thus, Philip Kurland argued:

There is no doubt that society permitted these women to come to maturity not

Similarly, some younger working women raised related questions about the value of equal rights under circumstances of unequal opportunities. As long as women faced substantial economic discrimination, the loss of any concrete benefits seemed a high price to pay for symbolic parity. As Simone de Beauvoir had noted decades earlier, it is "quite understandable" that the female worker receiving minimal wages, the "shopgirl, the secretary, will not care to renounce the advantages of masculine support."⁹⁷ Ironically, proponents' arguments about sex bias in employment options and wage scales may simply have exacerbated some women's fears. As one New York opponent submitted,

[i]f a man and a woman, equally qualified, go to an office to apply for the same job, who's going to get it? The man . . . Even if a law is passed against that, you can't change the way society is thinking. That takes education. Meanwhile why take the risk of having women lose their alimony?⁹⁸

Although legal developments during the 1970's accomplished many of the ERA's intended objectives regarding alimony, support, and protective labor statutes,⁹⁹ the public's perception of unwelcome tradeoffs lingered on.

For many women, draft exemptions appeared to be yet another illustration of the benefits they would relinquish under the Equal Rights Amendment. Front-line combat duty was not a congenial prospect, and that spectre was one on which opponents effectively capitalized. In 1973,

as competitors with males but rather as the bearers and raisers of their children and the keepers of their homes. A multitude of women still find fulfillment in this role. This may be unfortunate in the eyes of some; but it remains a fact. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Nor can women be regarded as unified in their desire for this change. Certainly the desire to open opportunities to some of them can be achieved without the price of removing the protection of others.

Kurland, *supra* note 22, at 248.

97. S. de Beauvoir, *The Second Sex* 642 (H.M. Parshley trans. 1952). The point still has force. Two-thirds of all American female workers are employed in clerical, service, or sales jobs. L. Howe, *Pink Collar Workers: Inside the World of Women's Work* 17-22 (1977).

98. Van Gelder, *supra* note 81, at 68 (remarks of Barbara Goldstein, claims checker and night college student).

99. See, e.g., *Orr v. Orr*, 440 U.S. 268 (1979) (holding unconstitutional Alabama statute that authorized alimony awards payable by husbands but not wives); *George v. George*, 487 Pa. 133, 407 A.2d 1 (1979); *Marchioro v. Chaney*, 90 Wash. 2d 298, 582 P.2d 467 (1978); Kanowitz, *The ERA: The Task Ahead*, 6 Hastings Const. L.Q. 637, 647-49 (1979); Kurtz, *supra* note 95, at 109-15. Thus, as Norman Dorsen observed in a statement prepared for the Senate Judiciary Committee, opponents often seemed to be "trying to erect bridges which were [already] crossed . . ." 117 Cong. Rec. 933 (Jan. 28, 1971). See also notes 14, 60, & 95 *supra*.

Schlaflly led a well-publicized march on the Illinois state capitol featuring baby girls with signs pleading "Don't draft me."¹⁰⁰ The campaign had its desired effect. In Illinois as elsewhere, the most commonly voiced objection to the ERA concerned the draft.¹⁰¹

Proponents' usual rejoinder, that Congress already had power to draft women,¹⁰² was hardly adequate to the occasion. According to Schlaflly, the ERA would *require* women to assume the same military obligations as men, including combat service. The legal predicate for that assertion was not impregnable, as a recent Supreme Court decision suggests.¹⁰³ Nonetheless, a substantial number of scholars and supporters agreed that the amendment would mandate sex-neutral treatment by all armed forces. But unlike Schlaflly, these proponents did not recoil at the thought of women in combat. Thus, the authors of a highly influential ERA analysis concluded:

[w]omen are physically as able as men to perform many jobs classified as combat duty. . . . There will be many women able to pass [a sex-neutral combat screening] test. . . .
[N]o one would suggest that combat service is pleasant or that the women who serve can avoid the possibility of physical harm and

100. J. Boles, *supra* note 2, at 126. See also text accompanying note 180.

101. J. Boles, *supra* note 2, at 170. See also H. Kay, *supra* note 60, at 144.

102. See, e.g., ERA Central, Should Women Have the Same Rights as Men? The U.S. Congress Says Yes, *Don't Let Illinois Say No*. (Mar. 28, 1973) (paid advertisement in *Chicago Sun-Times*). See also ERA Central publications cited in notes 53 and 84 *supra*.

Proponents' other major argument, that only a tiny percentage of military inductees ever saw combat service, was equally vulnerable. As Schlaflly frequently responded, "This is like saying that *only* 55,000 American servicemen were killed in Vietnam." Felsenthal, *supra* note 26, at 157 (quoting Phyllis Schlaflly).

103. In *Rostker v. Goldberg*, 453 U.S. 57 (1981), the Supreme Court upheld the 1980 draft registration law exempting women. Under the majority's analysis, Congress was free to conclude that inducting females would prove unduly burdensome. Given that women are not now eligible for combat, their inclusion in a draft could result in substantial expense (such as the cost of training and separate facilities), and loss of flexibility (resulting from the inability to rotate women to front line service). Presumably, comparable administrative convenience arguments could be invoked to sustain sex-based combat exemptions under an equal rights amendment. See Letter from the Defense Department to Senator Birch Bayh, Feb. 24, 1972, 118 Cong. Rec. 9088 (daily ed. Mar. 20, 1972). Even under a strict scrutiny approach, it might have been possible for some justices to view national security as a sufficiently compelling interest to justify excluding women from front-line service.

The difficulty with that argument, however, is that the legislative history of the 1972 ERA does not indicate that Congress felt such a categorical exception was warranted. Rather, the full House and Senate specifically declined several opportunities to modify the amendment to exempt women from the draft. See Yale Study, *supra* note 15, at 969 n.255 (noting that in 1970 the Senate endorsed such an exemption, and that in 1971, the House Judiciary Committee reported out the ERA with a similar qualification).

assault. But . . . [a]s between brutalizing our young men and brutalizing our young women there is little to choose.¹⁰⁴

It is by no means clear that most Americans share that view. In Schlafly's opinion, proponents' support of women in combat "put the nails in ERA's coffin."¹⁰⁵ National survey findings are certainly consistent with that assessment. Public opinion polls consistently revealed that a majority of Americans favored the Equal Rights Amendment, but opposed equal treatment for the sexes in military service.¹⁰⁶

Although some of this opposition doubtless stemmed from the attitudes noted above—a reluctance to exchange tangible benefits for more conjectural promises—the roots of public resistance went deeper. According to Schlafly, Americans did not want their daughters "treated

104. Yale Study, *supra* note 15, at 977. That study was reprinted in the Congressional Record. 117 Cong. Rec. 35012 (daily ed. Oct. 5, 1971). For comparable views, see Wohl, *supra* note 36, at 57; Hale & Kanowitz, *Women and the Draft: A Response to Critics of the Equal Rights Amendment*, 23 Hastings L.J. 199 (1971); and Kanowitz, *The ERA: the Task Ahead*, 6 Hastings Const. L.J. 637, 647 (1979) ("in my opinion . . . having our youth torn apart by enemy shrapnel is equally horrendous whether the victims are male or female.").

Other proponents were less equivocal in their endorsement of women's participation in the military. See J. Freeman, *supra* note 43, at 215 (testimony before House Judiciary Subcommittee, April 5, 1971, by representatives from "Women's Liberation" of George Washington University) ("Sex exemption from the draft is a negation of our ability to face the most onerous self-determination question of our times."). NOW president Eleanor Smeal, in objecting to women's exemption from draft registration, took a similar stance; the exclusion treated women as "second-class citizens" and denied them a "politically maturing experience." Felsenthal, *supra* note 26, at 157 (quoting Eleanor Smeal). Although in context, Smeal's comment apparently referred to the experience of resisting induction rather than service on the front lines, the distinction escaped most journalists and ERA opponents. See *id.* See also Ginsburg, *Gender and the Constitution*, 44 U. Cin. L. Rev. 1, 24-25 (1975) (noting that combat exclusions have impeded women's advancement in the armed forces); M. Binkin & S. Bach, *Women and the Military* 98-99 (1977) (Brookings Institute study providing comprehensive analysis of military positions in which women could perform at least as effectively as men); Note, *The Equal Rights Amendment and the Military*, 82 Yale L.J. 1533, 1539-54 (1973).

105. Felsenthal, *supra* note 26, at 157 (quoting Phyllis Schlafly). Other observers agreed that the draft has remained a "focal point of opposition to the Amendment." H. Kay, *supra* note 60, at 19. See also note 101 and accompanying text.

106. For a summary of the major polls on support for the amendment, see note 3, *supra*. A 1980 Gallup poll disclosed that 51% of those surveyed favored women's induction in future drafts, but only 41% wanted them to be eligible for combat roles. Gallup, *Public Support Grows for Reviving the Draft*, San Francisco Chron., Mar. 3, 1980, at 12, col. 1. Thirty-nine percent of male respondents and 50% of females opposed drafting women, and 53% of males and 56% of females surveyed opposed women's participation in combat. A Roper poll, which Senator Ervin entered into the Congressional Record, found that 64% of male respondents and 77% of females objected to women's "equal treatment regarding the draft." See 118 Cong. Rec. 3072-73 (1972).

like men or . . . sex playmates in the armed forces."¹⁰⁷ And to a substantial constituency, drafting women raised both such concerns.

Despite their often dubious factual foundations, concerns regarding sexual privacy and promiscuity in the armed forces proved difficult to dispel. Occasionally, military spokesmen were summoned to deny Schlafly's specific allegations, such as those regarding service-women's provocative clothing or licentious conduct.¹⁰⁸ Most often, however, proponents simply dismissed opposition claims as incredible on their face. That strategy may well have been imprudent, given the persistence of such concerns, even among relatively sophisticated audiences. Thus, opponents predicted in legislative floor debates that women would be housed in "barracks full of hardened military men,"¹⁰⁹ and traumatized by open latrines and soldiers relieving themselves in public.¹¹⁰

Similarly, proponents' tendency to ridicule rather than refute other assertions regarding sexual privacy was of dubious strategic value. The most notorious example involved Schlafly's account of the ERA's effects on public bathrooms. By her reasoning:

It is clear that the only reason that this nation has separate restrooms for men and women and boys and girls is sex. Consequently, being a distinction based on sex, the ERA would abolish the power of the Federal Government and the power of the 50 states to require separate facilities of this nature for persons of different sexes.¹¹¹

With comparable logic, other opposition spokesmen projected the demise of sex-segregated locker rooms, saunas, and hospital facilities.¹¹² Indeed, as one Illinois opponent grimly warned, "The House of the Good Shepherd for wayward girls, I suppose, can be inhabited by anybody looking for a room for the night."¹¹³

107. *ERA Marches On To Another Loss*, Time, May 26, 1980, at 23 (quoting Phyllis Schlafly).

108. See, e.g., Wohl, *supra* note 36, at 57, 85 (response of S. Duncan, Navy Public Affairs officer, to Schlafly's account of life aboard the U.S.S. Sanctuary; Duncan also denied allegations that women had engaged in tantrums to evade work).

109. *Florida Senate Rejects Equality For Women: ERA Proponents Will Ask the Voters*, Women Today, Apr. 29, 1974, at 53.

110. See *Women's Rights: Some Like it Not*, Newsweek, Jan. 15, 1973, at 17 (describing arguments by Illinois state legislators); Royko, *Borchers Hip to Girl Power*, Chi. Daily News, Mar. 26, 1973, at 3, col. 1. (quoting Illinois State Representative Webber Borchers).

111. See *Stop ERA*, *supra* note 67, at 1.

112. G. Whittenberg, *supra* note 69, at 41-42.

113. J. Boles, *supra* note 2, at 6 (quoting unidentified Illinois source); *The ERA Loses Two More Rounds*, *supra* note 3, at 18.

Despite the obvious difficulties with such syllogisms, proponents frequently focused on the arguments' triviality rather than their merits. A favorite technique was to dismiss these claims as pretextual—the "potty excuse."¹¹⁴ Some proponents could not resist the observation that Schlafly herself apparently had managed to survive the ordeal of undifferentiated restrooms during her frequent airline excursions to testify against the amendment. So too, pro-ERA literature often declined to dignify the issue by providing a substantive rebuttal.¹¹⁵

The effectiveness of such rejoinders, or of the sexual and privacy objections themselves, is impossible to gauge. But the persistence of these issues suggests that they touched deeper nerves than proponents acknowledged. Although the particular examples opponents cited may not have had great independent significance, they cumulatively evoked a vision of androgyny that threatened many core values and perceptions. Under opponents' analysis, these examples, and by extension the ERA, symbolically affirmed an asexual social order that ran counter to widely accepted norms.

2. The Symbolic Underpinnings

Early in the ratification struggle, opposition leaders began char-

114. The term was reportedly coined by Senator Cook and his staff. 188 Cong. Rec. 9531 (1972). Senator Mikva offered a comparable characterization: the "toilet training trauma" (quoted in B. Deckard, *supra* note 13, at 173).

115. Thus, for example, Washington Governor Daniel Evans submitted: "[T]he accusations concerning integration of facilities are so ridiculous, we in Washington have ceased to reply to them." Letter from Daniel J. Evans (Feb. 5, 1976), *quoted in* Report of the National Commission on the Observance of International Women's Year, To Form A More Perfect Union: Justice for American Women 28 (1976).

Similarly, one representative Illinois publication dismissed the argument with the observation:

STOP ERA asserts that equality means integrated bathrooms and dressing rooms. THE TRUTH IS—Aside from the obvious frivolity of this topic, the constitutional right to personal privacy, re-asserted in the strongest language by the Supreme Court just this term, amply covers this and similar situations. Sex-segregated sanitary facilities rest on unique physical characteristics of the sexes.

ERA Central, What is the Stop ERA Movement and Why Are They Saying All Those Terrible Things About Us?, note 84 *supra*.

It is unclear that this rejoinder adequately answered opposition's claims, which were that the ERA would not permit any differential treatment based on sex, whether or not it rested on unique physical characteristics. See, e.g., G. Whittenberg, *supra* note 69, at 42. Moreover, those whom proponents most needed to persuade did not consider the argument frivolous, and trivializing their perceptions was a questionable strategy. A more constructive alternative might have been to add a brief explanation that Congress had clearly intended to permit sex-segregated facilities. For the relevant legislative history, see S. Rep. No. 689, 92d Cong., 2d Sess. 12 (1972).

acterizing their target as the "unisex amendment."¹¹⁶ That label proved impossible to discard. To be sure, some supporters, such as Catharine MacKinnon, attempted to present the ERA's vision of equality as "an eradication not of gender differentiation but of gender hierarchy."¹¹⁷ But, for the most part, that distinction was inadequately explicated or absorbed.¹¹⁸ In Illinois, as elsewhere, observers continued to perceive the amendment as a tool to "nullify . . . distinction[s] between the sexes,"¹¹⁹ and to "force us into a gender-free society."¹²⁰ From opponents' perspective, the amendment's projected prohibitions, especially those regarding preferential treatment in military, employment, and domestic contexts, ignored sex-linked characteristics that were biologically determined or culturally desirable.

For example, the supposition that women could perform well in combat struck many Americans as physiologically and psychologically untenable. Among them was Illinois state legislator Webber Borchers, who insisted that women's "inadequate hip structure" and "tender feet" would not enable them to move rapidly or keep pace on long marches.¹²¹ And unlike men, who were by instinct "hunters and warriors," women

116. That characterization found favor with academics and publicists alike. See, e.g., Timmesch, *supra* note 2, at 54 (quoting Professor Philip Kurland); G. Whittenberg, *supra* note 69, at 54.

117. Or, as MacKinnon added, the issue is not "gender difference, but the *difference gender makes*" in the current social order. C. MacKinnon, *The Future of Women's Rights* 2, 3 (Mar. 16, 1982) (Unpublished Statement from a Debate with Phyllis Schlafly, Stanford Law School). See also Merrideu, *Jesse Jackson Backs ERA*, Chi. Trib., May 25, 1975, at 8, col. 6 (quoting Jesse Jackson) ("most arguments against the ERA arise from 'equality' being incorrectly equated with 'sameness'").

118. In part, proponents' difficulties in articulating their position may have reflected a general poverty of theory among liberal feminists. See generally E. Janeway, *Man's World, Woman's Place: A Study in Social Mythology* 229-33 (1971); and C. Degler, *Revolution Without Ideology: The Changing Place of Women in America*, in *The Woman in America* 193, 204 (R. Lifton ed. 1964). Difficulties may also have stemmed from ambivalence within the feminist community as to the appropriateness of sex-linked role patterns in a just society. See J.B. Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* 241-48 (1981); Jaggar, *On Sexual Equality*, 84 *Ethics* 275, 275-78 (1974); *Femininity, Masculinity and Androgyny* (M. Vetterling-Bruggin ed. 1982); and sources cited *infra* in note 261.

119. *DAR Hits Satanism, Sex Equality*, Chi. Trib., Apr. 18, 1974, § 2, at 7, col. 1 (quoting denunciation by Daughters of the American Revolution at their 1974 convention).

120. Schipper, *supra* note 7, at 88 (quoting Phyllis Schlafly).

121. Royko, *supra* note 110, at 12. To underscore the significance of the hip deficiency, Borchers recalled from his own World War II experience how a German woman soldier had been "cut right in half" by a machine gunner. "Because of her hips, she couldn't run the way a man could." *Id.* As to the foot problem, Borchers hypothesized that when female soldiers lagged behind, their male comrades would have to "stop and pick them up [They] will do that because it is natural for [them] to want to protect women[, b]ut it will hamstring the infantry." *Id.*

were "gentle creature[s]" who could not "press the attack."¹²² Other legislators conjured visions of mothers in combat while their husbands "scrub[bed] floors" and children learned "a new version of 'When Momma Comes Marching Home Again'."¹²³

Although neither proponents nor the press were inclined to take such arguments seriously,¹²⁴ many members of the public entertained similar concerns. Opponents who testified before state legislative committees frequently echoed the sentiment of one Minnesota activist: "We don't want to turn our daughters into tigers and our sons into pansies. Nature did not intend men and women to be equal."¹²⁵ It was this fundamental perception about sexual differences that Schlafly and her compatriots successfully exploited. In their characterizations, the ERA became an assault on deeply-rooted notions of masculinity, femininity, and the family.

In the world as Schlafly and other anti-ERA leaders conceived it, men and women assumed unique roles, dictated by biology and sanctified by scripture. For women, the prime responsibility and greatest achievement was motherhood; for men, it was earning a livelihood. Or, as Schlafly herself once summarized the argument: "Women have babies so men should support them."¹²⁶ Biology as destiny was an incontrovertible premise, not to be shaken by occasional murmurs to the contrary:

Marriage and the home [are] the greatest liberation for women. . . . It's what they want They may say they like their job and they want a career and all that. And oh sure I know—they say they like all kinds of intellectual things and all that. But there is something they will not do that men must do—make everything take second place to their careers For women home and family come first They can't help it, [t]hat's the way they are.¹²⁷

An irony that proponents might have noted was the United States Supreme Court's use of precisely the same argument in denying women

122. *Id.* See also note 108 *supra*, for discussion of military servicewomen's alleged propensity for temper tantrums.

123. R. Eisler, *supra* note 62, at 11 (quoting Georgia Rep. N.W. Larsen).

124. For example, *Chicago Daily News* columnist Mike Royko concluded his account of Rep. Borchers' views by noting that the Representative had just completed constructing a backyard bomb shelter. Added Royko: "I forgot to ask him if he put in separate washrooms." Royko, *supra* note 110.

125. *Women: Trouble for ERA*, Time, Feb. 19, 1973, at 22 (quoting M. Olsen).

126. Loercher, *Equality for Women Stalled?*, Christian Sci. Monitor, Feb. 15, 1973, at 6, col. 2 (quoting Phyllis Schlafly).

127. Wittner, *All Women's Liberationists Hate Men and Children*, Chi. Trib., May 20, 1973, (Magazine), at 22 (quoting Phyllis Schlafly).

In some respects, arguments predicated on women's presumed contentment in solely

entry to Ms. Schlafly's chosen profession. In 1872, in upholding Illinois' refusal to admit women to the bar, Justice Bradley reasoned:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things¹²⁸

A century later, opponents entertained similar views. Women's domestic destiny had strong religious, cultural, and biological underpinnings. American women were a privileged caste, "beneficiaries of a tradition of . . . respect . . . which dates from the Christian age of chivalry [and] [t]he honor and respect paid to Mary, the Mother of Christ."¹²⁹ Unlike the Soviet Union, where "equal rights" obligated

domestic roles seemed reminiscent of the half-truths underpinning the "myth of the happy slave." See A. Montagu, *Man's Most Dangerous Myth* 186-89 (5th ed. 1974). Yet it also bears emphasis that claims regarding the immutability of gender differentiation are more empirically grounded than those regarding racial distinctions. Among the most useful distillations of primary research bearing on the biological and cultural determinants of gender roles are Hochschild, *A Review of Sex Role Research*, 78 Am. J. Soc. 1011 (1973); I. Frieze, J. Parsons, P. Johnson, D. Ruble, & G. Zellman, *Women and Sex Roles: A Social Psychological Perspective* (1978); E. Maccoby & C. Jacklin, *The Psychology of Sex Differences* (1974); M. Rosaldo & L. Lamphere, *Women, Culture and Society* (1974); S. Weitz, *Sex Roles: Biological, Psychological and Social Foundations* (1977).

128. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141-42 (1872) (Bradley, J., concurring). For comparable patriarchal sentiments, see *Mueller v. Oregon*, 208 U.S. 412 (1908), in which the Supreme Court sustained maximum labor limitations for female factory workers on the theory that "history discloses the fact that woman has always been dependent on man . . . her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her." *Id.* at 422.

As late as 1961, the Supreme Court was still predicating decisions on the basis of women's special place at "the center of home and family." *Hoyt v. Florida*, 368 U.S. 57, 62 (1961) (upholding jury registration system that automatically included men but exempted women unless they volunteered). *Hoyt* was effectively overruled in *Taylor v. Louisiana*, 419 U.S. 522, 535 n.17, 537 (1975), and *Duren v. Missouri*, 439 U.S. 357, 360 (1975).

129. P. Schlafly, *What's Wrong with 'Equal Rights' for Women?* 5 *The Phyllis Schlafly Report*, Feb. 1972, no. 7, at 1. The press frequently reprinted that statement. See, e.g., Timmesch, *supra* note 2, at 53 (quoting Phyllis Schlafly). See also *Hearings on S.J. Res. 61 and S.J. Res. 231 Before the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 4 (1970) (statement by Sen. Sam Ervin):

When he created them, God made physiological and functional differences between men and women From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed on men the primary responsibility for providing a habitation and livelihood . . . to enable wives to make the habitations home and to furnish nurture, care, and training to their children during their early years The physio-

women to place their babies in state-run kindergartens while they performed heavy manual labor, including garbage collection,¹³⁰ American women were fortunate indeed:

In America, a man's first significant purchase is a diamond for his bride, and the largest financial investment of his life is a home for her to live in Mankind has not discovered a better nest for a lifetime of reciprocal love.¹³¹

Under this perception of conjugal bliss, all worked smoothly if men and women adhered to their accustomed roles. As one opposition group described the arrangement, in the pledge its women members made to their husbands: "You make the living and we'll make life worth living."¹³²

This was the arrangement the Equal Rights Amendment threatened. In explaining his core objection to the ERA, Congressman Emmanuel Celler posited:

men and women are as different as a horse chestnut and a chestnut horse Vive la difference.¹³³

He spoke for a more substantial constituency than proponents may have appreciated. Assumptions dismissed by legal and feminist communities as outmoded stereotypes were embraced by large and vocal audiences. The Equal Rights Amendment seemed an assault on those assumptions and those who held them. According to one Chicago resident:

I enjoy being a woman and I'm sure 90% of other women feel the same. I don't want to dig ditches as women in Russia do As far as I'm concerned the passing of the Equal Rights Amendment would mean the downfall of womanhood.¹³⁴

logical and functional differences between men and women constitute the earth's important reality.

130. P. Schlafly, *supra* note 129, at 3.

131. *Id.* at 1. For seminal accounts of the cult of domesticity among American women, see B. Friedan, *The Feminine Mystique* (1963); and Welter, *The Cult of True Womanhood: 1820-1860*, 18 *Am. Q.* 151 (1966). See generally B. Roszak & T. Roszak, *Masculine/Feminine: Readings in Sexual Mythology and the Liberation of Women* (1969); Broverman, Vogel, Broverman, Clarkson, Rosen & Krantz, *Sex Role Stereotypes: A Current Appraisal*, 28 *J. Soc. Issues* 59 (1972).

132. *Happiness of Womanhood, Inc.*, *supra* note 46, at 1.

133. Elkins, *Social Order and the Equal Rights Amendment*, in California Commission, *supra* note 16, at 217 (quoting Congressman Celler).

134. Wolfe, *Only 24 Words in Equal Rights, but Millions of Words About It*, *Chi. Trib.*, Apr. 1, 1973, § 1, at 33, col. 2 (quoting Letter to the Editor of the *Chicago Tribune*). See also O'Reilly, *Every Woman has Become a Feminist in Her Own Way*, *Chi. Trib.*, June 27, 1982, § 2, at 1, col. 3 (quoting an unidentified Oklahoma opponent) ("I want to be the lady in the family Of course I expect equal pay.").

So too, other opponents grimly predicted that, under the ERA's regime, women would relinquish all traditional prerogatives of their sex. That the amendment, by its terms, encompassed only state, not private, action was a legal nuance lost on many observers. Once granted equal rights, women could anticipate paying for their own meals, carrying their own packages, and coping unassisted with doors.¹³⁵ It was to avert such results and to defend "femininity, masculinity and chivalry"¹³⁶ that many anti-ERA organizations dedicated their efforts. Indeed, the names of opponent groups frequently intimated their members' views on this point, for example, Feminine Anti-Feminists, GiGi Gals Galore Against the ERA, Winsome Wives and Homemakers, and Women Who Want to Be Women.¹³⁷

Equally in need of defense was the family. To the John Birch Society, "[u]ltimately what [the ERA] comes down to is an attack on the family, the building block of our civilization."¹³⁸ Other opposition spokesmen, including Schlafly, sounded similar themes, which were quickly echoed by various religious and right-wing political leaders. Under their analysis, the Equal Rights Amendment, with its denial of gender difference, its presumed tolerance for homosexuality, and its abrogation of laws protecting homemakers, was an assault on the very fabric of society.¹³⁹ This would, in turn, lead to "unhappiness, and

135. G. Whittenberg, *supra* note 69, at 42, projected these consequences for women in restaurants and grocery stores. An unidentified female state legislator cited concerns about doors as the sole explanation for her opposition to the amendment. J. Boles, *supra* note 2, at 6. During the Congressional ratification debates, Senator Ervin also raised questions regarding female telephone operators' exposure to obscene language. See 118 Cong. Rec. 9531 (1972).

136. Happiness of Womanhood, Inc., *supra* note 46, at 1.

137. Other organizations included American Women Already Richly Endowed; Happiness of Motherhood Eternal (HOME); Humanitarians Opposed to Degrading Our Girls; Housewives and Motherhood Anti-Lib Movement; Right to Be a Woman; and Women for Maintaining the Differences Between the Sexes and Against the ERA. For a fuller catalogue, see J. Boles, *supra* note 2, at 200-02.

138. Loercher, *supra* note 126, at 1, col. 2 (quoting John MacManus, spokesman for the John Birch Society).

139. See discussion at text accompanying notes 67-80 *supra*. Opponents frequently assumed that the ERA would license homosexual marriages. See e.g., G. Whittenberg, *supra* note 69, at 18 (referring to ERA as the Homo Amendment); J. Boles, *supra* note 2, at 5 (remarks of Jaquie Davison, president of Happiness of Womanhood). The legal predicate for that assumption is questionable. See 118 Cong. Rec. S9331 (daily ed. Mar. 21, 1972) (statement of Sen. Birch Bayh) (suggesting that states must simply treat lesbian and homosexual marriages in uniform fashion); *Singer v. Hara*, 11 Wash. App. 247, 522 P.2d 1187 (1974) (holding that state equal rights amendment did not require recognition of single-sex marriages). But see R. Lee, A Lawyer Looks at the Equal Rights Amendment 64-65 (1980) (arguing that homosexuals could well prove to be "among the principal beneficiaries of the ERA").

increasing rates of divorce . . . desertion . . . alcoholism, suicide and possibly sexual deviation."¹⁴⁰

Thus conceived, the ERA was a natural target for conservative animus from almost every quarter. Depending on the critic, the amendment's sponsors assumed different, but invariably sinister, guises: emissaries of Satan,¹⁴¹ co-conspirators in a campaign "to destroy our [American] way of life,"¹⁴² or "a bunch of bitter women [liberationists] seeking a constitutional cure for their personal problems."¹⁴³ Such attributions touched responsive chords in a wide array of audiences.

Given its alleged effects on motherhood and morality, the ERA was an obvious rallying point for religious organizations, particularly Catholic women's and fundamentalist groups. Although surveys and public statements revealed a substantial degree of support for the ERA among Protestant and Jewish leaders,¹⁴⁴ they were far less active in mobilizing participants than were the Catholic and fundamentalist spokesmen who opposed ratification. In northern industrial states, such as Illinois and New York, various Catholic organizations recruited members to fight the amendment, often by linking it with other volatile issues such as abortion, homosexuality, and the related evils of a "singles society."¹⁴⁵ In southern and western states, some fundamentalist and

140. *ERA—Selling Womanhood Short*, 14 *Christian Crusade Weekly*, Mar. 10, 1974, at 3 (quoting J. Pincus, Professor of Neurology, Yale Medical School). See also Letter to the Editor of the *Chicago Tribune* from Robert Dalehide (Apr. 6, 1975) (crediting F. Gilder's *Sexual Suicide* with the observation that "the proposed ERA would unduly favor and promote a 'singles' society and weaken the basic family structure," and adding that "[a] singles society is most susceptible to mental and serious criminal disorders").

141. See, e.g., O'Reilly, *supra* note 52, at 60 (remarks of Bunny Chambers, head of the Pro-Family Forum, and Oklahoma City Bible class teacher) (The ERA struggle is "not a battle between men and women, or women and women. This is a battle between God and Satan."). Other opponents characterized the true portent of the amendment's acronym as "Evil Rules America." J. Bolea, *supra* note 2, at 7.

142. Loercher, *supra* note 126, at 1 (quoting John Birch spokesman John MacManus).

143. Wittner, *supra* note 127, at 21 (quoting Phyllis Schlafly).

144. For a compilation of the religious organizations on record as supporting or opposing the Equal Rights Amendment in 1972, see ERA Support Project, *The Church, Religion and the Equal Rights Amendment* (1978). See also *Changing Church Roles for Women*, Christianity Today, Sept. 27, 1974, at 42 (citing survey of 250 "denominational leaders" in which three-quarters of respondents favored the amendment).

145. For an account of the efforts by Catholic churches and societies to defeat the amendment in New York, see Swidler, *Catholics and the ERA*, 103 *Commonweal* 585 (1976). Those involved in the Illinois ratification struggle testified to similar efforts. See J. Boles, *supra* note 2, at 107-08; Shanahan, *Equal Rights Test is Near In Illinois*, N.Y. Times, Mar. 2, 1975, at 4, col. 5 (noting that church groups feared the ERA would bring abortion as well as looser sexual standards, and that opposition by individual priests seemed to influence certain key Illinois legislators).

Schlafly herself frequently linked the ERA with abortion. See, e.g., P. Schlafly, *The Power of the Positive Woman* 89 (1977); Schlafly, *What's Wrong With Equal Rights for*

Mormon leaders played a similar role. For example, a survey of anti-ERA activists in Texas revealed that sixty-six percent were members of fundamentalist churches (as compared with eight percent for the state as a whole), while ninety-two percent reported that religion was "very important" to them.¹⁴⁶ For many of these women, and their Catholic allies, the ERA challenged role distinctions embedded both in church doctrine and in vital social institutions.¹⁴⁷

To the extent opponents viewed such institutions as under siege, the ratification struggle also assumed important political dimensions. Particularly in southern and southwestern states, conservative leaders frequently identified the ERA as yet another assault on states' rights, and recalled the federal government's enforcement of comparably open-textured mandates in civil rights cases.¹⁴⁸

Women? 5 The Phyllis Schlafly Report, Feb. 1972, at 2, 4; Wittner, *supra* note 127, at 16 (remarks of Phyllis Schlafly); J. Boles, *supra* note 2, at 107. However, proponents and prominent Catholic church leaders repeatedly denied any connection. See, e.g., *Is God for the ERA*, Ms., May 1982, at 102 (interview statement by The Most Reverend Michael F. McAuliffe, chairman of the National Conference of Catholic Bishops Committee on the Status of Women in Society and in the Church) ("[t]he ERA will not condone abortion. It is absolutely essential to separate the issue of abortion from ERA. I am opposed to abortion and I am unequivocally in favor of the ERA.") See also Felsenthal, *supra* note 26, at 157 (remarks of Harvard Law Professor Laurence Tribe) ("I have concluded that adoption of the amendment would have no effect whatever on the power of the states to regulate abortion."). Such predictions have not, however, dissuaded plaintiffs from relying on state ERAs to challenge abortion funding cutbacks. See *id.* (discussing effort by Massachusetts Civil Liberties Union to enjoin cut-off of state funds for abortions).

146. See Brady & Tedin, *supra* note 48, at 573, 575; *Selling ERA To Mormons*, Newsweek, July 13, 1981, at 26. For a general profile of women involved in various conservative crusades, including the anti-ERA campaign, see A. Dworkin, *Right-Wing Women* (1982); and J. Bernard, *Women, Wives and Mothers: Values and Options* 165-95 (1975).

147. For a summary of the ways in which Catholic liturgy, publications, and organizational hierarchy reinforce women's subordinate status, see generally M. Daly, *Beyond God the Father* (1973); M. Daly, *The Church and the Second Sex* (1968) (citing, *inter alia*, the exclusion of women from sanctuary and policy functions, and the characteristics, such as submission and motherhood, ascribed to appropriate female role models). See also S. de Beauvoir, *supra* note 97, at 586 (noting how the Catholic Church reinforces "male guardianship" while sanctifying female passivity).

Fundamentalist spokesmen and followers have emphasized similar values. See generally Brady & Tedin, *supra* note 48, and sources cited therein. Among the most publicized statements reflecting the fundamentalist view of equal rights was that of a Montana legislator, who informed his colleagues that if God had wanted women to be equal, he would have had six female apostles. J. Boles, *supra* note 2, at 6. Some female opponents expressed similar views. See, e.g., O'Reilly, *supra* note 134, section 2, at 1, col. 3 (remarks of an unidentified Oklahoma homemaker) ("And the Bible says the man should be the head of the family"); A. Dworkin, *supra* note 146, at 117 (remarks of Mississippi opponent) (under the Equal Rights Amendment, women would have to assume equal responsibility for decision making and for money, contrary to the will of God).

148. See, e.g., O'Reilly, *supra* note 52, at 61 (remarks of Kenneth McFall, executive

Extremist right-wing organizations imbued the amendment with still more subversive overtones. Despite the Communist Party's official opposition to the ERA, the John Birch Society conceived the amendment as an integral part of the "Communist plans . . . at work in a now vast effort to reduce human beings to living at the same level as animals."¹⁴⁹ Other opponents, less certain about the ERA's conspiratorial origins, nonetheless perceived it as promoting a "communistic way of life."¹⁵⁰ As evidence for such assertions, some opposition leaders quoted Marx, Engels, and Lenin on the "liberation of women,"¹⁵¹ or invited their audiences to draw the appropriate historical inferences:

What is liberation? Ask women in Cuba. Castro "liberated" Cuba. Remember?¹⁵²

Among some constituencies, the ERA fell victim to a general backlash against the radicalism of the 1960's.¹⁵³ Proponents' call for equality and emancipation rekindled fears, if not of revolution, of severe dislocations in a congenial way of life. To those who accepted prevailing norms as more than transitory social artifacts, the feminist platform appeared profoundly disquieting.

So too, as the comment linking liberation and Cuba suggests, the opposition was able to unite diverse conservative constituencies by invoking one all-purpose scapegoat, women's liberation. In essence, the strategy was grounded on two assertions: that "women's libbers" were

secretary of the Oklahoma Farm Bureau) ("Civil rights was an area of states' rights until the 1950's. We didn't want Congress to have any more rights to enforce, especially this kind of vague [equal rights] law."). See also *DAR Hits Satanism, Sex Equality*, *supra* note 119, at 7, col. 1 (statement of Daughters of the American Revolution); J. Boles, *supra* note 2, at 170 (discussing fears in Georgia that the amendment would lead to more Supreme Court decisions like *Brown v. Board of Education*).

149. The John Birch Society Bull., May 1973, at 25. An explication of the Communist Party's views appears in Ristorucci, *Why We Oppose the ERA*, *Pol. Affairs: J. Marxist Thought & Analysis*, Mar. 1976, at 8. Under pressure from women members, the Communist Party muffled its reservations in the late 1970's. See R. Eisler, *supra* note 62, at 34.

150. Letter to the Editor of the *Chicago Daily News* from Eileen Condon and eleven cosigners (Feb. 1973). For comparable statements from those involved in the Georgia ratification struggle, see J. Boles, *supra* note 2, at 108.

151. J. Boles, *supra* note 2, at 108 (quoting unidentified Georgia spokesmen). See also G. Whittenberg, *supra* note 69, at 57 (quoting from the Soviet Union's Constitution guaranteeing "equal rights" for women).

152. O'Reilly, *supra* note 52, at 60 (quoting from *The Pink Sheet*).

153. Clearly, however, the anti-feminist movement had much deeper historical roots. As William Chafe notes, since the 1920's, "no issue has divided women's organizations more than the Equal Rights Amendment." W. Chafe, *supra* note 9, at 112. Much of the early opposition to the ERA paralleled contemporary sentiments in its ideological and rhetorical cast. See *id.* at 112-32, and sources cited therein; A. Kessler-Harris, *supra* note 12, at 206-10.

pursuing radical and amoral objectives, and that the ERA was a product and hence a legitimization of those ends.

From the outset of the ratification struggle, Schlafly missed few opportunities to vilify her adversaries:

Their motive is totally radical. They hate men, marriage, and children. They are out to destroy morality and the family. They look upon husbands as the exploiters, children as an evil to be avoided (by abortion if necessary), and the family as an institution which keeps women in "second-class citizenship" or even "slavery."¹⁵⁴

According to Schlafly, these "radical and nihilistic" aims were "plainly stated" in the movement's own manifesto, namely *Ms. Magazine*.¹⁵⁵ In short, "[w]omen's lib is a total assault on the role of the American Woman as wife and mother, and on the family as the basic unit of society."¹⁵⁶

It was equally apparent to Schlafly that this pernicious social movement was the driving force behind the ERA. The long list of non-feminist organizations and political leaders that had supported it were unworthy of notice. Rather, the amendment was:

an example of how a tiny minority can cram its views down the throats of the majority A noisy clique of women's lib agitators rammed ERA through Congress, intimidating the men into voting for it so they would not be labelled "anti-woman."¹⁵⁷

Even more to the point, ratification would constitute an unequivocal endorsement of feminist views and values. Accordingly, it was essential for the real "majority of American women" to make their voices heard:

[l]et's not permit these women libbers to get away with pretending to

154. Schlafly, *The Right to Be a Woman*, 6 The Phyllis Schlafly Report, Nov. 1972, at 4.

155. *Id.* at 4. See also Schlafly, *supra* note 145, at 4. In her 1972 Report, Schlafly offered the following analysis of that year's spring issue of *Ms.*:

It is anti-family, anti-children, and pro-abortion. It is a series of sharp-tongued, high-pitched whining complaints by unmarried women. They view the home as a prison, and the wife and mother as a slave. To these women's libbers, marriage means dirty dishes and dirty laundry. One article lauds a woman's refusal to carry up the family laundry as "an act of extreme courage." Another tells how satisfying it is to be a lesbian.

. . . The principal purpose of *Ms.*'s shrill tirade is to sow seeds of discontent among happy, married women so that *all* women can be unhappy in some new sisterhood of frustrated togetherness.

Schlafly, *supra* note 145, at 3-4. That same Report also contains a capsule account of the *Büch Manifesto*, from an unspecified issue of *Woman*.

156. Schlafly, *supra* note 145, at 4.

157. Schlafly, *The Fraud Called the Equal Rights Amendment*, The Phyllis Schlafly

speaking for the rest of us. Let's not permit this tiny minority to degrade the role that most women prefer.¹⁵⁸

That Schlafly's call to arms proved so effective should hardly have been surprising. As de Beauvoir noted, many women "confined within the conjugal sphere" will prefer to envision their domain as less "a prison [than] a realm"; for them it becomes the "center of the world and even its only reality."¹⁵⁹ A social movement that disturbs such entrenched conceptualizations will necessarily invite backlash. American feminism was no exception; as noted earlier, most members of the public did not view women's liberation in a positive light.¹⁶⁰ In denouncing radical feminists, Schlafly was preaching largely to the converted. And to a considerable extent, the strength of her appeal lay in weaknesses of the women's movement itself, most notably in its perceived deprecation of traditional family values and their adherents.

For women with no real career aspirations, particularly full-time housewives or occupants of low-status jobs, feminism represented an obvious threat. Women who had conceived their role primarily or exclusively as homemakers found Schlafly's rhetoric flattering and reassuring; it exalted their values and ennobled their station. By contrast, feminist ideology implied that these women had made the wrong choices and demanded reappraisal of their self-concepts, priorities, and way of life.

That message was understandably unwelcome in many quarters. For some, it seemed to come too late. Those who had followed traditional paths resented the assault on their views and status. The ERA afforded a vehicle for venting their frustration and reaffirming their sense of importance and influence in a changing social order.¹⁶¹ Once family and

Report, May 1972, at 4.

158. Schlafly, *supra* note 145, at 4.

159. S. de Beauvoir, *supra* note 97, at 424. See also M. Astell, Reflections on Marriage (1700) (women "are for the most part wise enough to Love their Chains"), quoted in Mitchell, *Women and Equality*, in *The Rights and Wrongs of Women* 379, 390 (J. Mitchell & A. Oakly eds. 1976); J.S. Mill, *The Subjugation of Women* in J.S. Mill & H. Mill, *Essays on Sex Equality* 227 (A. Rossi ed. 1970) ("[a] woman born to the present lot of women and content with it, how should she appreciate the value of self-dependence?").

160. See note 91 *supra* and accompanying text.

161. Lipset and Raab attribute engagement in right wing politics as a reaction "against the displacement of power and status accompanying change" by groups that are declining in a "felt sense of importance, influence, and power as a result of secular endemic change in the society." S. Lipset & W. Raab (1971) (suggesting that much anti-suffragist activity was attributable to concerns over status); Gusfield, *supra* note 20, at 185 (analyzing Prohibition as a struggle over a legal "symbol of social power and status"); H. Lasswell, *Psychopathology and Politics* 195 (1960) (discussing the "catharsis function" of symbolic political actions).

feminism were fixed as the relevant poles of debate, many women could be expected to rally around the symbol by which they had ordered their own priorities.

For other women, whose lives were more in flux but whose actual opportunities appeared limited, feminism demanded an assumption of personal responsibility for their future that was more disquieting than liberating. Compared with the familiar values and well-defined role models that Schlafly espoused, the feminist alternative seemed unclear, unsettled, and unreasonably demanding. For some, the fears of failure and uncertainties of choice made liberation an uncongenial objective.¹⁶²

So too, particularly for individuals in lower socio-economic brackets, the fundamental aspirations and assumptions of the women's movement seemed out of phase with daily realities. To those lacking adequate employment skills, mobility, or child-care arrangements, the feminist preoccupation with professional achievement seemed elitist and irrelevant. In the view of one Illinois opposition leader, the ERA proponents were "BPWers [members of Business and Professional Women organizations] and oddball feminist types who put work before family."¹⁶³ Their ratification campaign reflected a "selfish" attempt to advance their own career interests at the expense of the majority of women, who, if they worked at all, held "menial" and part-time jobs.¹⁶⁴

162. See *Introduction*, California Commission, *supra* note 16, at 14; C. Heilbrun, *supra* note 38, at 32-33.

163. Interview with Darlene Deginhardt, *supra* note 45. Deginhardt's claim was not without factual basis. For example, a 1974 survey of NOW members revealed that only 17% listed "homemaker" as their primary occupation. Seventy-eight percent of respondents were employed, 66% held college degrees, and 30% had advanced degrees. A quarter of the sample were "professionals"; an additional quarter were teachers or students. Only 8% of NOW members were clerical workers, although women in such positions accounted for 35% of the female work force at the time. See J. Freeman, *supra* note 43, at 91-92. For comprehensive profiles of the membership of major feminist organizations, see M. Carden, *The New Feminist Movement* (1974).

164. *Id.* The point was echoed elsewhere. See, e.g., Van Gelder, *supra* note 81, at 68 (remarks of J. Kaplan) ("Only a small percentage of women make it big in their careers Most of us just want to add to the family income. I just do my little job"). See also Arrington & Pyle, *Equal Rights Amendment Activists in North Carolina*, 3 Signs 666, 673 (1978) (finding that ERA opponents in North Carolina tended to be housewives and were less well-educated and more likely to be married to men in lower-status occupations than proponents); L. Howe, *supra* note 97, at 216-17 (reporting evidence that non-professional women express high levels of satisfaction with even mundane domestic tasks).

For general comparisons of the occupational expectations and values among blue collar and professional women, see M. Komarovsky, *Blue Collar Marriage* 49, 56 (Vint. ed. 1967); and A. Kaplan & J. Bean, *Beyond Sex-Role Stereotypes: Readings Toward a Psychology of Androgyny* 276 (1976).

By devaluing family-centered and avocational pursuits, the "liberation" movement appeared to endorse an alternative as confining as the domestic stereotypes it sought to supplant. According to several New York opponents:

[the feminist ERA sponsors] make it seem like you have to be one way and only one way to be liberated If I want to do the dishes, why should I feel guilty about it Women libbers . . . don't come down to the common level ¹⁶⁵

I know [feminists] are intelligent women but I don't [think] they put enough value on the feminine role in the home. The woman who stays home is preparing the next generation but that's not respected. They don't even value volunteer work. I just don't [think] they've tried to reach women in general. ¹⁶⁶

As those observations suggest, the failure of the Equal Rights Amendment was in some measure a failure of feminism, at least as presented to the public over the last two decades. There were, of course, other causes, including resistance to change in general and women's advancement in particular. But without doubt, some constituencies were unnecessarily alienated by feminist polemics and priorities. For many women, it was ERA opponents rather than supporters who appeared to offer real choices. It was Schlafly who conferred dignity and significance on a domestic role that society as a whole has undervalued. Moreover, in the critical early phases of the ratification struggle, proponents often seemed unable to appreciate, let alone allay, the concerns underlying opponents' symbolic appeals.

Although Schlafly's efforts to "whi[p] up sentiment against radical libs"¹⁶⁷ were plainly apparent, many proponents seemed oblivious to the effectiveness of that strategy. To be sure, a few of the more politically astute supporters crisply rebutted their adversaries' claims by noting that ERA supporters included President Nixon and Mayor Daley, scarcely

165. Van Gelder, *supra* note 81, at 68 (quoting Barbara Goldstein).

Sociological research has also revealed resentment among working class housewives towards a perceived "attempt by Lib leaders to tell other women what they ought to do, feel, be proud of, or ashamed about" as wives and mothers. R. Coup, S. Green, & B. Gardner, *A Study of Working Class Women in a Changing World* 103 (1973).

166. Van Gelder, *supra* note 81, at 67 (quoting Lilly Newman). See also Nemy, *supra* note 93, at 32, col. 2 (remarks of Elinor Guggenheimer, Commissioner of New York City Department of Consumer Affairs) (criticizing the "negative NOW attitude on volunteerism"). Schlafly herself credited the "general women's lib assault on the homemaker," as the critical factor animating many opponents. Margolia, *Bill Failed as Women Succeeded*, Chi. Trib., June 27, 1982, § 2, at 2, col. 3 (quoting Phyllis Schlafly).

167. Interview with Esther Saperstein, cosponsor of the ERA in Illinois, *supra* note 79.

card-carrying members of "women's lib."¹⁶⁸ Too often, however, proponents accentuated rather than undercut the perceived linkage between the Equal Rights Amendment and radical feminism.

For example, in early 1973, under the auspices of the Chicago Women's Bar Association, ERA Central organized a press conference with an eye to counteracting STOP ERA's assertion that "the supporters of the amendment are a bunch of man-eating harpies."¹⁶⁹ To this end, they scheduled brief pro-ERA statements by three suburban housewives, an airline stewardess, and a Playboy bunny. It is doubtful that the event accomplished its stated objectives. Journalists predictably treated it as a lark—the *Chicago Daily News* account, titled *A Bunny Hops on Rights Issue*, opened its narrative by noting that "[t]he first Playboy bunny to speak out on the Equal Rights Amendment went hop hop hop Wednesday for ERA."¹⁷⁰ Worse yet, when a reporter inquired of the bunny, who ostensibly was present to exemplify positive sentiment toward men, whether she ever discussed equal rights with her customers at the Playboy Club, she replied: "No, they are a perfect example of pigism."¹⁷¹

Similarly, as that press account reflects, proponents may not have made sufficient efforts to dissuade journalists from painting the amendment in radical feminist hues. Since most newspaper editors favored the

168. For example, Jill Ruckelshaus, wife of then Cabinet member William Ruckelshaus, noted in her testimony before the Illinois House subcommittee hearings:

We hear the charge that E.R.A. is an arm of the women's lib [movement].
Quite ridiculous. President Nixon is no member of women's lib . . . [and
he] strongly supports [the measure].

Equal Rights Wins Approval of House Committee, Chi. Trib., Mar. 23, 1973, § A1, at 4, col. 1 (quoting Jill Ruckelshaus).

Similarly, Illinois House cosponsor Giddy Dyer, when facing "outrageous opponent claims" that the amendment would invalidate laws on sex crimes, snapped back: "President Nixon and Mayor Daley are for the ERA. Would they want to wipe out rape and prostitution laws?" Interview with Giddy Dyer, in *Chicago* (Aug. 18, 1973).

169. *A Bunny Hops on Rights Issue*, Chi. Daily News, Feb., 1973, at 34.

170. *Id.*

171. *Id.*

So too, proponents' acceptance of financial contributions from the Playboy Foundation did not pass unnoticed. For example, in a presentation for the 1978 Illinois League of Women Voters Legislative Day, Schlafly orchestrated an original vocal composition beginning:

Here comes Playboy cottontail,
Hopping down the bunny trail
Trying to buy the votes for ERA
Telling every girl and boy
You can only have your joy
By becoming gender-free or gay.

C. Felsenthal, *supra* note 4, at 243 (quoting Phyllis Schlafly).

ERA,¹⁷² they might well have proved sympathetic to supporters' need to distance the issue from an unpalatable social movement. As it was, media accounts seemed to buttress Schlafly's claim that the amendment was a product of women's liberation. A representative sample of 1972-1973 Chicago newspaper stories includes: *Woman Against Lib*; *Women's Lib Fight Tougher*; *Marching Along with Women's Lib*; and *Pin-Up Gals Fight Lib Law*.¹⁷³

As the ratification campaign wore on, proponents profited too little from prior mistakes, often failing even to recognize them as such. Midway through the struggle, a few prominent feminists began to acknowledge needs to diversify the movement's leadership, alter its image, and broaden its support among nonprofessional constituencies.¹⁷⁴ On the whole, however, such perceptions were not widely shared by those orchestrating the ERA campaign. While national leaders were commissioning public relations firms to enhance the amendment's appeal,¹⁷⁵ local ERA supporters were busy entrenching unpalatable stereotypes. Denunciations of opposition leaders and legislators frequently appeared strident, patronizing, or patently offensive.¹⁷⁶ Many proponents seemed

172. See J. Boles, *supra* note 2, at 110-11, 138 (noting, *inter alia*, the editorial endorsements of the ERA by major urban newspapers). See, e.g., the *Chicago Daily News* editorial coverage of state legislative actions, *Setback for Women's Rights*, Chi. Daily News, May 19, 1972, at 10, col. 1. ("The [legislators'] debate, with its tired clichés, ribaldry, and a maudlin tribute to motherhood missed the point entirely."); see also *The Mossbacks Win Again*, Chi. Daily News, Apr. 6, 1973, at 12, col. 1 (editorial quoted in text accompanying note 202 *infra*).

173. The respective selections are from Chi. Trib., Feb. 7, 1973, § 1, at 12, col. 4; Chi. Trib., Feb. 1, 1973, § 2, at 5, col. 1; Chi. Trib., May 28, 1972, § A1, at 5, col. 3; and Chi. Daily News, Apr., 1972.

174. For example, various supporters advanced such suggestions after the amendment's defeat in New York in 1975. See, e.g., Nemy, *supra* note 93, at 32 (quoting Betty Friedan) ("[Recognition of] the worth of either spouse in the house . . . [has] been drowned out by the rhetoric of revolution. . . . Too many people in the movement are talking to themselves. There's a self-hypnosis going on."); *id.* (quoting Elinor Guggenheimer, Commissioner, New York City Dep't of Consumer Affairs) ("We have very effective leaders . . . but the leadership [also] should include women with whom various segments of the population can identify."); *id.* (quoting Elizabeth Harris, president of the Women's Forum) ("We've argued as though all women were terribly depressed and suffering. . . . And we haven't emphasized the word 'choice.' The woman who chooses to stay home shouldn't feel threatened by us."); *id.* (quoting Muriel Fox, founder of NOW) ("Our biggest forward thrust should be to communicate our priorities to housewives and blue collar workers. . . . We have to . . . listen to what they are saying.").

175. See *Madison Ave. Equality*, Nat'l Rev., June 25, 1976, at 666 (reporting that major advertising firms had been hired to make the ERA "respectable"); *A Marketing Blitz to Sell Equal Rights*, Bus. Week, Apr. 19, 1976, at 146 (quoting Vel Ranken, creative director and vice president of Ogilvy and Mather) (describing \$230,000 media campaign treating the ERA as a "product with a problem").

176. See, e.g., Van Gelder, *supra* note 81, at 68 (characterizations of ERA supporters by

to dismiss the unpersuaded as unworthy even to participate in the debate. If male, the opponent was a misogynist; if female, she was incompetent to recognize her own interests.¹⁷⁷

So too, decisions to assign more militant ERA supporters a highly visible role in the campaign may have overshadowed other efforts to expand support for the amendment. Rallies prominently featuring lesbian and socialist workers' groups, or feminists like Gloria Steinem who demanded "revolution not just reform,"¹⁷⁸ were hardly likely to convert the uncommitted. To some ERA supporters, participation by all wings of the movement was an important matter of principle,¹⁷⁹ but it came at a high political price. As one local lobbyist observed, "you don't bring Gloria Steinem to Georgia. . . . It was counter-productive."¹⁸⁰

In retrospect, one of the most striking aspects of the ERA debate is the persistency with which proponents misdiagnosed their own difficulties. From their vantage, the obstacles to ratification were all of others' making. "What went wrong," according to the president of NOW's New York chapter, "had nothing to do with image. . . . We came across as little ladies in white gloves politically. The opponents used fear, distortion, outright lies and scare tactics."¹⁸¹ To national NOW president Eleanor Smeal, the real culprit was the Republican Party.¹⁸² Other

New York opponent J. Kaptan) ("braless types, lesbians, marching types, and just hostile, nasty, bitchy, wrong women interested in wrong things."); J. Boles, *supra* note 2, at 88 (remarks of unidentified opponents) ("rude," "profane," "women but not ladies"); see also R. Coup, S. Green & B. Gardner, *supra* note 165, at 103-06 (reporting objections by working class housewives to feminists' marching, picketing, rough language, etc.). For discussion of the offensive tactics giving rise to such charges, see discussion at text accompanying notes 232-35 *infra*.

177. For examples of such characterizations, see notes 185, 186 and 235 *infra*.

178. Felsenthal, *supra* note 26, at 140 (quoting Gloria Steinem).

179. According to Bebe Smith, vice president of Georgia NOW, the organization's leadership was unwilling to request groups such as the Atlanta Lesbian Feminist Alliance and the Socialist Workers Party to remain in the background: "It was a matter of principle for me. A few years ago NOW was considered to be too radical. I was not going to be a part of telling other groups that they couldn't participate." Wohl, *supra* note 2, at 82 (quoting Bebe Smith).

180. Wohl, *supra* note 2, at 82 (quoting Doris Holmes, chairperson of the Georgia League's Committee on the Legal Status of Women). President Carter's analysis of the 1974 ERA defeat in Georgia carried the same implication:

There's been some confusion between ERA as such and the Women's Liberation people. Instead of looking at ERA as a way to guarantee women equal employment opportunities, they look on it as a movement by the Gay Liberation Front or Gloria Steinem and other more liberal and exotic characters to destroy proper relationships between husbands and wives.

J. Boles, *supra* note 2, at 107 (quoting Jimmy Carter).

181. Nemy, *supra* note 93, at 32 (quoting Carol De Saram).

182. See Hunter, *Leaders Concede Loss on Equal Rights*, N.Y. Times, June 25, 1982, at

supporters variously ascribed responsibility to "big business,"¹⁸³ right wing extremists,¹⁸⁴ self-hatred or stupidity among women opponents,¹⁸⁵ and rank sexism among male legislators.¹⁸⁶

Such ad hominem reflected an unhappy mix of tunnel vision and wishful thinking. Too often proponents assumed that the public was simply deceived. In fact, it was deeply divided. The source of opposition that conservative leaders tapped was more deeply rooted than feminists

A13, col. 1 (remarks of Eleanor Smeal) (the Republican party "actually led the attack" against the amendment); see also Egler, *In Illinois, a Roller Coaster History with Thrills to the End*, Chi. Trib., June 27, 1982, § 2, at 2, col. 2 (remarks of Eleanor Smeal) ("[T]he reality is that the Republican party is cheating women's equality. They are totally responsible for this.") (referring to June, 1982, Illinois Senate defeat).

183. Langer, *Why Big Business is Trying to Defeat the ERA: The Economic Implications of Equality*, Ms., May 1976, at 64 (attributing blame to leaders of major business interests in the country, particularly those representing insurance companies or corporate managers concerned about the "costs of equality").

During the last months of the national campaign, NOW ran full-page ads in leading newspapers titled *Will the ERA be Sacrificed for the Insurance Number Game?* O'Reilly, *supra* note 52, at 61. A spokesman for the American Council of Life Insurance, however, denied "lift[ing] a finger, covertly or in any setting, to oppose ERA. Indeed a great many people in business support the ERA." Toufexis, *What Killed Equal Rights*, Time, July 12, 1982, at 33 (quoting Robert Waldron, American Council of Life Insurance spokesman).

184. See notes 40-41 *supra*.

185. Van Gelder, *supra* note 81, at 68 (remarks of Ann Giordano) (recounting New York proponent's statements about "what kind of a stupid ass would vote against her own rights"); California Commission, *supra* note 16, at 5 (viewing ERA opposition as reflective of women's "self-hatred" and their "psychological defense mechanism to inequality and poor self-image"); J. Bolea, *supra* note 2, at 87 (quoting proponents' views of adversaries as "naive," "misguided," and incapable of independent thought). See also O'Reilly, *supra* note 52.

Such characterizations were indicative of a bias embedded in much contemporary feminist ideology and organizational structures. As Jean Bethke Elshtain has suggested, the "elaboration of the feminine mystique led to facile explanations about the true and false images of the feminine and ushered [in] a rather breezy elitism whereby women who were already privileged by education and class could impose upon other women their own analysis of other women's discontents." J. Elshtain, *supra* note 118, at 250. See also *The Feminists, Dangers in the pro-Woman Line and Consciousness-Raising*, in *The Other Half: Roads to Women's Equality* 203 (C. Epstein & W. Goode, ed. 1971), and note 163 *supra*.

186. See, e.g., *MacNeil-Lehrer Report*, *supra* note 35, at 2 (remarks of Kathy Wilson, president of the National Women's Political Caucus) ("[O]ur feeling is that the ERA did not ratify because there was a small contingent of legislators from rural America, basically, who were . . . categorically opposed to equal rights for women."). For attributions of blame encompassing a broader geographic constituency, see, e.g., Wohl, *supra* note 36, at 57; Herbers, *Women Turn View to Public Office*, N.Y. Times, June 28, 1982, at 37, col. 4 (remarks of Eleanor Smeal, president of NOW) (singling out "the stag-club atmosphere" in state legislatures as cause of non-ratification); O'Reilly, *supra* note 52, at 37 (attributing the ERA's defeat to the majority's complacency, the opposition's superior organization, and the fact that "too many people, both men and women, dislike women").

generally acknowledged. Anti-ERA sentiment was a reflection not simply of reactionary hysteria or rank sexism, but rather of fundamental ambivalence about the meaning and value of formal equality in a context of societal inequality. As the ratification struggle wore on, it should have been apparent that much of the public found family and femininity more compelling symbols than equal rights. Yet this was a conclusion feminists declined to confront.

Ironically enough, the most effective aspect of opposition strategies was not the deception they practiced on the general public, but the self-deception they encouraged among proponents. The presence of Schlafly and other convenient scapegoats deflected attention from fundamental problems of feminist ideology—its perception of social roles and its prescriptions for social progress. By the same token, the fixation on opponents' misstatements and conservative pedigrees obscured the need for practical politics as well as ideological introspection. Particularly during the crucial early stages of the ratification campaign, before anti-ERA sentiment had crystallized, proponents missed numerous opportunities to demonstrate that they, not Schlafly, spoke for the American public. It is to those failures that Part III is addressed.

III. The Legislative Response

Analyzing the legislative dimensions of the equal rights campaign presents methodological difficulties common to much social science research. Politicians' votes reflect a variety of ideological and prudential concerns that are never fully accessible to conventional empirical techniques. Nonetheless, a variety of primary and secondary source material casts some light on the personal attitudes, public pressures, and parliamentary strategies that shaped the ratification process.

A. Personal Ideologies

Disentangling the ideological roots of legislative behavior is a particularly complex and conjectural enterprise. Although proponents frequently attributed ERA defeats to politicians' sexist sentiments, the evidence for such attributions is hardly conclusive. Political rhetoric rarely provides a complete account of personal motivation. Moreover, an issue with the ERA's emotional freight is likely to accentuate divergences between actual and professed concerns. The arguments voiced in public forums may more frequently have been rationalizations than rationales for particular votes. Even so, those arguments are instructive, if not for what they conclusively establish about legislators' motives, at least for what they reveal about the range of politically acceptable bases for decision making.

For the most part, the arguments that legislators advanced closely

tracked those put forward by major pro- and anti-ERA organizations. The most common instrumental objections centered on laws granting women preferential treatment. In justifying their opposition to constituents, many lawmakers submitted that the amendment would "actually take away more rights from women than it would give."¹⁸⁷ More specifically, opponents singled out protective labor policies, support obligations, and draft exemptions as the most significant benefits that the ERA would jeopardize.¹⁸⁸

That those issues proved particularly crucial is unsurprising, given the constituencies and backgrounds of most state legislators. To some politicians, especially those from rural or industrial working-class districts, the amendment appeared to be the handiwork of a few elitist feminists, preoccupied with "liberation" and oblivious to the more immediate needs of female farm and factory workers.¹⁸⁹ Even those representing wealthier constituencies found it difficult to square the ERA's egalitarian mandate with deep-seated protective and chivalric sentiments; woman's "natural superiority should not be demeaned by law."¹⁹⁰ Many may have believed, as Schlafly repeatedly asserted, that the American people supported "real public officials" with the courage to

187. Letter from Rep. Richard F. Kelly, Jr. to Mrs. Sonia McCallum, ERA Central (April 26, 1973). Other Illinois legislators expressed similar views, e.g., Letter from Rep. Charles F. Keller to Illinois Democratic Women's Caucus (May 31, 1982) ("I feel that most laws today are for the benefit of women and I feel that they should remain that way"); and sources cited in notes 188-89 *infra*.

188. See, e.g., Letter from Ralph Capparelli to Illinois Democratic Women's Caucus (June 13, 1972) ("Just a few examples of specialized treatment of women which would be jeopardized by the amendment are the responsibility of a husband to support his wife and children, the elimination of protective benefits for women as workers . . . and the freedom of women from the military draft."); see Davidson, Ginsburg & Kay, *The Standard Under the Equal Rights Amendment: Sex as a Prohibited Criterion*, in *Cases on Sex Based Discrimination* 109 (1974) (noting that these three issues have "dominated the legislature").

189. Hyde, *The Losses Can Outweigh the Gains*, Chi. Trib., June 9, 1972, at 16, col. 3 (quoting E. Celler) ("[T]he feminists cavalierly say 'We don't want protection, we want liberation!' I say, tell that to the female farm workers and female factory workers.").

Although the AFL-CIO had originally opposed the ERA, in part because of its alleged effect on protective labor legislation, the organization endorsed it in 1973 as a "symbol of commitment to equal opportunities for women." Wohl, *supra* note 2, at 81. For an account of unions' role in the ERA campaign, see B. Babcock, A. Freedman, E. Norton, & S. Ross, *Sex Discrimination and the Law* 132-33, 181-84 (1975) and sources cited therein. A seminal account of unions' historic ambivalence concerning rights for working women appears in S. Anthony, *Women's Place in Industry and Home* (1932). For more current analyses, see generally A. Nelson & B. Wertheimer, *Trade Union Women: A Study of Their Participation in New York City Locals* (1975); and P. Foner, *Women and the American Labor Movement: From World War I to the Present* (1980).

190. See, e.g., Hyde, *supra* note 189; see also sources cited in note 192 *infra*.

protect women, not the "wimps who hide behind phony symbol[s]." ¹⁹¹ As one Illinois representative put it, "I am for equal rights but not for equal responsibility." ¹⁹²

Support obligations offered a case in point. Legislators who worried about the issue seemed largely impervious to the extensive volume of pro-ERA literature outlining the limits of current support responsibilities and the availability of sex-neutral alternatives. In proponents' view, this failure of communication was more a function of politicians' personal biases than inept advocacy. As one congressional ERA sponsor noted, a large percentage of elected representatives were relatively affluent married men with nonworking wives. ¹⁹³ For many such legislators, the reservations of housewives appeared more pressing than the aspirations of feminists.

But the issue animating the broadest cross section of the legislature was the draft. Equality in the work place was one thing; equality in the trenches quite another. As noted earlier, many of the most evocative military screenplays emerged from state capitols, as legislators envisioned their daughters sharing barracks or bunkers with hardened combat troops. ¹⁹⁴

There were, of course, other issues. In Illinois as elsewhere, some legislators invoked the entire parade of horrors that opponents had assembled. The Equal Rights Amendment would signal the demise not only of states' rights and sex-segregated shot-put competitions, but of home, motherhood, and conjugal relationships. ¹⁹⁵ In tones reminiscent of

191. *Senate Gets Equal Rights Bill*, N.Y. Times, Jan. 28, 1983, at 6, col. 2 (quoting Phyllis Schlafly).

192. *Equal Rights Backers May Take Cause to Federal Courts*, Chi. Daily News, Apr. 9, 1973, at 3 (statement of Rep. John Krugman [R-Pekin]). See also Letter from Richard Kelly, Jr., *supra* note 187; R. Eisler, *supra* note 62, at 11 (statement of Georgia Rep. D. Matthews) (the ERA would "lower our ladies down to the level of men").

193. New Orleans Times-Picayune, Jan. 19, 1975, (quoting Martha Griffiths).

194. For accounts of the manifold dangers presented by female hip structures, field latrines and so forth, see discussion at text accompanying notes 121-24 *supra*. See also Elmer, *Equal Rights Gets State Senate OK*, Chi. Trib., May 25, 1972, at 6, col. 3 (remarks of Sen. Robert Eagen) (adverting to his "three beautiful little girls who will be draft eligible at age 18").

195. See, e.g., *The Mossbacks Win Again*, Chi. Daily News, Apr. 6, 1973, at 12, col. 1 (noting objections to female participation in shot put); *An Emancipation Precedent*, Chi. Sun Times, May 19, 1972, at 12 (remarks of H. Hyde [R-Chicago]) ("an attack on home and motherhood"); *ERA Capitol Conflict*, Kankakee Daily Journal, Mar. 15, 1973 (remarks of Sen. Edward McBroom [R-Kankakee]) (ratification would "devastate husband and wife relationships"). See also *Equal Rights Amendment Fails Twice in Assembly*, Chi. Trib., Apr. 5, 1973, at 1, col. 3 (remarks of R. Cunningham [R-Lawrenceville]) (the ERA would "signal the unfortunate demise of chivalry . . . [m]en would be racing women for positions in the lifeboat"). Discussion of the states' rights issues

apocalyptic anti-suffragist rhetoric, one Peoria representative characterized ratification as the prelude to "social disruption, divorce, desertion, and alcoholism."¹⁹⁶

Although proponents tended to dismiss these claims as pretextual, their underpinnings may in fact have been somewhat more complex. For example, while arguments regarding states' rights may not have been decisive for any legislator, neither were they as patently disingenuous as pro-ERA spokesmen often assumed.¹⁹⁷ In essence, Schlafly and her associates framed the issue as a question of power: "Who's going to have it, the states or the feds?"¹⁹⁸ To some legislators, the amendment represented yet another potential inroad on their declining power and status. In the words of one small-town representative: "[w]e have already permitted the pendulum to swing too far in that direction."¹⁹⁹ For many who agreed, the ERA afforded an appropriate occasion to change the course.

Yet the Equal Rights Amendment threatened legislators' status in a still more fundamental sense. To many, it loomed as the embodiment of an ideology that was personally offensive and socially pernicious. Women's liberation, with its insistence on parity and claims of oppression, challenged not merely their values, but their very identities. Under the more radical feminist view, these legislators' domestic arrangements and professional achievements were neither natural nor deserved, but rather a product of illicit subjugation and false consciousness. Unsurprisingly, many politicians viewed the ERA as an opportunity to respond

occurs in notes 197-98 *infra* and accompanying text.

For a general treatment of chivalry as a palliative for the injustices of women's social position, see K. Millet, *Sexual Politics* 36-37 (1970); and J.S. Mill, *supra* note 159, at 225.

196. Elmer, *supra* note 194, at 6, col. 3 (quoting Ben Hudson Sours [R.-Peoria]). Opponents to women's suffrage variously predicted that the vote would lead to divorce, child neglect, juvenile delinquency, and "race suicide." See A. Kraditor, *supra* note 49, at 16-18; C. Catt & N. Shuler, *Woman Suffrage and Politics* 467 (1923).

197. Both the original ERA sponsors in the Illinois House felt that those who invoked states' rights had formed their positions by reference to other, often sexist, values and then had "shopped around for credible arguments." Interview with Giddy Dyer, *supra* note 168. See also Interview with Eugenia Chapman, *supra* note 79.

198. Felsenthal, *supra* note 26, at 142 (quoting Phyllis Schlafly).

199. Rep. Thomas Miller [R.-South Holland], WGN Editorial, Mar. 30, 1973, tr. at 1. See also *Senate Ratifies*, Chi. Sun Times, May 25, 1972, at 13 (remarks of K. Berning [R.-Deerfield]) ("a vote for the ERA would further erode states' rights—and I am a strong believer in and supporter of states' rights"); A. Dworkin, *supra* note 146, at 118 (reporting a Utah representative's perception that federal endorsement of the feminist program would restrict her freedom as a legislator, in "violation of states' rights"). See also R. Lee, *supra* note 139, at 87-88 (arguing that the loss of state legislative power would constitute a "significant cost" of ratification).

in kind, to vent their spleen against the "bra-less brainless broads"²⁰⁰ who had demeaned their status and impugned their relationships.

Of course, as noted in Part II, anti-feminist sentiments were also widely shared by women opposed to the ERA. But the rhetoric issuing from state capitols had a different resonance. On the whole, Schlafly and her female counterparts depicted a social order in which women were separate but equal. Many conservative legislators seemed less certain about the "equal." A surprising number were quite explicit on the point: woman's destiny was to "serve her husband";²⁰¹ she would rather be "loved than liberated."²⁰² According to a poem read into the Illinois Senate record by one lawmaker with literary aspirations:

Just to be needed is more sweet says she
Than any freedom in this world could be.²⁰³

Such sentiments did not, of course, receive universal critical acclaim. In the view of the *Chicago Daily News* editors, the ERA was "kayoed by a prim little covey of legislators convinced that females were put on this earth for kuchen and kinder and, by cracky, not much else."²⁰⁴ These press accounts, if somewhat simplistic, nonetheless captured a significant point about political discourse. Tributes predicated on group

200. J. Boles, *supra* note 2, at 160 (quoting Rep. Hanahan). Hanahan's views did not demonstrably mellow over time. When informed that he had been elevated to the "dirty dozen" hit list of the National Women's Political Caucus, Hanahan responded, "As far as I'm concerned it's a nucleus of a bunch of idiots. That doesn't make them a political force." Collin, *Tears and Cheers for End of an ERA*, Chi. Trib., July 1, 1982, at 1, col. 1.

201. *Women: Trouble for ERA*, *supra* note 125, at 25 (quoting unnamed Oklahoma Democrat) ("the good book says a woman should serve her husband"). For a comparable scriptural exegesis, see note 147 *supra*. See also *Trouble for ERA*, Time, Feb. 19, 1973, at 25 (quoting Sen. Guy Hamilton Jones [Ark.]) ("Women are put on this earth to minister to the needs of miserable men."); and text accompanying note 202 *infra*.

202. *Equal Rights Proposal Fails Twice in Assembly*, Chi. Trib., Apr. 5, 1973, at 1, col. 3 (quoting Roscoe Cunningham [R.-Lawrenceville]).

203. In full context, the stanza does not improve:

JUST TO BE NEEDED

by Mary Eversley

She always seems so tired is what friends say,
She never has a chance to get away—
Home, husband, children, duties great or small,
Keep her forever at their beck and call—
But she confides with laughter in her eyes,
She never yet fretted by these ties—
Just to be needed is more sweet says she,
Than any freedom in this world could be.

Letter from Sen. Frank Ozinga to Martha Clark (May 2, 1973).

204. *The Mossbacks Win Again*, Chi. Daily News, Apr. 6, 1973, at 12, col. 1. See also editorial quoted in note 172 *supra*.

status carry different symbolic baggage depending on their source. When mothers exalt the mystique of motherhood, it appears as an attempt, however benighted, to enhance status; when such encomiums originate with males opposed to equal rights, the effect is otherwise. As constitutional theorist John Ely argues, the stereotype may be the same, but the import is fundamentally different.²⁰⁵ One regards with some skepticism the "enthusiasm for women's destiny manifested by men who [presumably] would not for the world have any part of it."²⁰⁶

In any event, what is ultimately most revealing about the anti-ERA rhetoric is not what it discloses about the biases of particular legislators, but rather what it suggests about the prevailing ideological climate in state capitols. The record hardly reaffirms the framers' vision of the ratification process, conceived as "the most likely means of drawing forth the best men in the states" to resolve fundamental issues of constitutional governance.²⁰⁷ Moreover, that so many politically accountable officials felt free to couch their objections in phrases like "loved not liberated" or "bra-less brainless broads" evidences more than a flair for alliteration or facility for grandstanding. Rather, it testifies to the perceived legitimacy of certain core attitudes about women's roles and feminist ideology. By the 1970's, it would have been difficult to visualize even the most racist politician publicly objecting to civil rights legislation on the grounds that blacks would rather serve-than-be-served, or that proponents were nagging-noxious-niggers. Sensitivities to racism and sexism remain on qualitatively different levels.²⁰⁸

205. J. Ely, *Democracy and Distrust: A Theory of Judicial Review* 158, 164-65, 169 (1980) (discussing the role of self-denigrating and self-aggrandizing stereotypes in sex-discrimination contexts). See generally G. Allport, *The Nature of Prejudice* 78 (1954); Brest, *Foreword, In Defense of the Anti-Discrimination Principle*, 90 Harv. L. Rev. 1 (1976).

206. S. de Beauvoir, *supra* note 97, at xxvi. See also M. Wollstonecraft, *A Vindication of the Rights of Woman* 100 (C. Hagelman ed. 1967) (1st ed. 1792) ("I lament that women are systematically degraded by receiving the trivial attentions which men think it manly to pay to the sex, when in fact, they are insultingly supporting their own superiority.").

207. 2 Records of the Federal Convention of 1787, at 93 (M. Farrand ed. 1911) (James Madison quoting Rufus King).

208. As philosopher Richard Wasserstrom suggests with regard to racial jokes, what the jester generally fails to grasp is "how implausible it is to believe that one can hold these [stereotypical] views about black people and at the same time deal with them in non-racist fashion." Wasserstrom, *Racism, Sexism, and Preferential Treatment*, 24 UCLA L. Rev. 581, 591 n.19 (1977). Moreover, as Wasserstrom goes on to note, sexism is a more deeply embedded cultural phenomenon than racism; "[being] less unequivocally regarded as unjust and unjustifiable, [sexism is] harder to detect [and] harder to eradicate . . . [M]any persons announce, without regret or embarrassment, that they are sexists or male chauvinists; very few announce openly that they are racists." *Id.* at 590.

For commentary suggesting the force of Wasserstrom's point even in academic circles, see Pascal, *Why I Oppose the ERA*, 4 S.L. Rev. 11, 12 (1977) ("The ERA is a manifestation of . . . libertarian thought. Once men ignore the observable order in being it becomes

Yet ironically enough, the candor of conservative legislators proved one of proponents' most effective organizational assets. It was as much the rhetoric as the results of state ERA campaigns that enlisted large numbers of supporters in the cause. Sexist sentiments catalyzed a burst of financial and lobbying support that gave proponents enormous organizational advantages.²⁰⁹ What remains to consider is why supporters could not capitalize effectively on those advantages, and convince enough legislators that equal rights, if not ideologically congenial, were at least politically expedient.

B. Public Pressures

The linkage between public opinion and legislative decision making, however central to democratic theory, is often difficult to gauge in practice. In this instance, analysis is especially problematic since there are no systematic data on lobbying efforts. But the mobilization of public pressure clearly played a crucial role in the ratification campaign. Accordingly, it seems appropriate to sketch at least in broad outlines the pressures that participants brought to bear on state legislators.

1. The Opposition's Strategy

No one in suffrage camp credited the "anti-s" with great effectiveness. Their arguments seemed too puerile . . . (But) the anti's appearance at hearings and in print . . . did furnish legislators with the excuse that a body of respectable women did not want the vote.²¹⁰

Again, historical parallels are apparent. Not until a constituency of female anti-ERA activists emerged did a significant number of politicians join the chorus. It was only the presence of a visible women's lobby that effectively legitimated male legislators' opposition.²¹¹ One need not fear

impossible to distinguish between male and male, between female and female, between male and female, or between human and monkey.").

209. For comparison of membership, financial resources and institutional support structures of pro- and anti-ERA organizations, see notes 220-21 *infra*, and accompanying text.

210. E. Flexner, *Century of Struggle: The Women's Rights Movement in the United States* 296 (1959). *Accord*, C. Catt & N. Shuler, *supra* note 196, at 273.

211. According to Illinois ERA sponsor Dyer, "[a]s long as men were convinced that this was something all women wanted they would vote for it. But then Schlafly and her followers came down and gave a rationale for opposition." Interview with Giddy Dyer, *supra* note 168.

Other Illinois supporters held similar views. Interview with Charlotte Waters, lobbyist for the National Organization for Women, in Chicago (Aug. 13, 1972) (Schlafly "provided an excuse"); Interview with Sherwin Schwartz, lobbyist for the Independent Voters, in

the label "oppressor" when bowing to the demands of the putatively oppressed.

That opposition leaders managed so quickly to muster a sufficient show of political force attests to remarkable tactical astuteness. Particularly at the outset of the ratification campaign, before the issue had attracted substantial media attention, opposition leaders faced enormous difficulties in marshalling volunteers. As one Illinois opponent explained:

People like us have very limited time and it would be against our nature to go out and organize because our main job-priority is the fact of staying in the home. If we put that aside . . . we're in effect doing just what we're fighting against. The vast majority of women are doing what comes naturally to women, being homemakers and being in the home and they're not political activists.²¹²

Opponents' inclination to accord politics a relatively low priority confronted their leadership with substantial practical problems. A woman anxious to be home in time "to get supper for my family"²¹³ is hardly an ideal candidate for a lobbying position. As one frustrated Illinois organizer recalled:

I went to Springfield last year but no one else from my group was able to go. They all had excuses—child care, one woman's husband refused to let her go, another was having a rug delivered.²¹⁴

In attempting to surmount such obstacles, Schlafly and her followers relied on two principal techniques. First, as the discussion in Part II suggested, they vested the ERA with instrumental and symbolic dimensions calculated to arouse even the most phlegmatic housewives. In addition, opposition organizers developed lobbying strategies that were

Chicago (July 25, 1973) ("Schlafly brought down Catholic women [to Springfield] who made the point that opposition came from women not men").

In some states, the presence of women legislators opposed to the amendment doubtlessly reinforced the legitimacy of anti-ERA votes. For an analysis of the attitudes and backgrounds of those women, see Lilie, Handberg & Lowrey, *Women State Legislators and the ERA: Dimensions of Support and Opposition*, 2 *Women and Politics* 23 (1983).

212. J. Boles, *supra* note 2, at 123 (quoting unidentified ERA opponent).

213. In commenting on one of the ERA's 1978 defeats, Rosemary Thomson, Director of Illinois Eagle Forum, stated: "It's a tremendous national victory for women of traditional moral values. Now I'm going home to get supper for my family." *The End of an ERA?* *Newsweek*, June 19, 1978, at 34 (quoting Rosemary Thomson). In a similar vein, Ann Patterson, Oklahoma Stop-ERA chairperson, explained the absence of a victory press conference on the grounds that "we have dishes to do." O'Reilly, *supra* note 52, at 59 (quoting Ann Patterson).

214. J. Boles, *supra* note 2, at 123 (quoting an unidentified ERA opponent). See also Fraker, *supra* note 36, at 35 (quoting Phyllis Schlafly) (noting opponents' reluctance to "ruin a lovely weekend at home with their families").

both attractive to broad constituencies and effective with their state representatives.

Among the most successful of these techniques was the mass mail campaign. With remarkably little lead time, Schlafly and her colleagues were able to generate exceptional volumes of anti-ERA correspondence.²¹⁵ Given the profile of the opposition's typical adherent, the emphasis on mass mail was astute. Compared with other techniques of interest group politics, letter writing is the ideal vehicle for a constituent with limited commitment, mobility, and lobbying experience. By enlisting church, Republican, and conservative women's organizations, and by supplying sample correspondence for the uninspired, opposition leaders were able to generate a broad-based show of strength.

Of course, insofar as individuals and organizations merely reproduced the proffered boiler-plate prose, their message lost some of its potency. As the campaign wore on, legislators became increasingly irritated at the large volume of letters, which greatly complicated the task of identifying and responding to individualized correspondence.²¹⁶ Yet, despite the prepackaged appearance of many anti-ERA missives, they frequently proved effective. By drawing attention to the substantial female constituency that opposed ratification, the mass-mail strategy convinced many uncommitted legislators that their own reservations were not only legitimate but politically prudent.

That conviction was buttressed further by a second opposition technique, an ostentatiously feminine form of personal lobbying. By example and instruction, Schlafly set the tone for much anti-ERA proselytizing. In appearing before state legislatures, Schlafly often dressed pointedly in pink and cast her appeals in accessible, low-key terms. That approach, widely imitated by her disciples, reportedly sat better with many state politicians than proponents' more strident presentations and less conventional attire.²¹⁷

215. In Illinois, Schlafly had unleashed a flood of letters within months after the amendment's initial introduction. See text accompanying note 27 *supra*. During 1972-1973, legislators reported mail running 7 to 1, 30 to 1, and 50 to 1 against passage. See *ERA Capitol Conflict*, Kankakee Daily Journal, Mar. 15, 1973; *State Senate OK for Women's Rights*, Chi. Today, May 25, 1972. After Schlafly's testimony in Atlanta, letters reportedly came in at 10 to 1 against ratification. See J. Boles, *supra* note 2, at 115.

216. For representative statements by irate legislators, see J. Boles, *supra* note 2, at 134-36. In Florida and Indiana, the flood of anti-ERA mail prompted proponents to offer to filter out non-constituent, out-of-state, or identically worded missives. See Shanahan, *Opposition Rises to Amendment on Equal Rights*, N.Y. Times, Jan. 15, 1973, at 1, col. 4.

For examples of opponents' suggested texts to state legislators, see G. Whittenberg, *supra* note 69, at 71-72.

217. See Wohl, *supra* note 36, at 55; see also notes 176-200 *supra* and 233-43 *infra* and accompanying text. Schlafly personally conducted workshops for anti-ERA lobbyists, featuring advice on wardrobe, weight loss, and makeup. C. Felsenthal, *supra* note 4, at

So too, Schlafly and her colleagues devised a uniquely domesticated lobbying approach that captured both public and legislative attention. Many opposition leaders encouraged their followers to arrive in state capitols bearing gifts of identifiably feminine manufacture, most often home-baked bread and similar culinary offerings. However, opponents occasionally varied the presentations with less propitiatory tokens. One of the more celebrated distributions featured twenty-eight individually boxed and beribboned mice, offered to California senators who supported ratification. The point, according to donors, was that "those who voted for the ERA are mice instead of men because a real man will fight for a woman."²¹⁸

Such contrived displays, like the silver bullets dispensed in Ohio and the don't-draft-me baby girls described earlier,²¹⁹ were effective in several respects. This genre of lobbying involved activities with which many housewives felt comfortable. By creating such participatory vehicles, opponents were able to recruit women who lacked experience and interest in more conventional forms of political suasion.

In addition, from a public relations perspective, these techniques were an inexpensive means of arousing media attention. Although the magnitude and sources of anti-ERA funding remain conjectural,²²⁰ it appears that opponents were under far tighter budget constraints than their adversaries. While proponents could obtain organizational and funding support from many well-established women's associations, opponents had to rely more heavily on ad hoc volunteer networks and small individual contributions.²²¹ Media events were one way of offsetting

267-68.

218. *Men or Mice? Lib Foe Raises Big Squawk*, Chi. Daily News, Nov. 11, 1972, at 16 (quoting Happiness of Womanhood member Mrs. Bobbie Boccardi).

219. The silver bullets assertedly demonstrated that women could defend themselves without an amendment. In a similar vein, Minnesota opponents attempted to "bat away" the amendment with fly swatters. *Trouble for ERA*, Time, Feb. 19, 1973, at 25. Other anti-ERA lobbyists provided homemade jams labeled "preserve us from a Congressional jam." C. Felsenthal, *supra* note 4, at 248.

Such tactics continue. Borrowing the theme of a recent best-seller, B. Feirstein, *Real Men Don't Eat Quiche* (1982), Phyllis Schlafly sent some of same to the 53 senators who reintroduced the measure in January, 1983. Each quiche bore the label, "Real Men Don't Draft Women." See *A Quiche Gift to ERA Wimps*, San Fran. Chron., Jan. 27, 1983, at 7, col. 1.

220. According to Schlafly, primary financial support for her efforts came from her husband and her earnings from books, newsletters, broadcasts and lecture fees. Klemesrod, *supra* note 7, at 45. Although she has declined to disclose details about large donors, Schlafly has consistently denied allegations of funding from the John Birch organization. A spokesman for the Society has confirmed the absence of any national support. Wohl, *supra* note 2, at 87.

For discussion of the level of Schlafly's anti-ERA expenditures, see note 221 *infra*.

221. For example, in the final year of the campaign, NOW reportedly spent some

proponents' greater ability to underwrite mailings, publications, and paid advertisements.

Finally, the anti-ERA leadership's emphasis on feminized lobbying strategies had the effect, if not the intent, of maneuvering proponents into a difficult defensive posture. By playing both to legislators' paternalism and reporters' preference for style over substance, opponents presented their adversaries with an unhappy choice. If proponents did not respond in kind, they forfeited media coverage and left unchallenged opponents' claim that the battle was one between feminine and feminist camps. Yet to the extent that they descended to opponents' level of discourse, supporters risked entrapment in a trivialized contest that they could never win. It was a dilemma that ERA supporters proved unable to escape.

2. The Proponents' Strategy

Of course we're going to get ERA If it
takes white gloves, we'll use white gloves. If it
takes combat boots, we'll wear combat boots. If it
takes white gloves and combat boots, we'll use both.

Ann Scott
Legislative Vice President
National Organization for Women²²²

"White gloves and combat boots": proponents tried both, but never found a satisfactory fit. The "white gloves" strategy took several forms. One approach, more inspired in theory than in practice, was to meet opponents on their own terrain. The goal was to undercut opponents' assertion that mainstream women opposed equal rights. Accordingly, the more moderate pro-ERA leaders mounted their own culinary campaign, matching their foes muffin for muffin. For example, in 1973, seventy-five mature housewives assembled to serve eggs benedict to Illinois Representatives and Senators. Neither the opposition nor the press let the event pass unnoticed. The day before the brunch, Schlafly and followers distributed small loaves of home-baked bread to all the legislators, labeled "Let us stay in the kitchen."²²³ Unsurprisingly, this juxtaposition proved irresistible to reporters. In their accounts, the affair became a playful internecine contest among rival hausfraus. *Rights Battle Booms*

\$15,000,000 nationally, whereas Schlafly acknowledged national expenditures of only \$100,000, in addition to some \$100,000 in PAC candidate contributions. O'Reilly, *supra* note 52, at 59. See also note 34 *supra*. Many other women's organizations, such as the National Women's Political Caucus, the League of Women Voters, and local business and professional women's associations, gave significant monetary and in-kind assistance. By contrast, anti-ERA efforts were frequently orchestrated from opponents' homes or church basements, and their financial outlays were far more modest.

222. Wohl, *supra* note 2, at 98 (quoting Ann Scott).

223. *ERA Capitol Conflict*, Kankakee Daily Journal, Mar. 15, 1973.

From Kitchens, chortled the *Chicago Daily News*.²²⁴ The *Tribune's* narrative, *Women Try To Cook Up Votes*, began:

Women on both sides of the fight over ratification of the Equal Rights Amendment appear to have decided that the way to a legislator's vote is through his stomach.²²⁵

Responding to one reporter's query, an irate ERA supporter observed icily that "this brunch was planned a month ago and was not an attempt to show that liberated women can cook as well as unliberated ones."²²⁶ What the event was originally designed to show was somehow lost in the translation.

Undaunted by these jocular press reviews, proponents continued to offer variations on the same theme. Legislators across the nation absorbed a barrage of breads, pastries, valentines, tea roses, forget-me-nots, and the like.²²⁷ Many recipients appeared more bemused than moved. The gestures seemed "unprofessional"; they made moderate supporters appear "impractical lady do-gooders."²²⁸ Worse still, the strategies, as caricatured by the press, made the amendment seem unworthy of serious substantive debate. Although pro-ERA leaders were quick to deplore the journalists' dismissal of the ratification campaign as a "teacup quarrel,"²²⁹ proponents' own tactics unquestionably invited such portrayals. In an era when political campaigns have become increasingly personalized, the media's response was hardly surprising.²³⁰ The in-

224. *Rights Battle Booms from Kitchens*, Chi. Daily News, Mar. 15, 1973, at 34.

225. *Women Try to Cook Up Votes*, Chi. Trib., Mar. 1, 1973; see also Wolfe, *ERA Given Boost at State Breakfast*, Chi. Trib., Mar. 15, 1973, § 2, at 9, col. 1.

226. *Women Try to Cook Up Votes*, supra note 225.

227. See *ERA Marches On To Another Loss*, Time, May 26, 1980, at 23 (home-baked bread); J. Boles, supra note 2, at 124 (cookies with the message "Be Our Valentine"); *Valentines for Legislators*, N.Y. Times, Feb. 22, 1973, at 33, col. 8 (red carnations and valentines); Mitchell, *ERA Payola: Roses and Pies*, Chi. Trib., Apr. 17, 1974, at 7, col. 1 (Schlafly and followers distributed apple pies bearing notes "My heart and hands went into this dough. For the sake of the family, please say no!" while ERA advocates presented roses to legislative supporters with the message "You are a sweetheart to support the Equal Rights Amendment.").

228. J. Boles, supra note 2, at 113, 130, 132-33 (quoting unidentified legislators).

229. Letter to the Editor of *Chicago Tribune Magazine* from Sonia McCallem (June 8, 1973).

230. As Murray Edelman has argued:

If political acts are to promote social adjustment and are to mean what our inner problems require that they mean, then these acts have to be dramatic in outline and empty of realistic detail. In this sense publishers and broadcast licensees are telling the exact truth when they excuse their poor performance with the plea that they give the public what it wants. It wants symbols and not news.

M. Edelman, *The Symbolic Uses of Politics* 9 (1964). To expect the press to underscore substance at the expense of side shows misunderstands the "limited nature of the news, the

evitable, if unintended, consequence of proponents' quiche and cookie crusades was to trivialize the issue. Such tactics helped create a climate that made ratification debate an occasion to "let off steam and relax,"²³¹ rather than to confront serious questions of sex-based discrimination.

Moreover, supporters taking the "white gloves" tack were repeatedly upstaged by their more provocative colleagues. The radical feminist wing remained unconvinced that the most direct route to the legislator's vote was "through his stomach." They pursued a different path. Public denunciations of adversaries in animal blood, spray paint or burnt effigies were favored gambits.²³² When animated by a spirit of giving, militant ERA supporters abandoned any pretense of subtlety. Among the most publicized offerings were chicken manure (North Carolina) and a child's potty (Virginia).²³³ Such gestures, however cathartic for the converted, presumably did little to persuade either the recipients or their constituencies.

While pro-ERA lobbyists were counseling supporters to be "soft-spoken," and to "cool the women's lib business,"²³⁴ their more assertive comrades were making headlines by chaining themselves to fences, launching hunger strikes, and excoriating their foes as "sexist pigs."²³⁵

illimitable complexity of society, and our own endurance, public spirit and all-around competence." W. Lippman, *Public Opinion* 228 (1950).

231. Interview with Eugenia Chapman, *supra* note 79.

232. See Lentz, *ERA Backers Pour Blood on Capitol Floors*, Chi. Trib., June 26, 1982, at 2, col. 1 ("Nine militant women protestors for the Equal Rights Amendment were arrested Friday after they went on a rampage in the Capitol pouring blood over the marble floors following the Senate's defeat of the Amendment."); C. Felsenthal, *supra* note 4, at 5 (describing Washington, D.C. rally at which proponents burned Phyllis Schlafly in effigy). See note 235 *infra* for further variations on the theme.

233. The manure was for recalcitrant North Carolina legislators. See MacNeil-Lehrer Report, *supra* note 31, at 1 (remarks of C. Felsenthal). The potty went to Virginia House majority leader James Thomson, who was chairman of the committee that killed ratification in 1974. J. Bolea, *supra* note 2, at 125.

234. Shahanan, *Stiff Fight Looms Over Ratification of Equal Rights Amendment*, N.Y. Times, Jan. 29, 1974, at 15, col. 1 (quoting Mrs. Burton Truman). Proponents were also informed that blue jeans were not the preferred apparel in capitol rotundas. *Id.*

235. Seventeen women, comprising the "Grass-Roots Group of Second Class Citizens," chained themselves to railings in front of the Illinois Senate Chamber until they were forcibly removed four days later. The group then staged a series of sit-ins and disruptive tactics in the state capitol. Nine women were arrested. See Egler, *In Illinois a Roller-Coaster History with Thrills to the End*, Chi. Trib., June 27, 1982, § 2, at 2, col. 1. Van Gelder, *Electoral Politics or Civil Disobedience*, Ma., Jan., 1983, at 38, 39. In the spring of 1982, seven women fasted for 37 days, convening in the Illinois capitol rotunda under a banner titled "Women Hunger for Justice." *Id.*

"Pig" remained the denomination of choice in many feminist circles. The Broward County Florida NOW staged a carnival featuring a Pin-the-Tail-on-the-Male-Chauvinist-Pig game, while their "Southern Belle" sisters in Louisiana spray-painted the word "pig" on the homes of two New Orleans legislators. J. Bolea, *supra* note 2, at 7, 125.

Even the more charitable press accounts tended to portray such tactics as "childish" pranks; one account, with its emphasis on a fasting group's total 226½ pound sacrifice, seemed reminiscent of a Weight Watchers' advertisement.²³⁶

Although more moderate ERA proponents attempted to dismiss these antics as the churlish posturings of a few extremists, that effort received a serious setback in 1977. Live on national television, delegates to the International Women's Year Conference in Houston warmly endorsed the ERA—along with abortion, gay rights and a host of other controversial planks and placards (e.g., "Mother Nature is a Lesbian").²³⁷ Just in case any legislator from a non-ratifying state had missed the festivities, Schlafly thoughtfully mailed everyone a full account.²³⁸ Other anti-ERA leaders brought home conference souvenirs for display in state capitols to ensure that no one could overlook the connection between equal rights, vibrators, and sex education in the public schools.²³⁹ The point was widely appreciated. According to one Illinois representative who had switched his vote after the conference, "the resolutions adopted there [show] what these people think the ERA stands for I can't tolerate those things—and neither can my constituents."²⁴⁰

To be sure, it may have been unrealistic to expect leaders of a highly heterogeneous social movement to have muzzled conference participants for the sake of the ERA's public image. At that juncture, many doubtless believed that the image was already hopelessly compromised. Nonetheless, the event did raise broader questions about feminists' seemingly self-defeating priorities. At the same time movement leaders were investing enormous energy and financial resources in a campaign to secure mainstream support for the ERA, they were also orchestrating telegenic theatricals that inevitably undercut that effort.

Then too, there were marches. Often the marches culminated in rallies featuring a varied assortment of celebrities: former presidents, film stars, and feminist leaders. Such demonstrations did, of course, serve several useful purposes. They revived flagging spirits, aroused the complacent, and generated members and money.²⁴¹ But all that came at a

236. See Van Gelder, *supra* note 235, at 39.

237. For a fuller description, see Felsenthal, *supra* note 26, at 140.

238. *Id.*

239. O'Reilly, *supra* note 52, at 59 (discussing Oklahoma anti-ERA organization's display of Houston materials).

240. Felsenthal, *supra* note 26, at 140 (quoting Edward Blathardt [R.-Shiller Park]).

241. One of proponents' greatest difficulties, particularly during the early 1970's while the momentum for ratification seemed strong, was to convince passive supporters of the need for more tangible assistance. As Peter Hart, pollster for liberal Democratic candidates, noted after the June, 1982 deadline expired, "We now have a society which is sexually integrated. The average woman saw that and it made her [unwilling to] be a crusader," Margolis, *Bill*

cost. Mass convocations not only evoked unsettling images of radical feminism,²⁴² but also diverted the leadership's attention from the more mundane aspects of grass roots organizing. While supporters were marching, opponents were making phone calls and enlisting volunteers in key legislative districts. In commenting on these divergent priorities, one Florida state senator noted, "As far as I know, neither Marlo Thomas nor Alan Alda nor Jimmy Carter votes in my district."²⁴³

That point was eventually brought home to ERA supporters. As the campaign wore on, proponents became increasingly adept at the less splashy aspects of interest-group politics. Pro-ERA leaders focused more on boycotts and ballots, less on brunches and playboy bunnies. According to one Illinois organizer, "We've learned we must hit our legislative opponents where it hurts—their candidates, their bills."²⁴⁴

But in key states, that lesson came too late.²⁴⁵ Once opponents had

Failed as Women Succeeded, Chi. Trib., June 27, 1982, § 2, at 1, col. 1. See also O'Reilly, *supra* note 55, at 37.

The efficacy of marches in arousing the phlegmatic varied considerably across jurisdictions. Proponents in Illinois, aided by the overtly sexist comments of some state legislators and the constant physical presence of Schlafly, had strong turnouts throughout the campaign. For example, in 1980, thousands converged on Chicago, while only 500 turned out in a New York City march. *Compare Thousands to Come to Chicago for National ERA March May 10*, Nat'l NOW Times, Apr. 1980, at 1, col. 1, with B. Friedan, *supra* note 32, at 26.

242. Supporters were advised that a 1976 Chicago rally drawing an estimated 12,000 people from 30 states would simply "reinforce the ERA's association with radical women's liberationists." J. Boles, *supra* note 2, at 126. See also text accompanying notes 178-80 *supra*.

243. Felsenthal, *supra* note 6, at 141 (quoting Jim Scott).

244. *Pro-ERA Women Drop the Lady-like Tactics*, Chi. Today, July 9, 1973, at 27 (quoting Mary Ann Lupa). See also *MacNeil-Lehrer Report*, *supra* note 35, at 3 (remarks of Kathy Wilson, president, National Political Caucus) ("I think . . . we've come around to the conclusion . . . that we need to do less marching and more grass roots."); Wohl, *supra* note 2, at 86 (remarks of Karen Coolman, Florida NOW coordinator).

In addition, proponents sought to bring economic pressure to bear on recalcitrant legislatures by organizing a boycott of conventions in non-ratifying states. See *supra* note 34. Whether that strategy had the desired effect, or further alienated crucial constituencies, remains a matter of some dispute. Those opposing the boycott often maintained that it was irrelevant to the rural legislators who formed the backbone of ERA opposition, and unfair to the low-paid urban hotel and restaurant workers whose representatives typically supported ratification. See generally Felsenthal, *supra* note 26, at 153-54, and sources quoted therein; Bode, *Fellowship and Sisterhood*, New Republic, July 19, 1982, at 4.

245. See Margolia, *supra* note 241, § 2, at 1, col. 2 (remarks of S. Cotner, ERA America) ("We did not get to the grass roots soon enough."). See also Toufexia, *What Killed Equal Rights*, Time, July 12, 1982, at 32, 33 (noting that during the early ratification campaign, activists "did not seem to know how to find a precinct list or run a phone bank").

As late as 1978, leading proponents were still advocating mass rallies with media celebrities. See R. Eisler, *supra* note 62, at 130 (citing list of 52 entertainment luminaries available for ERA support).

mobilized a strong public constituency, including many putatively single-issue voters, supporters' task became more difficult. Unlike Schlafly and her followers, who often appeared willing to let votes and campaign assistance hinge solely on the ERA, proponents failed to establish dependable patterns of reward and punishment. They frequently tied their support to favorable action on other issues, such as abortion, and overlooked opportunities to compensate wavering adherents for pro-ERA votes.²⁴⁶

Also neglected were the parliamentary strategies that might have made the difference in some crucial contests. As one New York organizer acknowledged, "[w]e didn't focus on all the Byzantine stuff that goes on in state legislatures."²⁴⁷ Had proponents spent less time in public denunciations and more in capitol corridors, there might have been less to denounce.

C. Parliamentary Strategies

To a considerable extent, the ERA's difficulties in parliamentary circles mirrored those identified above. In part, the problems stemmed from ideological resistance. Some influential lawmakers were unmistakably ill-disposed toward the concept of equality and its presumptively feminist pedigree. Once opponents had established respectable grounds for resistance, these legislators were unlikely to retreat. Other less ideologically committed politicians seemed responsive to the public pressures discussed above.

However, especially during the early ERA campaigns, many legislators had minimal personal investment in the issue and represented constituencies that were uninformed, unconcerned, or divided. Their votes were negotiable. The inability of ERA sponsors to bargain

246. See Felsenthal, *supra* note 26, at 152-53. By almost all accounts, anti-ERA organizations were more astute and generous in their campaign contributions. Brotman, *The ERA Battle of the Bankrolls*, Chi. Trib., Nov. 2, 1980, § 12, at 1; Jones, *The Effect of the Pro- and Anti-ERA Campaign Contributions on the ERA Voting Behavior of the 80th Illinois House of Representatives*, 2 Women & Politics 71 (1982). Through multivariate analysis of the voting records of Illinois state representatives during 1977 and 1978, the Jones study concluded that political donations influenced the representatives who changed positions in the six ERA votes occurring in that period.

For an account of one of proponents' most mismanaged campaign contributions, see Egler, *Three Women with Right Cause*, Chi. Trib., June 27, 1982, § 2, at 2, col. 3 (discussing conviction of Wanda Brandstetter, a Chicago businesswoman convicted in 1980 of attempting to bribe a legislator to vote for the ERA).

247. Fraker, *supra* note 36, at 38 (quoting B. Feigen Fasteau). See also *Feminist Cause Looks Back to Grass Roots*, N.Y. Times, Nov. 8, 1982, at B10, col. 2 (remarks of Koryne Horbal, Minnesota ERA lobbyist) ("many feminists, like myself, who were party-oriented and involved in national boards and organizations, found that because we ignored what was happening in state legislatures, we did not do well. . . .").

effectively for these ballots proved a critical impediment in many ratification struggles.

In large measure, the problem was inadequate leadership. By choice or necessity, proponents found themselves relying on legislative sponsors who lacked either parliamentary finesse or a strong commitment to the issue. In some states, the difficulty was unavoidable. Politically powerful legislators declined to become identified with the amendment or withdrew from active sponsorship once controversies arose.²⁴⁸ But in other states, including Illinois, one or several sponsors deliberately chose to chart the course unassisted. Frequently, they were women far removed from power centers in state capitals.²⁴⁹ The significance of women's subordinate position in parliamentary hierarchies is well illustrated by the legislative history of the Illinois ratification campaign.

As noted earlier, when two female representatives introduced the Equal Rights Amendment during the Illinois House's 1972 session, they had offers of cosponsorship from ninety-three male colleagues, a larger number than necessary for ratification. They declined all such overtures; not until 1977 were any male sponsors enlisted.²⁵⁰ The original Illinois Senate proponent took a similar stance. From 1972 to 1975, when she resigned her seat, she brought in only one male sponsor. The absence of more diverse leadership had serious practical consequences, particularly in view of the female sponsors' limited affinity for political brokerage. Their continuing ineptitude prompted one proponent to submit that "the ERA didn't encounter difficulties; its sponsors encountered difficulties."²⁵¹

Some of these problems might perhaps have been averted had proponents' timing been more astute. For example, Illinois representatives would have been well-advised to follow the traditional convention of holding back a potentially volatile measure until the end of the House session.²⁵² Concededly, there was no reason to anticipate Schlafly's sudden blitz. Even so, prudence might have counseled postponement,

248. See J. Boles, *supra* note 2, at 145-48. According to many observers, powerful male politicians who publicly supported the amendment seldom attempted to "wheel and deal or twist arms" on its behalf. See *ERA: RIP*, *The Nation*, July 3, 1982, at 3; Bode, *supra* note 244, at 4. See also note 258 *infra* (remarks of Eleanor Smeal).

249. For examples, see J. Boles, *supra* note 2, at 92, 145-48, 167.

250. See text accompanying note 26 *supra*. This article's analysis of Illinois parliamentary maneuvers draws from a variety of background interviews with lobbyists, legislators and members of pro- and anti-ERA organizations, as well as the sources cited in notes 253-59 *infra*. The discussion is generally consistent with Janet Boles' case history. See J. Boles, *supra* note 2, at 144-48, 150, 154-56, 164-65, 172-73.

251. J. Boles, *supra* note 2, at 167 (quoting unidentified ERA supporter).

252. As one study of Illinois parliamentary strategies noted:

Controversial bills are passed at the end of a session without as extensive a

especially since the sponsors were totally unprepared for resistance. No literature for journalists or politicians had been assembled, let alone distributed. As a result, when Schlafly unleashed her barrage, legislators were ill-equipped to weigh the merits of opponents' legal claims. Had ERA sponsors introduced their bill at the end of the session, Schlafly might have been less able or inclined to seize on Illinois as a potential turning point in the tide of ratification.

Tactical maladroitness persisted throughout the ERA campaign. The amendment frequently fell victim to parliamentary back-biting and back-scratching. Among the most celebrated instances was one Illinois sponsor's decision to champion an independent candidate for leadership of the state delegation to the national Democratic convention. That gesture did not sit well with then-Mayor Daley, a politician not renowned for his willingness to forgive and forget. Shortly after the convention fracas, the ERA came up for a vote in the House. The Senate had already endorsed the proposal in its 1973 session, and support by Daley Democrats would have secured passage in the House. That assistance was not forthcoming. It was scarcely coincidental that seven of the Mayor's most devoted lieutenants, all of whom had supported ratification the preceeding year, reversed their position, leaving the amendment seven votes short of passage. The sponsor herself was philosophical about the event:

If you permit yourself to be intimidated, it hurts your stature and efficacy as a legislator. You may bargain and negotiate but you can't be intimidated. It's a fine line but you must draw it.²⁵³

While many pro-ERA supporters agreed with the distinction, they felt she had picked the wrong moment to underscore it.²⁵⁴

Comparable timing problems surfaced in other contested states. Political pique may have been decisive in one well-publicized Tennessee defeat;²⁵⁵ in South Carolina, sponsors gained national notoriety for allowing a vote to proceed immediately after lunch, before several crucial legislators had returned.²⁵⁶ Other sponsors repeatedly miscalculated the

scrutiny as they would receive at an earlier date, and some legislators deliberately delay pushing certain bills until the last possible moment. Passage of a bill in Illinois depends, in part at least, on the sense of timing of its adherents.

G. Steiner & S. Grove, *Legislative Politics in Illinois* 21 (1960).

253. Interview with Eugenia Chapman, *supra* note 79.

254. Interview with Esther Saperstein, *supra* note 167. See also J. Boles, *supra* note 2, at 167, and sources quoted therein.

255. See Wohl, *supra* note 2, at 84-85. See also *Women: The End of an ERA*, Newsweek, June 19, 1978, at 34 (recounting a comparable incident).

256. *Rights Amendment Seems Dead for '75 After New Set Back*, N.Y. Times, Mar. 27,

strength of their support and the repercussions of various parliamentary maneuvers. Where they did accurately anticipate difficulties, they lacked the logrolling resources to avert defeat. While such *faux pas* are commonplace in any state capitol, the consensus has been that ERA sponsors in contested states generally displayed singular mismanagement at certain critical junctures.²⁵⁷

But if there is blame to apportion, it should by no means be laid solely at these individuals' doorsteps. The failures of female proponents reflect a prolonged exclusion from the political mainstream, for which they cannot be held accountable. With few exceptions, these women legislators have remained outsiders, unwelcome intruders in the sporting and dining enclaves where deals are struck. So too, the unwillingness of powerful male sponsors to press more vigorously for ratification testifies to women's general impotence at both parliamentary and grass roots levels.

If "women's issues" are to assume a less peripheral niche in the political landscape, their supporters must organize around candidates as well as causes. Nothing less will ensure a critical mass of elected officials who are committed to women's concerns, and who can summon sufficient legislative muscle to make their priorities felt. For that to occur, more women must become principals rather than accessories in political campaigns. They must stand for office, build cohesive voting blocks, and secure a greater share of party nominations and resources.

The point has not been lost on ERA proponents. Shortly after the ratification deadline passed, the president of the National Women's Political Caucus observed that, despite women's numerical majority in the voting population, they comprise only twelve percent of the state legislators. What became "painfully apparent in the ratification battle is that 12% . . . is not enough."²⁵⁸

1975, at 33, col. 1 (describing defeat by vote of 46-43 taken before some key supporters had returned from lunch).

257. For example, many observers believed that the Illinois speaker's 1973 decision that a three-fifths vote rather than a simple majority was necessary for ratification was influenced by actions of the Democratic ERA sponsor, who had run against him for the speaker's position. See Unger, *Women's Lib Fight Tougher*, Chi. Trib., Feb. 1, 1973, § 2, at 5, col. 1. As one anti-ERA leader bluntly acknowledged, that sponsor had "done some stupid things. She'd helped us tremendously." Interview with Darlene Deginhardt, *supra* note 45. See also C. Felsenthal, *supra* note 4, at 253.

Moreover, in many non-ratifying states, supporters seemed exceptionally uninformed and ineffectual in the horse-trading maneuvers that preceded key votes. See generally J. Boles, *supra* note 2, at 145-66, 168-80. See also Lentz, *State Senate Vote Kills ERA*, Chi. Trib., June 25, 1982, § 2, at 1, col. 2 (describing ERA backers' surprise at defection of key supporters in the amendment's final defeat before the 1982 deadline expiration).

258. MacNeil-Lehrer Report, *supra* note 35, at 3 (quoting Kathy Wilson). In another interview, Wilson added, "We can no longer be standing on the outside wringing our hands

If the ERA's defeat has helped inspire and empower women to redress that imbalance, the struggle may well be vindicated. A twenty-four-word constitutional amendment is more a catalyst than a source of change. Without a fundamental reordering of American institutions and values, women cannot hope to achieve true parity in employment opportunities, economic security, and social status. Both private and public sectors must attach much higher priorities to a cluster of issues: adequate day-care, flexible work schedules, comparable pay for comparable worth, extended maternity leaves, support structures for single mothers, and reforms in pension, tax, credit, and welfare policies.²⁵⁹ The prospects for that social agenda hinge far more on political power than

over every roll call vote. We have got to get women in office." Herbers, *supra* note 40, at 1, col. 1 (quoting Kathy Wilson). Some feminist leaders had reached comparable conclusions a half-century earlier. See, e.g., E. Flexner, *supra* note 210, at 326 (quoting Carrie Chapman Catt). For an overview of the barriers to women's political advancement, see Costantini & Craik, *Woman as Politicians: The Social Background, Personality, and Political Careers of Female Party Leaders*, 28 J. Soc. Issues 217 (1972).

Of course, a significant number of female legislators also opposed the ERA, though in smaller percentages than their male colleagues. See Lilie, Handberg & Lowrey, *supra* note 211, at 32. Thus, the need is not simply to elect women. See Collin, *As Symbol, Issue Will Never Die*, Chi. Trib., June 27, 1982, § 2, at 1, col. 5 (remarks of Eleanor Smeal, president of NOW) ("We will not again seriously pursue the ERA until we've made a major dent in changing the composition of Congress as well as the state legislatures to include a significantly larger proportion of women and of men who are genuinely feminists. Next time we will not be cheerleaders on the sidelines but direct participants in the decision making bodies."). See also *NOW Supporting Some Men Instead of Women for Office*, N.Y. Times, Oct. 3, 1982, at 68, col. 5.

259. For discussion of the desirability of various options regarding day-care, part-time employment, maternity leaves, and flexible work schedules, see M. Wade, *Flexible Working Hours in Practice* (1973); Rowe, *Child Care for the 1980's: Traditional Sex Roles or Androgyny?*, in *Women into Wives: The Legal and Economic Impact of Marriage* 169 (J. Chapman & M. Gates eds. 1977); *Hearings on Part Time Employment and Flexible Work Hours Before the Subcomm. on Employee Ethics and Utilization of the House Post Office and Civil Service Comm.*, 95th Cong., 1st Sess. (daily ed. May 24, 26, June 29, Oct. 4, 1977); National Conference on Social Welfare, Families and Public Policies in the United States, Final Report of the Commission (1978). For a general discussion of work-sharing plans that might increase the number of jobs available to women with extensive family commitments, see also Summers & Love, *Work Sharing as an Alternative to Lay Offs by Seniority: Title VII Remedies in Recession*, 124 U. Pa. L. Rev. 893 (1976).

The rationale for a comparable worth approach to existing male-female salary differentials is analyzed in note 263 *infra*. For suggestions regarding means of securing more adequate child support, see Powers, *supra* note 17, at 115-16; and sources cited in note 95 *supra*. The need for reforms in social security and AFDC programs is reviewed in U.S. Nat'l Comm'n on Social Security, *Social Security in America's Future* 225-44 (1981); and sources cited in note 266 *infra*.

Given the types of jobs they occupy and their mobility in and out of the labor force, women are half as likely as men to be covered by pensions. See President's Comm'n on Pension Policy, *Working Women, Marriage and Retirement* 31 (1980). For discussion of

constitutional symbols. Had the ERA sailed smoothly through state capitols, its proponents would have missed valuable instruction in both the mechanics of realpolitik and the limits of their own influence. In the long run, the political truths distilled from the unsuccessful struggle could prove more enduring than the fruits of an easy symbolic victory.

IV. Epilogue

Less than a year has passed since the latest demise of the Equal Rights Amendment. With the proposal so recently interred, any sweeping historical pronouncements would seem premature, even somewhat unseemly. Nonetheless, the recent resurrection of the text in Congress²⁶⁰ prompts a few musings that, depending on one's frame of reference, may form more a prologue than a requiem.

To those most intimately involved, the ratification struggle has had all the makings of a medieval morality play. For the opposition, the allegorical referents were unambiguous. In a contest between decency and deviance, the champions of family and femininity took arms against a radical fringe. To opponents, the result was culturally and spiritually appropriate if not, indeed, preordained.

For many proponents the moral landscape was equally flat; the roles were simply reversed and the narrative was as yet incomplete. At the close of Act I, the vanguard of liberation suffered a setback at the hands of a small reactionary cadre. The 1982 ratification deadline marked only the intermission. In the final scene, still in preparation, the forces of darkness will be dispersed and equality will at last be the law of the land.

Neither script is consistent with the analysis developed above. Even at this limited historical distance, the narrative seems less banal, the motivations richer, and the outcome more indeterminate than the principals have acknowledged. Viewing the performance not as a single set piece but as part of a continuing genre, the denouement suggests

modifications in pension vesting requirements and coverage that might reduce this gender differential, see U.S. Comm'n on Civil Rights, *supra* note 15, at 16-17.

One potentially promising statutory approach to many of the issues identified above is the proposed Economic Equity Act of 1983, S. 888, 98th Cong., 1st Sess., 129 Cong. Rec. 53796 (daily ed. Mar. 23, 1983) (providing, *inter alia*, increased tax credits for child care; tax incentives for employers who hire divorced or widowed homemakers re-entering the work force; prohibitions against pension plans that penalize women for taking child-care leaves; and more stringent enforcement of alimony and child support obligations). 260. Supporters introduced a joint resolution proposing an equal rights amendment in July, 1982, and again in January, 1983. H.R.J. Res. 534, 97th Cong., 2d Sess., 128 Cong. Rec. H4109 (daily ed. July 14, 1982); S.J. Res. 213, 97th Cong., 2d Sess., 128 Cong. Rec. S8240 (daily ed. July 14, 1982); S.J. Res. 10, 98th Cong., 1st Sess., 129 Cong. Rec. S529 (daily ed. Jan. 26, 1983); H.R.J. Res. 66, 98th Cong., 1st Sess., 129 Cong. Rec. H98 (daily ed. Jan. 6, 1983).

broader questions that do not readily yield allegorical truths. From a historical perspective, the ratification campaign seems a relatively minor event in an ongoing struggle over the redefinition of social status and sexual roles. The results of that process will depend on economic, technological, and cultural forces to which the ERA's fate will make at best a marginal contribution.

Even so, the future ratification colloquy will not lack significance as a social text. From a political and jurisprudential standpoint, the debate may continue to prove illuminating for what it discloses about the dynamics of constitutional change; among other things, it may suggest the limits of meaningful public discourse on legal issues carrying substantial symbolic freight. From a more sociological vantage, the dialogue could be instructive for what it reveals about cultural mores and aspirations; in particular, it may illumine the degree of consensus regarding social institutions that seek to reinforce or suppress sex-linked differences.²⁶¹ And finally, from an instrumental perspective, the results may exert some short-term influence over the continuing reformulation of women's legal rights and social station.

At this juncture, the shape of the coming ratification campaign remains very much in doubt. One disquieting possibility is that the same morality play will be revived, with much of the original script unaltered. Having spent a decade snarling past each other, proponents and opponents may now have difficulty conceptualizing their interaction as anything other than a contest for cultural dominance. In attempting to establish who speaks for women, neither faction has attended to what women have in fact been saying.

Throughout the ratification struggle, opponents flailed against their own caricatures of an androgynous society. Unwilling to accept either the risks or the rhetoric of liberation, they seized on the Equal Rights Amendment as an all-purpose scapegoat for encroachments on their

261. For some of the more thoughtful attempts to fashion a theory of sexual equality that takes account of values traditionally ascribed to women, see E. Wolgast, *Equality and the Rights of Women* (1970); Elshtain, *The Feminist Movement and the Question of Equality*, 7 *Polity* 452 (1975); and Rossi, *Equality Between The Sexes: An Immodest Proposal*, in *The Women in America*, *supra* note 118, at 98.

For counterarguments in favor of an "assimilationist" society that does not assign roles on the basis of an involuntary and immutable sexual characteristic, see C. Epstein, *Woman's Place* (1971); C. Gilman, *Women and Economics* (1898); La Follette, *Concerning Women*, in *Freedom, Feminism, and the State* 213-35 (W. McElroy ed. 1982); Jagger, *On Sexual Equality*, *supra* note 118; Wasserstrom, *Racism and Sexism*, *Philosophy & Social Issues* 30 (1980). See also Yale Study, *supra* note 15, at 874 ("As long as woman's [sic] place is defined as separate, a male-dominated society will define her place as inferior."); Accord, S. Firestone, *The [D]ialectic of Sex 2* (1970). For empirical research bearing on these issues, see sources cited in note 127 *supra*.

values, status, and way of life. After a point, such symbolic baggage becomes difficult to shed. Many women may remain unable to acknowledge that the feminist demon is largely of their own making.

Proponents, for their part, are no strangers to the arts of self-delusion. Like the Bourbons, many seem to have learned nothing, and forgotten nothing, from their defeats. In their zeal to allocate blame among disingenuous opponents and sexist legislators, they have remained oblivious to the numerous defects in their own performance. Their rhetoric frequently vacillated between the overwrought and the unintelligible. Too often, proponents summoned tedious legal exegeses against arguments that sprang from different roots. Yet, when their audiences' attention flagged, they responded with precisely the wrong diversions: culinary crusades, scatological pranks, and personal assaults. Predictably, the real substantive issues became trivialized and confused, and doubts among the unconverted were more amplified than allayed.

It is, of course, by no means obvious that different strategies would have yielded different results. From the outset, proponents confronted major stumbling blocks; the converted were often complacent, and the unconverted were wary of change in general and sexual equality in particular. Even so, proponents' conceptual ambiguities and prudential errors made them accomplices in the amendment's defeat.

What remains to be seen is whether, after a decade of dialogue, at least partial truths have been revealed to both sides. The cacophony that proved so divisive in the short term may yet have more constructive repercussions. It should now be clear to most participants that to enlarge their audience they must broaden their appeal. By choice or necessity, an increasing number of women have become full-time workers and single heads of households.²⁶² Those who are employed remain concentrated in low-paying, low-status jobs that yield few advancement opportunities and average salaries far below those of male workers.²⁶³ The vast majority

262. In 1979, 51% of all U.S. women were working or looking for work. Bureau of Labor Statistics, U.S. Dep't of Labor, Bull. No. 2080, *Perspectives on Working Women: A Databook 3* (1981). Of younger women, ages 25-34, 64% were in the labor force, *id.* at 4, including 54% of the mothers within this age group. *Id.* at 34. Since 1972, more than half of married women with school-age children have worked outside the home. U.S. Dep't of Commerce, *Statistical Abstract of the United States 392* (1977) (citing U.S. Bureau of Labor Statistics, *Special Labor Force Reports*, Table 634 [Married Women in the Labor Force by Age and Presence of Children: 1950 to 1976]). See also note 265 *infra*.

263. In the two decades that have elapsed since the enactment of Title VII and the Equal Pay Act, which prohibit sex-based discrimination in employment, see note 14 *supra*, the salary differential between full-time male and female workers has not significantly improved. See Burstein, *Equal Employment Opportunity Legislation and the Income of Women and Nonwhites*, 44 *Am. Soc. Rev.* 367, 374-81 (1979). Employed women receive an average of only 59 cents for every dollar earned by men. Women's Bureau, U.S. Dep't of Labor, *The*

of married women continue to assume primary domestic and child care responsibilities, which are not easily accommodated within existing employment structures. Work schedules, benefit packages, evaluation procedures, and seniority provisions have generally proved unresponsive to working parents who seek extended leaves or meaningful part-time vocations.²⁶⁴

Moreover, demographic patterns reflect an increasing "feminization of poverty."²⁶⁵ Divorced mothers have experienced enormous

Employment of Women: General Diagnosis of Developments and Issues 7 (Apr. 1980). Among the primary causes of this differential are the occupational segregation of female employees and the lower wage scales in jobs traditionally held by women. See *id.* at 6-7; C. Lloyd & B. Niemi, *The Economics of Sex Differentials* (1979); A. Stromberg & S. Harkess, *Women Working: Theories and Facts in Perspective* (1978); Blumrosen, *Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964*, 12 U. Mich. J. L. Ref. 397, 402-04 (1979); Stevenson, *Women's Wages and Job Segregation*, 4 Pol. & Soc'y 83 (1973). Such de facto segregation in turn reflects the lingering imprint of a century of intentional discrimination and social stereotyping.

To reduce the disparity between male and female earnings, feminists have increasingly advocated concepts of comparable worth, which require that wage scales reflect analysis of job content rather than prevailing market rates. The merits of that approach are reviewed in *id.*; Nelson, Opton & Wilson, *Wage Discrimination and the 'Comparable Worth' Theory in Perspective*, 13 U. Mich. J. L. Ref. 231 (1980); Schwab, *Job Evaluation and Pay Setting: Concepts and Practices*, in *Comparable Worth: Issues and Alternatives* 49 (E. Livernash ed. 1980).

The Supreme Court recently reserved decision on possible application of the doctrine in federal sex discrimination cases. *County of Washington v. Gunther*, 452 U.S. 161 (1981). For subsequent developments and analysis, see Gasaway, *Comparable Worth: A Post-Gunther Overview*, 69 Geo. L.J. 1123 (1981).

264. Working wives' disproportionate assumption of family obligations are discussed in J. Bernard, *supra* note 146, at 219-20; R. Rapoport & R. Rapoport, *Dual Career Families Re-examined* 354-58 (1976); and L. Hoffman & F. Nye, *Working Mothers* 55, 230 (1974). This asymmetry in domestic commitments accounts for many women's choice of part-time or discontinuous employment. Yet by the same token, most work that accommodates flexible schedules or extended leaves affords little job security, insurance coverage, pension protection, advancement opportunities, or decision-making responsibility. For analysis of these structural problems and the range of statutory mandates and incentives that might improve women's position in the labor force, see L. Holmstrom, *The Two-Career Family* 39-86, 153-81 (1973); Frug, *Securing Job Equality For Women: Labor Market Hostility to Working Mothers*, 59 B.U.L. Rev. 55 (1979); Scales, *Towards A Feminist Jurisprudence*, 56 Ind. L. J. 375, 438-44 (1981); and sources cited in note 259 *supra*.

265. In 1975, twenty-one million persons, 13% of all families, were living in female-headed households. Almost 40% of these families had incomes below the poverty level. U.S. Comm'n on Civil Rights, *Women Still in Poverty* 1, 18 (1979). Census Bureau figures for 1981 indicate that almost one-half of the families below the poverty level were headed by women with no husband present. The poverty rate for such families was 32.7%, compared with 6.2% for married couples and 11% for families headed by men with no wife present. U.S. Comm'n on Civil Rights, *A Growing Crisis: Disadvantaged Women and Their Children* (1983). See also *Facts and Figures About Women and Poverty*, San Francisco NOW Times, Feb. 1983, at 3.

difficulties obtaining adequate financial support, and single women dependent on welfare, pensions, or social security assistance have not fared well in a climate of growing administrative austerity.²⁶⁶ Nor have homemakers lacking independent incomes inevitably received equitable treatment under the gender-neutral domestic property laws that have become the norm in most states.²⁶⁷ These are deeply rooted social problems that both opponents and proponents have an interest in addressing.

The victims of these structural inequalities are not, of course, similarly situated. Some are members of a transitional generation, now reluctant to bear the cost of creating "equal" opportunities that they never enjoyed. Others are victims in other respects. Confronted by daily reminders of their social and economic disadvantages, many women do not rank symbolic parity high among their personal objectives. Yet cutting across such class divisions are issues of common concern.²⁶⁸ Many of these women share commitments both to family-oriented values and to institutional structures that will give those values content in the current social order. A large number want not a choice between domestic roles and meaningful vocations, but some means of reconciling the two. To capture this audience, activists must offer substantive programs, not simply scapegoats or symbols.

If ERA opponents are to conserve feminine traditions, they must confront the consequences of cultural change. They must offer a plausible

266. For discussion of the problems in enforcing support statutes, see sources cited in note 76 *supra*. The federal welfare budget of the Aid to Families With Dependent Children Program was cut from \$6.4 billion in fiscal 1982 to \$5.4 billion in fiscal 1983. See Office of Management and Budget, Exec. Office of the U.S. Gov't, *Fiscal Year 1983*, pt. 5, at 124 (1982). For analysis of the impact of other recent budgetary curtailments on women, see Women's Research & Education Institute for the Congressman's Caucus, *Impact on Women of the Administration's Proposed Budget* (Apr. 1981); Eisenstein, *The Sexual Politics of the New Right: Understanding the 'Crisis of Liberalism' for the 1980's*, in N. Keohane, M. Rosaldo & B. Gelpi, *Feminist Theory: A Critique of Ideology* 77, 92-98 (1982).

Single women comprise almost three-fourths of the nation's elderly poor. U.S. Dep't of Health, Education & Welfare, *Social Security and the Changing Roles of Men and Women* 168 app. C (Feb. 1979). One of three single women over 65 had an income that fell short of the poverty threshold. *Id.* at 167-70. For discussion of the way current social security and pension provisions disadvantage those women, see U.S. Comm'n on Civil Rights, *supra* note 15, at 14-17, and sources cited therein.

267. See notes 75 and 95 *supra*.

268. For a critical review of the literature seeking to bridge these divisions and synthesize Marxist and feminist theory, see MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, in N. Keohane, M. Rosaldo, & B. Gelpi, *supra* note 266, at 1; C. Guettel, *Marxism and Feminism* (1974). Among the most useful syntheses are Z. Eisenstein, *supra* note 22; S. Firestone, *supra* note 261; and J. Mitchell, *Woman's Estate* (1971).

way for working women, divorced homemakers and single heads-of-households to fulfill, at least partially, the role they idealize. So too, if proponents are to become successful advocates for progress, they must recognize that broad segments of the American public find much worth preserving in ostensibly archaic feminine stereotypes. For many women, the "liberated" alternative, grounded in a professional paradigm, has appeared inaccessible and just as confining as the domestic mystique it sought to supplant.

In attempting to enlist those women, feminists might do well to pause in the pursuit of an increasingly divisive constitutional symbol and focus on more concrete responses to structural inequities. That redirection of effort will, in turn, require sustained pressure not only on legislatures, but also on unions and employers in both private and public sectors. And to be successful, the campaign must convince men that society as a whole has a stake in expanding assistance for working parents and in renouncing role stereotypes that have constricted opportunities for both sexes. Obtaining formal rights within existing institutional structures is not sufficient. The objective must be to recast those structures to accommodate more humane, less hierarchical forms of social experience.

If the ratification debate brought these points home, and equipped women with the political expertise to make their perceptions felt, then the process itself may have been more significant than the objectives either side sought to attain. If there is a hopeful lesson to be distilled from the ERA campaign, it is that the vast majority of women on both sides of the issue want equality in some sense: equality in social stature, economic security, and vocational opportunities. It is to these common aspirations that the struggle for equal rights must now turn.