ERA

Pilgrim Church, Duluth November 19, 1978 Royal F. Shepard, Jr.

In 1923 a Quaker social worker, Alice Paul, managed to get introduced to Congress a proposed Constitutional amendment guaranteeing equal rights to women. Fifty-five years later the fate of that proposal remains uncertain. In the meantime we have been passing through what is probably the most far-reaching social revolution in the history of our species, a revolution in which the age-old roles of the sexes have been changing in a process that is likely to continue with mounting acceleration for the foreseeable future. It is no longer a question of whether the highest law of the land will lead the way. The only question is whether it will catch up soon enough to matter.

Many church bodies have given the ERA amendment vigorous support. Included among these are the Episcopal Church, the United Presbyterian Church and the United Methodist Church. The Methodists in particular have been active not only in supporting the amendment but in boycotting for convention purposes those states that have voted against ratification.*

The General Synod of the United Church of Christ also has been active in support of ERA. It has taken this position because its members believe that equality in the economic, political and domestic spheres of life is rooted in that equality before God that is taught by the gospel. In a pronouncement of 1971 the General Synod declared:

> An integral part of our Christian faith is that God's love for all his children makes no distinction of worth between male and female. They are equal in value in God's sight; therefore, distinctions made by society which assume an inferior-superior relationship are contrary to the will of God. The right of each person to achieve his or her maximum potential as a child of God is basic to any understanding of the gospel of Jesus Christ.

On the basis of this affirmation the pronouncement goes on to attack the stereotyping of women "as housekeepers and childraisers" and the discrimination they frequently experience in employment.

That meeting of the General Synod did not endorse ERA. However, at the synods of 1975 and 1977 such endorsement was approved.

As time has gone on, however, other religious groups have grown very aggressive in opposing ERA. Mormon leaders are credited with defeating ratification in certain state legislatures in the West. Fundamentalist Protestants have been instrumental in preventing ratification in most of the southern states. While many Catholics have been outspoken in supporting the amendment, groups such as the Knights of Columbus and the Holy Name Society have lent support to the opposition in some parts of the country. Emotions run high on the issue and some devout persons seem to believe quite sincerely that were the amendment to become law almost every conceivable moral evil would ensue.

*The General Synod of the United Church of Christ recently reaffirmed a similar policy.

Looking at the wording of the proposed amendment you would hardly suspect so much of it. That wording reads as follows:

> Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Who outside of the Ku Klux Klan and the John Birch Society would want to quarrel with that? Quite a few people, it seems, including some in the legal profession who claim to have the welfare of both men and women at heart. I cannot claim any competence in constitutional law. I have not been able to lay my hands on the sort of extended treatment of ERA that one might find in a law journal. I have had to rely like most other people on the often misleading superficialities of the popular press. Nevertheless, I shall make so bold as to comment briefly on what appear to be the chief arguments against the proposed amendment from responsible sources.

One basic argument holds that the amendment is unnecessary. Some persons believe that the desired results could be achieved more safely and with less confusion by litigation under the "equal protections" provision of the 14th Amendment and under special legislation passed by Congress.

Against that argument three considerations come to my mind. The first is that when basic human rights meet with massive social resistance, a certain amount of redundancy may be a good thing. That which is repetitious from a purely logical point of view, may still be useful in practice.

The second consideration is that to date attempts to achieve equality without such an amendment have not produced the desired results. Laws discriminating on the basis of sex do exist in several states. Moreover, as Barbara Katz pointed out in The National Observer /Apr. 19, 1975/, "In 200 years an all-male Supreme Court has failed to find that a sex-based legal classification violates the Constitution. To use the Court's terminology, sex discrimination - unlike racial discrimination - is not regarded as 'inherently suspect.'"

The third consideration is that necessary or not, from a legal perspective, a constitutional amendment would lend tremendous moral sanction to equality of rights. Dorothy Lara-Braud makes the point in an issue of Engage/Social Action, an official journal of both the United Church of Christ and the United Methodist Churches. She says "an amendment to the constitution is.... a more powerful force in changing tradition than any single law could possibly be. The constitution is the standard against which other laws are judged, the principle by which all of us measure ourselves, the most basic ruling agreement in our society." /Dec., 1976/

To put this matter another way, we could say that a constitutional amendment carries powerful public relations impact. Consequently, it wields great moral influence. It used to be said in earlier civil rights debates that you cannot legislate morality. Martin Luther King responded by answering that although you cannot legislate morality, you can legislate behavior. But Dr. King need not have conceded so much. When you give legal sanction for or against a type of human behavior you influence attitudes, you effect changes in what some people believe to be right or wrong, you alter the going moral code under which a given community operates. Legislation does change morality. That is one reason why it is right for churches to concern themselves with legislation on moral grounds.

A second basic argument against ERA is that it would lead to results injurious to the welfare of women. Here we get into projections as to the pos-

sible consequences of the amendment. These are so numerous and so complex that it is quite impossible for us to review them all in the few minutes allotted to us.

Let me list just a few of the more serious results, which both advocates and opponents of ERA agree would occur.

If there were a draft, which God-forbid there ever would be again, women no longer could be exempted by reason of sex alone.

Husbands no longer would be held accountable solely, or primarily, for the support of their wives and children. Both parties to a marriage would be equally responsible for material support, although in practice they would be free to work out whatever domestic or employment arrangement was mutually agreeable.

So-called protective labor laws prohibiting women to work at certain jobs, or limiting the hours or conditions under which women as distinguished from men might work, would be changed or struck down. In some cases the protections would be extended to men; in other cases, they would be eliminated and all persons would be free to apply for a job on the basis of their individual qualifications rather than their sex. A little girl who grew up in a church I once served, holds a union card as a longshoreperson. If she can heave fifty-pound crates around for eight hours a day, no one could deny her a job because she's a woman.

These and other predicted results of the ratification of ERA do give cause for some legitimate concern. An interesting article in the Saturday Review /7/25/77/ pointed out that many women oppose ERA because they are pessimistic about the outcome. They fear that a male-dominated society will take advantage of the amendment in order further to take advantage of women in such areas as child support, and employment.

On the other hand, women supporting ERA argue that the supposed protections and privileges they enjoyed afford more disadvantages than advantages. They argue that laws putting primary financial responsibility on the husband do not make much difference except in cases of separation or divorce and they tend to perpetuate women's status of economic dependence. The main result of protective labor laws is to exclude women from well-paying jobs. Only a minority of men ever have qualified for the draft and there is no reason why those women who do qualify should not be given the opportunity to serve in this way.

It is to the credit of women's groups supporting ERA that they are not trying to have their cake and eat it too. They recognize that equal rights demand equal accountability, that equal opportunities require equal responsibilities. If women are to become full participants in the game of our society, not only in the home, but everywhere, they must play the game according to the same rules as the men. They cannot have special privileges. But as many informed persons are prepared to point out in some detail, these historic protections and privileges are not the social boon most people assume them to be.

Nevertheless, I do see some risk involved in the passage of ERA. The essential difficulty lies in the fact that we only are part-way through this process of change. Consider the question of economic responsibility in the family. In a society where husbands were held accountable for the support of their wives there was some justice in the policy of many companies and public

agencies paying a higher wage to a male head of family than to a single woman. In a society, such as ours today, where economic conditions require that most women be gainfully employed, such a policy would be totally unjust. By the same token, in a society where women had equal access to the labor market it would be unjust to hold a husband primarily accountable for the support of his wife.

The problem is that we find ourselves in an in-between situation. Many women do hold good jobs and sometimes they take jobs away from men. Yet the average wage earned by women is only about 57% that earned by men, and that ratio is not improving. Consequently, both men and women experience much unfairness in our society. In the short run ERA may lead to more cases of individual unfairness while relieving others. Surely it cannot lead to full economic and social equality overnight. Our best hope, I think, is to make the ground-rules as equal as possible so that in the long run we may achieve the maximum degree of equality for everyone.

Beyond the arguments against ERA that I have mentioned there are others, some highly emotional. For example, Sam Irvin insists that we shall have to go to co-ed rest-rooms. Well, our church already has one. Then there are fears that such an amendment would promote abortion and homosexuality. I do not see that the amendment ties in directly to such matters.

Underlying such specific fears, there is the more general anxiety that somehow ERA will hasten the destruction of family life and the deterioration of moral behavior. I for one can sympathize with such anxiety. The changing roles of the sexes in our society continue to prove unsettling to just about everybody. They have led to very negative side effects at times both in family life and in individual behavior. I doubt that any of us is fully capable of coping with this process of change. No matter how strongly we may feel it is moving in the right direction, we are bewildered by it and sometimes we suffer from it. It will take some generation not yet born to live at peace with this social revolution not only economically and politically, but psychologically and spiritually.

In the meantime, we must do the best we can. Much as some of us would like to, we cannot return to the old patriarchal family system where all of us knew so well what our respective places were. That system was tied to an old agricultural society that no longer exists. It is too late to shut the barn door; or rather, we should say, the kitchen door. The woman has flown. The sexes will continue to differ. No one denies that. But with respect to their rights before the law, with respect to their opportunities for life, liberty and the pursuit of happiness, the time has come to say, there ought not to be a difference.

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Equality of rights is right. That is why the United Church of Christ has come out in support of this proposed amendment. Equality of rights always was right, but only in modern industrialized society has it become possible. In such a society it also has become urgent. If the lawyers can come up with a way of securing equal rights for women more quickly and effectively than a constitutional amendment, more power to them. In the meantime, I think we must take our chances with the option now before the states.