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*WOMEN'S CAMPAIGN FOR EQUALITY:
A NATIONAL AND STATE PERSPECTIVE*

NECAH STEWART FURMAN

THE STRUGGLE for equality by women of all cultures has been a lengthy and continuing process, during which women have traditionally turned to the legal system of the United States in their attempts to gain equity. It is somewhat paradoxical, therefore, to discover that historically the superimposition of the American legal system, legislation, and the Anglo culture has not always been a step forward for all ethnic groups. This is particularly true in the borderland states of New Mexico, Arizona, California, and Texas where Indian and Spanish social and legal systems preceded that of the United States. In these multicultural areas, the superimposition of Anglo culture, in some respects, resulted in a retrogression in the quest for women's equality.

New Mexico, with its large Indian and Mexican populations, is a case in point. In this state, the Navajos and some Pueblo groups traditionally functioned as matrilineal societies with equality of the sexes long before the coming of the white man. The cultural mores of Indian society allowed Navajo women, for example, to participate actively in tribal courts, take the initiative in divorce, transfer property from mother to daughter, and permitted the worship of both male and female deities. The Navajo woman's property and possessions, such as jewelry and livestock, could not be taken from her even through divorce. The American patriarchal system, based upon European antecedents, was destined to come into conflict with these tribal customs, resulting in loss of stature and prestige for the Indian woman. Her legal position, as well as that of her husband, suffered further when the United States government defined tribal members as "wards" of the government.¹

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After the Spanish conquest in the sixteenth century, the Hispanic legal system predicated upon the Roman code recognized the community property rights of women. According to Spanish law, one-half of all property belonged to the wife and one-half to the husband, however, a Hispanic woman could not will community property, nor was she truly an equal partner in business ventures. Although the Spanish woman enjoyed certain legal rights under Spanish law, and although she played a dominant role within the family unit, Catholicism had conditioned her to accept a role subservient to her husband.

Black women in New Mexico were in a similar subservient situation—a condition previously experienced through long years in slavery. Although historical and statistical data on Black women in New Mexico is practically non-existent—perhaps because this group constitutes the smallest minority within the state—it is obvious that in this territory as in others, Black women discovered that citizenship provisions of the constitution extended only to their spouses.

The Anglo frontier woman in New Mexico was, of course, also subject to Anglo law as based upon English precepts. The Blackstonian conception of woman's status asserted that after marriage, man and wife were one, which in effect robbed the woman of personal and legal identity. In most cases inheritance passed from father to eldest son. Single women were considered as perpetual minors, or if married, they were considered as part of their husband's chattel.² This status did give the poor creature certain interesting immunities; for example, the husband was held solely responsible for offenses and crimes she might commit in his presence or with his consent. On the other hand, the husband was allowed to beat his wife "with a reasonable instrument" to prevent such an unfortunate occurrence. Wifebeating, in fact, was legal in every state as late as 1850. This instrument was further defined as "a stick no thicker than my thumb."³

If the frontier woman was indicted for a crime, she was subject to an all male court and an all male jury, which utilized laws created and implemented by men; therefore, despite the fact that New Mexico remained a community property state, very few women availed themselves of their rights to sue to control that

private property. Furthermore, the pioneer woman of New Mexico as on other frontiers was the victim of a double standard, the remnants of which still exist today. While women of all cultural groups were expected to withstand the rigors of frontier life and perform the necessary long and arduous chores associated with homemaking in a primitive environment, she was treated as a dependent fragile being under the law. Her legal status was weakened by statutes, rules, and regulations that defined these hardy women as "incapable of facing harsh realities." Those individuals who did not fit the male mental and legalistic image were considered anomalies. Those few exceptions, the "female entrepreneurs" who sought independence, identity, and legal freedom were thus hampered by the legal illusions established by Anglo law. From the male Anglo-Saxon viewpoint, the law protected virginal daughters and wives; while, in reality, only the wives and daughters of the wealthy benefited from such an arrangement. The average wife, mother, or businesswoman was deprived of equal rights under the law.⁴

In the broader sphere, the origins of the movement to rectify such inequities began officially in Seneca Falls, New York, where in July 1848 under the leadership of Elizabeth Cady Stanton and Lucretia Mott, the famous "Declaration of Sentiments" was adopted proposing that "woman is man's equal." By this mid-nineteenth century period, women had placed their main emphasis on the winning of legal and political rights, although there were those even then who believed that economic advancement was the basis for feminine independence. Suffrage, however, was felt to be "the key to unlock every door and make women free."⁵

Geographically, few pioneer suffragists were to be found in the South, which is perhaps both ironic, considering that the genesis of the movement was connected to abolitionism, and logical, considering that interference with the position of women in the South, as with the position of the Negro slave, constituted an attack on the traditional Southern way. Most pioneer feminists concentrated their efforts initially in the northeastern states, but some scattered West. Here they met with greater success.

There were various reasons for this success, some of which were indigenous to the strength and character of the women who made

the arduous trek westward and contrary to the stereotypic image of woman as "reluctant pioneer," the devastated drudge who eventually retreated to her home in the East.⁶ Although historians and fiction writers have tended to perpetuate "the oppressed help-mate image," there were many women who stayed and sturdily survived, rearing children, tending fields, teaching the one-room schools, emptying slops, and even entertaining the cowboys at the end of the dusty trail. The worth of all these women was well appreciated, to the extent that early male inhabitants sought to lure them westward in larger numbers.

As enticement, the male leadership of western states and territories offered constitutions providing certain rights for women. The constitution for the state of Texas, Article VII, Section 19, for example, adopted in 1845, and Article X, Section 14 of the constitution of the state of California, adopted in 1849, held almost identical clauses providing for protection of women's property rights.⁷ Other western states soon followed suit. By 1858, 1859, and 1861, respectively, Minnesota, Oregon, and Kansas all had adopted constitutions with liberal provisions for the rights of women. The Kansas constitution of 1861, granting women the right to vote in all school elections, initiated the western suffrage campaign in earnest. Many women, in fact, were elected school officials; yet, the Kansas suffrage referendum in 1867 failed.⁸

Nevertheless, this campaign was aided by Wyoming democrats who had been influenced by the referendum and believed that they could enhance their party strength by supporting a move permitting women of their territory to vote. Politics, therefore, played an important part in these early attempts to gain equality for women in the West. Politics, however, did not constitute the sole motivating factor. In this state there were numerous transient voters—railroad workers, miners, and army personnel—whose vote had wielded some influence in the territorial election of August 1869, yet Wyoming was not to be their permanent residence. Natives of the territory felt that women voters would strengthen the power of the "home element" at the polls.

Finally, in Wyoming, as in other western states, political leaders held what might be termed "a real estate man's attitude." The state needed settlers. Furthermore, since Eastern women had

recently lost contests for the franchise, politicians reasoned that the suffrage experiment in Wyoming would create publicity, resulting in land sales.⁹ Thus political and economic motivations gave impetus to the women's campaign for equality in the West.

By the 1870s, the efforts of women suffragists such as Elizabeth Cady Stanton, Susan B. Anthony, and Abigail Scott Duniway, who began to focus their efforts in the western and borderland states of Oregon, Washington, Utah, Colorado, and California, also proved to publicize the cause. Interestingly enough, in addition to proclaiming that women were "citizens" and therefore entitled to the vote, these individuals also resorted to so-called "expediency arguments," stating pragmatically that women's suffrage would have "the most gratifying results—the immigration of a large number of good women to the territory."¹⁰

On December 10, 1869, champions for women's rights reached a milestone in their quest when the Wyoming Territorial legislature granted women the franchise. In addition, favorable property laws and equal compensation provisions were included. Then on July 10, 1890, Wyoming became the forty-fourth state in the union and the first state as well as the first territory to adopt equal suffrage and political rights for women. By 1898, Colorado, Utah, and Idaho also had woman suffrage.¹¹

At the national level it was not until 1912 that the movement was given real support when the Progressive Party, organized at Chicago to support Theodore Roosevelt for the presidency, incorporated as one of the planks in the new party's platform the principle of woman suffrage. The Bull Moose Party failed in the autumn election, but three more western states, Arizona, Kansas, and Oregon, adopted woman suffrage. Despite the support by individual states, and although the fourteenth and fifteenth amendments to the constitution had been passed much earlier in 1868 and 1870, granting citizenship and the franchise to Blacks, women were to wait until 1920 for the passage of the nineteenth amendment granting them the right to vote.

In 1921, the legislature of the state of New Mexico passed a resolution amending the New Mexico constitution to conform to the federal amendment. This resolution, granting women the franchise and the right to hold office, was narrowly approved on

September 20, 1921.¹² In the period following, women took a more active interest in affairs of state, and in 1925 the voters of New Mexico elected the state's first female senator, Louise Coe. At the age of twenty-eight, this attractive woman became the youngest person to hold the office. She served four consecutive terms beginning in 1925 and dedicated herself to the improvement of New Mexico's public education system. Chairman of the Senate Education Committee for a decade, she promoted passage of bills to upgrade education, including the use of state sales and severance taxes for school revenues. She also initiated bills providing for the consolidation concept for New Mexico schools, free textbooks, and a teacher retirement fund, among other issues. Louise Coe also sponsored a bill which attempted "to give a wife the right to control her separate property without consent of her husband." After serving as President pro-tempore of the Senate, from 1935 to 1937, she retired in 1941.¹³

Another outstanding woman to serve in New Mexico state government from 1936 to 1942 was Concha Ortiz y Pino de Kleven. Descendant of a well-known Hispanic family in New Mexico, she maintained a family tradition by becoming a member of the House of Representatives where she was "the only woman in the United States to be majority whip in a state legislature." In addition to civic and cultural activities, interest in rehabilitation of the handicapped, and other concerns, she sponsored legislation for bilingual education and the right of women to serve on juries.¹⁴ Despite the efforts of individuals such as Louise Coe and Concha de Kleven, attempts to correct legal inequities for women were largely unsuccessful during the 1930s and 1940s.

This was not because women in government and in the women's rights movement had failed to take action and pursue their objective of total equality. These leaders had realized in 1920 that the passage of the nineteenth amendment was merely the first step on the long road toward equality under the law. Consequently, the National Women's Party under the leadership of Alice Paul, the League of Women Voters, and other civil rights organizations soon thereafter introduced a bill before the United States Congress for the prevention of discrimination against any individual on the basis of sex. Fifty years later Congress agreed to present this issue to the states as the Equal Rights Amendment.¹⁵ Meanwhile,

women had joined the work force in increasing numbers, becoming more and more aware of the various forms of discrimination directed against them—discrimination in pay, promotions, professional training, childhood conditioning, in the job selection process, and within the legal, economic and financial power structure of society.

The turning point toward positive action for women came in 1963 when John F. Kennedy appointed a Committee on the Status of Women at the national level, thereby providing the impetus for the establishment of commissions at the state and local level. By February 1968, Governor David Cargo of the state of New Mexico had created his own Committee on the Status of Women by executive proclamation. In directing the activities of this group, he stressed the need for constructive action to improve employment policies and practices, labor laws, educational opportunities, and expanded programs to help women as wives.¹⁶

By 1971, a group of women studying with Leo Kanowitz at the University of New Mexico Law School formed the nucleus of the New Mexico Equal Rights Legislation Committee. Law school faculty and students became actively involved with studies of New Mexico statutes and their implications for women. Meanwhile, the United States Congress was engaged in committee debates over the Federal Equal Rights Amendment. Therefore, the time seemed opportune for consideration of a state amendment.

The New Mexico Equal Rights Legislation Committee, formally chartered in December 1971, spearheaded the move to place the equal rights concept on the November 1972 ballot as a constitutional amendment. Tom Ahern, who was president-elect of the state bar association at the time, organized eight committees to analyze and propose necessary statute revisions under this amendment. Then began the process of writing a comprehensive revision of New Mexico laws which would be needed if voters approved a state Equal Rights Amendment. Another important step was the educating of the public through study sessions, the press, the American Association of University Women, the League of Women Voters, and others.

The persistence and hard work paid off. In November 1972, citizens of New Mexico approved the state ERA by a 71% majority. This was a significant victory, but the New Mexico Rights

Legislation Committee and its moderator, Virginia Ahern, realized that there was still much to be accomplished. As she explained, "Other states had approved equal rights, but none of their statutes had been revised to conform to this ideal. Essentially this negates a state ERA as each act of discrimination must be proved in the courts."¹⁷ Members of the New Mexico Equal Rights Legislative Committee monitored all meetings and lobbied congressional members. Finally, during the 1973 session, the New Mexico Senate and House also voted in favor of the federal amendment; and in July of the following year, Governor Bruce King established a governor's Commission on the Status of Women.

The campaign for the Federal Equal Rights Amendment in New Mexico has not been without controversy. A strong anti-ERA coalition was organized in 1975; however, due to the efforts of the New Mexico Commission on the Status of Women and others, the anti-ERA forces were defeated after hours of debate and after hundreds of women invaded the legislative chambers to present their case.

More recently, the federal ERA has lost favor in the New Mexico legislature. At the same time, interest and support for the state ERA has increased, possibly because supporters see this as the only solution. The United States Supreme Court refuses to render a decision on the Equal Rights Amendment, but those people who have studied the problem feel that this may be the last resort as each protest of discrimination is resolved case by case.¹⁸ At present, three states are needed to ratify the amendment before the March 1979 deadline to obtain passage; however, efforts are under way for an extension. Needless to say, the passage of the federal ERA is not the answer to women's quest for equality within the state of New Mexico or within the United States as a whole. What is needed is a remolding of the mind-set of many Americans toward women's place in society.

Basic to the conquest of that obstacle is the educational system which conditions boys and girls to learn "appropriate" employment behavior through children's textbooks, which contain two-and-a-half times more boy-centered stories than girl-centered stories, and far more numerous male heroes than female. Textbook

studies showing the extent of this problem reveal that men are portrayed in 147 different types of employment, while women were pictured in only 26. In those 26, they were portrayed as a mother, a queen, a fat lady in a circus, and a witch.¹⁹ Findings such as these illustrate the tremendous need for the revamping of traditional texts and outdated educational concepts, not only within the borderlands state of New Mexico but throughout the nation. Only when the mental image of the American woman is changed in the minds of the majority of Americans can women succeed in their quest for equality.

NOTES

1. John Upton Terrell, *The Navajos* (New York, 1970), pp. 51, 229. Some of these female deities included Earth Woman, Changing Woman, Spider Woman, and Salt Woman.

2. I would like to express my appreciation to Mrs. Virginia Ahern, former Chairman of the New Mexico Commission on the Status of Women, for her generous assistance in providing information for this paper, especially for her permission to use material from her manuscript, "History of Women's Legal Rights in New Mexico."

3. Robert E. Riegel, *American Feminists* (Lawrence, Kansas, 1963), p. 78.

4. Ahern, "History of Women's Legal Rights in New Mexico," p. 2.

5. The "Declaration of Sentiments" was patterned after the Declaration of Independence, but substituted the word "man" for "King George" and listed eighteen grievances as women's demand for reform and equality. See Riegel, *American Feminists*, pp. 49-50, 155.

6. Sheryll Patterson-Black, "Women Homesteaders on the Great Plains Frontier," *Frontiers* I (1976):1-12. This is an excellent article helping to dispel the image of women as "reluctant pioneer," an image that has been perpetuated by fiction writers such as Hamlin Garland and Ole Rølvaag. Historian Everett Dick's book *Sunbonnet and Calico: The Homesteader's Consort*, although sympathetic, also portrays the frontier woman in this image.

7. First Constitution of the State of Texas, Austin, 1845, in H. P. N. Gammel, *The Laws of Texas, 1822-1897*, 2:1277-1304; 1849 Constitution of California, in Thomas J. Farnham, *Life Adventures and Travels in California* (New York, 1851), pp. 479-509.

8. These provisions included the rights of married and single women to own property, to make a will, dispose of their own earnings as they desired, and gave them more voice in child-rearing in the event of divorce. See William Forest

Sprague, *Women and the West: A Short Social History* (New York, 1972), pp. 138, 143.

9. Sprague, *Women and the West*, pp. 150-51.

10. Sprague, *Women and the West*, pp. 145-47; T. A. Larsen, "The Women Suffrage Movement in Washington," *Pacific Northwest Quarterly* 67 (1976):48, 51, 55.

11. Larsen, "Women Suffrage Movement," pp. 49, 55.

12. Ahern, "Women's Legal Rights," p. 3.

13. *Women in New Mexico*, American Association of University Women pamphlet published for the Museum of Albuquerque exhibit "Women in New Mexico," February 1-June 6, 1976. See also Wilbur Coe, *Ranch on the Ruidoso: The Story of a Pioneer Family in New Mexico, 1871-1968* (New York, 1968); and "Oral History of Louise Coe," October 23, 1974, Marilyn Dunn, Albuquerque Branch, American Association of University Women (AAUW).

14. *Women in New Mexico*, pp. 19-20; "Vignette, Concha Ortiz y Pino de Kleven," *The Santa Fean Magazine* (December-January 1975):18-19. See also "Oral History of Concha Ortiz y Pino de Kleven," August 27, 1975 by Louise Miller, Albuquerque Branch, AAUW.

15. *New Mexico Women and the Law?* pamphlet published by the New Mexico Commission on the Status of Women, p. 21. Provisions of the proposed Equal Rights Amendment are enumerated on p. 2, Section 1, reading, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." See also Ahern, "Women's Legal Rights," p. 3.

16. Marjorie Bell Chambers, "Women, the Majority Minority," speech presented at the conference on "Cultural Conflict in New Mexico: Issues of Public Concern," Museum of Albuquerque, June 4, 1977. Dr. Chambers is actively involved in the quest for women's rights in New Mexico.

17. Ahern, "Women's Legal Rights," pp. 4-6. Kanowitz was author of *Women and the Law*, an extensive explanation of discrimination between sexes.

18. Ahern, "Women's Legal Rights," pp. 4-6.

19. Interview, Kathy Staudt, political science professor, University of Texas, El Paso, reported in "ERA Faces Strong Test," *The Prospector*, April 28, 1978, p. 2.