

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Equality/Gender

The Report of the U.S. President's Commission on the Status of Women (1965)¹

President John Kennedy in 1961 established a Commission on the Status of Women, chaired by former first lady Eleanor Roosevelt.² The women appointed to the commission were particularly concerned about what they perceived as “a puzzling contrast between our claim to freedom of opportunity and our actual accomplishments.” Women had greater freedoms in the 1960s than ever before, but only a few women were in economic, cultural, or political leadership positions. After holding extensive hearings, the commission issued a wide-ranging report that detailed and made recommendations about the status of women in the home, in educational settings, in the workplace, and in politics.

The following excerpt is from the section on the constitutional rights of women. Think about this section in light of the debates over women's rights in the 1920s. To what extent did understandings about women's equality change over forty years? What principles remained the same? To what extent did this report indicate that women seeking equality were largely mimicking the efforts of the civil rights movement? Was this a wise strategy, given the success of that movement in the 1960s, or do you think that strategy problematic? The epilogue to the report asserted, “All roles and statuses should be equalized toward those of the American, white, Protestant, well-educated, adult male.” This consensus position among most proponents of gender equality in the 1960s soon became a bone of contention among different feminist schools, many of which objected to treating men as the appropriate standard for measuring the rights, duties, and interests of women.

Civil and Political Rights

Although women in the United States are more equitably treated now than they have ever been, discriminations against them based on sex still remain in both law and practice. Reports of the Commission and its Committees document a wide variety of examples of inequitable treatment. Indeed, there would hardly have been need for a Commission on the Status of Women had the belief prevailed that women's rights were fully recognized. Those concerned with the status of women have long held that it would be easier to identify and eradicate many kinds of discrimination if broad recognition of the principles of women's equality were embodied in the law. While this objective is widely accepted, disagreement has existed on the best means to attain it, with the greatest controversy centering around the pros and cons of an equal-rights amendment to the United States Constitution.

CONSTITUTIONAL RECOGNITION OF THE EQUALITY OF WOMEN
THE EQUAL-RIGHTS AMENDMENT.

The proposed equal-rights amendment to the United States Constitution provides in part: “Quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”

¹ Margaret Mead and Frances Balgley Kaplan, *American Women: The Report of the President's Commission on the Status of Women and Other Publications of the Commission* (New York: Charles Scribner's Sons, 1965), 4, 184, 147–51.

² Roosevelt died in 1962, the year before the commission report was released.

This or a similar proposal has been introduced in each Congress since 1923 and has repeatedly been reported on favorably by the Senate Judiciary Committee. The Senate approved the proposed amendment in 1950 and in 1953, but added the "Hayden rider" to it on the floor. The rider provides that the amendment "shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law upon persons of the female sex. Supporters of the equal-rights amendment generally oppose the "Hayden rider" because they believe that it is under the guise of special "rights, "benefits," and exemptions that women have been denied opportunities that are available to men and that such exceptions contradict or nullify the principle of legal equality. Most supporters of the amendment think its passage is necessary because they believe that the Fifth and Fourteenth Amendments, as interpreted by the courts, do not afford women protection against discriminatory treatment. Those who oppose the amendment are fearful that it would threaten protective benefits that women have acquired over the years. They further believe that such a broad constitutional declaration is not a satisfactory way of dealing with a host of complex and varied provisions ranging from laws governing family relations to those related to women in industry.

The equal-rights amendment apparently is not intended to require identical legal treatment of the sexes. The Report of the Senate Judiciary Committee in 1962 indicated that the amendment probably would render unconstitutional laws restricting the legal capacity of married women, those dealing with jury service that treat women differently than men, and restrictive work laws applying only to women. The Senate Report state further that the amendment would not affect laws granting maternity benefits or criminal laws governing sexual offenses, nor would it require equal treatment of men and women for purposes of military service any more than all men are treated equally for the purposes of military duty, but women apparently would be equally subject to military conscription. With respect to alimony and support, the Report indicated that under the amendment alimony laws probably could not favor women solely because of their sex, but a divorce decree could award support to a mother if she was granted custody of the children.

It would, of course, ultimately be a matter for the courts to determine when equality of rights under the laws has been denied or abridged on account of sex, just as it is for the courts now to determine when due process of the law or equal protection under the laws is denied women under the Fifth or Fourteenth Amendments.

LITIGATION UNDER THE FOURTEENTH AMENDMENT.

The Commission and the Committee studied these arguments, and others, and concluded that the Fifth and Fourteenth Amendments *do* embody the principle of equality for women, but that clarification by judicial interpretation is urgently needed.

...
The language of the Fourteenth Amendment appears sufficiently broad to reach all arbitrary class distinctions and would therefore seem to cover discrimination based on sex.

...
In very recent decisions on cases concerning school desegregation . . . , the Supreme Court has enunciated principles illustrating the capacity of the Constitution to reflect modern concepts of the importance of human values and individual rights.

"The genius of the American Constitution is its capacity through judicial interpretation for growth and adaption to changing conditions and human values," [a report prepared for the Commission declared]. " . . . It must be recalled that the earlier decisions on women's rights reflected the prevailing attitudes of a parochial society in which human rights had neither gained recognition as a universal concept nor received the comprehensive analysis which they are being given today. Archaic notions expressed in some of these cases would hardly be countenanced by an enlightened court of the nineteen-sixties. The more important precedents were established nearly fifty years ago before the worldwide technological, social, and political revolution which has followed two World Wars had made its impact upon American society and institutions."

...

Members of the Committee and Commission were unanimous in their hope that, in a properly presented case, the Supreme Court would give full effect to the principle of equality of rights for men and women, thereby clarifying and establishing this principle in federal constitutional doctrine.

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