Critical Thinking and Cedaw: Women's Rights as Human Rights

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CRITICAL THINKING AND CEDAW:
WOMEN'S RIGHTS AS HUMAN RIGHTS

A Thesis Presented

by

NANCY L. ADAMS

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CRITICAL THINKING AND CEDAW:
WOMEN'S RIGHTS AS HUMAN RIGHTS

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ABSTRACT

CRITICAL THINKING AND CEDAW: WOMEN'S RIGHTS AS HUMAN RIGHTS

June 1997

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Directed by Professor John R. Murray

The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the divinity itself; and can never be erased or obscured by mortal power.

Alexander Hamilton, 1775

This thesis is designed as an exercise in critical thinking which attempts to trace the little-known and vaguely understood international effort to address women's rights as human rights. Specifically, it is intended to introduce and actively engage the reader in the application of critical thinking processes through an analysis of the history and status of the Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW. Given the potential significance of CEDAW for the United States, it is ironic that this human rights treaty is not commonplace in discussions regarding women's rights.

Many associate the women's rights movement with efforts during the 1970s to ratify the Equal Rights Amendment, or ERA. Some may recall that the ERA was penned in 1921 after the Nineteenth Amendment was ratified, or simply the efforts to secure voting rights for women. Few, however, associate the women's movement with international efforts to codify such rights into law through treaties such as CEDAW.

CEDAW emerged as a product of the three World Conferences for Women that comprised the "Decade for Women" from 1975 through 1985. In 1995, a Fourth World Conference for Women followed. Of all of the documents produced, however, CEDAW

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stands alone as a legally binding treaty which, under Article II, section 2 of the Constitution, has the potential to become "...the supreme Law of the Land."

CEDAW serves as a contextual framework for introducing the processes of, and understanding the need for, critical thinking. The central hypothesis of this study is that critical thinking enables the public to determine if information is accurate, reliable, relevant and sufficient to support or refute a given opinion. Correlated with the fundamental premise that a democracy requires a well-informed citizenry, is that information must be accessible and citizens need to think critically. Upon these premises rests the hope that the resultant standards will be applied in the adjudication of important social issues.

This thesis asserts that issues of substance can easily be obscured and even discarded when selective emphasis is placed on secondary issues. Analyses of CEDAW are made with respect to media presentation, US Senate proceedings, and provocative topics which served to prevent the public from being well-informed. The results of these analyses reveal an astounding degree of misinformation (in the form of omission, bias, digression, fragmentation, contradiction, and general confusion) that continues to obscure CEDAW from public consideration and debate. Although, through an in-depth critical analysis the status of this treaty may be tragically unclear, the flaws in the treatment of human rights issues, as well as paths of correction, are exposed for public consideration.

In sum, critical thinking processes are viewed as necessary to protect the public’s perceptions of issues. Absent critical thinking, the public may fall prey to misinformation. Through its use, it is hoped that a higher level of humanity, understanding, and truth will emerge within the process and as the product of sound and careful reasoning.
To my parents,

Tom and Shirley Adams
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Women’s rights is not a new issue for the American public. It is, however, viewed or defined differently by various segments of the populace. Generally speaking, many associate the women’s rights movement with the efforts during the 1970s to ratify the Equal Rights Amendment, or ERA, as a part of the Constitution of the United States. Some may recall that the Equal Rights Amendment was penned in 1921 following the passage of the Nineteenth Amendment, or simply recall the efforts of the suffragists in securing the right of women to vote in the mid-1800s through the early 1900s. Few, however, associate the issue of women’s rights with human rights or are aware of international efforts to codify these rights into law through treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW.

The subject of women’s rights has historically been quite controversial and difficult to understand. The presentation of the history of the women’s rights movement, for example, tends to lack continuity in standard history books. Further, substantive issues are often obscured by surrounding controversies or a failure to provide a context through which these issues might be readily understood. In view of such problems, it is considered important to develop an awareness of the history and issues of the women’s movement in order to more fully understand the emergence of the contemporary view of women’s rights as human rights.
Critical thinking is asserted to be essential to the development of such an awareness. In brief, the processes of thought embodied by critical thinking provide the skill and standards needed to formulate understandings or opinions that are sound and well-substantiated. Through the application of critical thinking processes it becomes possible to identify misconceptions, fallacies, and bias which distort core issues, as well as opinions or conclusions based upon insufficient, inaccurate, or unreliable evidence. Beyond identification, critical thinking also provides avenues to counter-balance or otherwise correct these problems, particularly if critical thinking is understood as including or interdependent with creative thinking. In sum, the application of critical thinking processes engenders both a clearer understanding of relevant issues and how they may have been distorted, as well as the reasons why this was or may be the case.

Turning to the history of women’s rights in the United States, it is necessary to review the circumstances under which a movement to secure certain rights for women first evolved. Once the context in which certain events transpired has been established, later developments can be examined as a possible extension of earlier attempts to secure various rights for women. Since the United States is still a young nation by comparison, there is an added advantage of being able to establish this historical context over the span of less than two hundred and fifty years.

The social and cultural norms which existed when the United States underwent a transformation from its original colonial status, through the establishment of thirteen independent states, and ultimately to the formation of a new nation, are far removed from those which exist today. Slavery and the second class position of women were widely
accepted norms in the nation's formative years. The inequity inherent in such views, however, similar to the perceived mistreatment of the colonists by the British Empire, planted the seeds for future rebellion and change.

For the original colonists, rebellion was formally initiated through the Declaration of Independence in 1776. At that time, however, the colonists had yet to create their own national form of government or code of laws. Indeed, it was not until 1787 that the United States of America became a nation, with the drafting and subsequent acceptance of the Constitution. The Constitution established the legislative, executive, and judicial branches of the nation's government, as well as a system of checks and balances to prevent the abuse of authority which remain in place to this day.

In this respect, the Constitution of the United States of America is undoubtedly the cornerstone document of our national unity. Its survival over the course of more than two centuries in America's history speaks not only to its power and importance, but also to its flexibility. Indeed, the United States has continued to define itself through an ongoing interpretation of this document, whether in the face of civil war or such national uprisings as occurred during the course of both the civil rights and women's movements.

The disputes which have arisen that have caused the Constitution to be subject to evaluation and reinterpretation have involved issues of rights. The questions concerning rights include everything from the degree of authority extended to the president to the right of individuals to vote. In each case, the answers to these questions have been determined by the procedures established by the Constitution, although at times these procedures were deemed to be inherent or implied as opposed to specifically stated.
The intention of this brief summation is not to ignore or otherwise discount the fact that the Constitution itself has historically been subject to criticism. From a contemporary point of view, one need only recall the renewed allegations (e.g. arising from the current emphasis on multiculturalism) that the Constitution is a document which was designed by and for wealthy white males. As true this allegation may be, the reinterpretation of this document over the years has gradually eroded the relevance or force of this criticism as it relates to contemporary society.

Certainly, one cannot negate the factual realities of slavery or the limited status assigned to women, minorities, and the economically disadvantaged which persisted beyond the adoption of the Constitution. Nor can one ignore the fact that the Constitution did not address the role or rights of women as US citizens, just as it failed to address the institution of slavery. However, the resultant abrogation of rights continue to be subject to correction by virtue of the very processes established by this document.

Specifically, the Constitution of the United States contains a self-correcting mechanism, namely the allowance for amendment. Just as is the case in developing a critical thinking perspective, interpretations of the Constitution must be self-correcting in order to adjust to new and constantly changing circumstances and social conditions. Daniel J. Boorstin acknowledges this succinctly in his essay entitled “Printing and the Constitution.” He writes:

What men had made, they could improve. The explicit provision for amendment, a characteristically American feature, proved essential to the longevity of our Constitution. (Boorstin 1994, 72-73)
Unfortunately, the process of constitutional self-correction for disenfranchised groups has historically been both divisive and painfully slow.

Key issues of national debate are reflected in the amendments to the Constitution, beginning with the Bill of Rights incorporated on December 15, 1791. Currently, amendments to the Constitution are twenty-seven in number. Included among them are amendments directed toward abolishing slavery and determining the right to vote. With respect to voting, several amendments were needed to guarantee and protect this right from discrimination based on race, prior conditions of servitude, sex, payment of taxes, or against citizens eighteen years of age or older. The periods in history reflected by these amendments include the Civil War, the continued attempts on the part of individual states to maintain racially prohibitive or “Jim Crow” legislation, the struggle of the suffragists to secure the right to vote for women, the civil rights movement, and the Vietnam War. What is not reflected clearly as a comprehensive period in history is the effort to ratify the Equal Rights Amendment which lasted over a half-century, then seemed to all but disappear.

It is interesting that in a democracy, so many amendments have been needed to guarantee American citizens the right to vote. Without the right to vote, individuals have no voice in deciding who should represent them in their government. As Mortimer J. Adler has noted, however, “[a]t no time are the people as a collectivity coextensive with the population” and he holds up various members of the population such as children, resident aliens, and the mentally handicapped as examples of this claim. (Adler 1987, 73) Adler concludes that the government is empowered by the consent of “enfranchised citizens” and points out that “[i]n earlier centuries there were other disenfranchised groups in the
population who were among the governed but without suffrage— for example women, blacks, individuals without sufficient property” who could not (by law) give such consent. (ibid.)

Early reform efforts often overlapped, however, crossing boundaries of race, gender, and class. Of great historical significance was the connection between race and gender, which would again emerge within the civil rights movement and a rejuvenated attempt to ratify the Equal Rights Amendment. The overlap in the 1840s occurred in the case of individuals seeking the abolition of slavery and those seeking to advance the status of women. It was precisely within this social climate to which the roots of the “women’s movement” can be traced.

Specifically, the Seneca Falls Convention of 1848 stands out as a crucial point in American history in the formal organization of the women’s movement. This unprecedented gathering resulted from the work of two female abolitionists and focused on securing rights for women. The participants of the Seneca Falls Convention issued forth a document entitled the “Declaration of Sentiments.” Patterned after the Declaration of Independence, it speaks directly to the inequity and injustice of the station to which women were assigned under the laws and customs of the growing new nation and offered twelve resolutions for change.

The Declaration of Sentiments cites several laws which served to disenfranchise women socially, economically, and politically. The attached resolutions petitioned that women not be subjugated by laws which denied them a voice in government, religious assemblies, and in public, as well as access to education and employment. Summarizing the ultimate goal of the Seneca Falls Convention, the Declaration insisted that women “...have
Slavery was prohibited by the ratification of the Thirteenth Amendment in 1865. The Fourteenth Amendment of 1868, twenty years after the Seneca Falls Convention, established the right of adult males to vote. The Fifteenth Amendment of 1870 protected that right from racial, but not gender, discrimination. Ironically, of all of the disenfranchised citizens, women were the last to be granted the right to vote and it took an additional fifty years to attain this goal.

It is significant that women were not included in prior amendments which served to enfranchise African Americans and former slaves with voting rights. Sandra Lipsitz Bern summarizes this omission as follows:

...when the Fourteenth and Fifteenth amendments to the Constitution were ratified in 1868 and 1870, the former merely specified that the states could not deny the right to vote to any “male” citizen over the age of twenty-one, and the latter merely specified that no citizen could be denied the right to vote on account of “race, color, or previous condition of servitude.” In other words, there was no mention of sex discrimination. (Bern 1993, 65)

Bern continues by noting that despite the persistence of individuals and groups that sought to delete the word “male” from the Fourteenth Amendment and to include sex as a category enumerated by the Fifteenth Amendment, the tide of history ran against such efforts of the women's movement. (Ibid.)

In 1920 women were finally, after many decades of protest, guaranteed the right to vote under the Nineteenth Amendment to the Constitution. The ratification of the Nineteenth Amendment ended a half-century old quest to delete the word male from the Fourteenth or include gender under the protections of the Fifteenth Amendment. Instead, the Nineteenth
Amendment introduced the word “sex” into the Constitution for the first time. Ratified on August 18, 1920, it reads as follows:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

By specifying sex as a distinct category it is possible to raise the question as to whether the Constitution or any of its subsequent amendments should be viewed as being applicable to women unless their inclusion is explicitly stated as it is in the Nineteenth Amendment.

Indeed, such a question is not as extreme as it may initially appear. In fact, history tends to partially support its legitimacy. Ironically, during the formative years of the nation, many women actually lost previously granted rights after the Declaration of Independence in 1777 and beyond the adoption of the Constitution in 1788. As Malvina Halberstam and Elizabeth F. Defeis point out, “...the Constitution was silent with respect to the rights of women” and that “...the political rights enjoyed by women were either specifically denied or implicitly discouraged under the new state constitutions then being drafted.” (Halberstam and Defeis 1987, 6)

It should be stressed, however, that the rights sought by and for women were not limited to obtaining voting rights. Halberstam and Defeis, for example, are among the authors who note the effects of the hardships of colonial life on the lives of women. By necessity, as has since occurred in times of war, women had access to a vast number of opportunities outside of the home, many of which were stereotypically considered to be male professions. As these hardships lessened, however, so did society’s tolerance for women stepping outside of traditionally defined roles.
Halberstam and Defeis point to a "reversion to traditional sex roles," emphasizing the popularity of defining the "proper role for women" both in Europe and America and citing various factors which contributed to the acceptance of a quite limited role in society. (ibid., 7) The authors (in concurrence with Bern) assert that, "The codification of American law was patterned on Blackstone's Commentaries on the Laws of England, as well as on the English common law." (ibid.) They state:

After the American Revolution, Blackstone's view that upon marriage a woman had no legal rights separate from her husband's prevailed...Thus a woman lost all her social, political, and economic rights as an individual upon entering marriage. In the eyes of the law marriage was the "civil Death" of a woman. As a result of the codification of law, married women could no longer own property, enter into contracts, or bring law suits in their own names and without their husband's permission. (ibid.)

In addition, Halberstam and Defeis stress the importance of women's involvement in the social reform efforts of the 1820s and 1830s occurring within the context of religious revivalism. They note that given this social context, women were provided an opportunity to overcome "...one of the most severe and dehumanizing limitations enforced against women during the 1820s...the restriction that women could not speak in public." (ibid., 8) By the 1840s, women were seeking reform in a wide variety of areas and speaking out on issues ranging from health, education, and working conditions to "greater legal rights for all women," including laws relating to divorce and the custody of their children. (ibid., 9)

While attaining the right to vote took precedence as a unified goal of the women's movement, the passage of the Nineteenth Amendment did not guarantee the broader reforms sought to enhance the legal and social status of women. As Halberstam and Defeis write:
Unfortunately, the Nineteenth Amendment was not a panacea for correcting all economic, political, and social discriminations against women, and a handful of militants in the 1920s saw that the vote was at best an incomplete solution. Inequalities in laws pertaining to jury service, property rights, marriage, divorce, and work opportunities had to be eradicated before women could truly exercise the right to vote in any meaningful manner. (ibid., 15)

Further, as the movement to grant women the right to vote was gathering strength, several rulings were issued by the Supreme Court on landmark cases which effectively blocked such additional reform efforts by establishing new legal precedents.

With the ratification of the Nineteenth Amendment, the women’s movement was no longer unified in its objectives or strategies. Opposing factions soon emerged, perhaps primarily divided between those who sought to engender reforms through exercising the right to vote and those supporting the National Women’s Party which sought to end discriminatory practices against women through the ratification of an equal rights amendment. Regardless of the cause, whether attributable to dissension within the movement itself, the new legal precedents of the Supreme Court which blocked the advancement of women in several areas, a sense of triumph and completion resulting from the attainment of suffrage or a combination of such factors, the women’s movement was severely, if not irrevocably weakened.

Of the years following the passage of the Nineteenth Amendment, little if any mention is made of the women’s movement in standard history books. The United States faced a series of domestic and international crises, ranging from the Great Depression and World War II to the Cold War, the Vietnam War, and the emergence of the civil rights movement. Though many women (and men) remained politically active, seeking reforms
and advancements in areas such as employment, education, and law, these efforts and their results were more cumulative than cohesive.

In recent years, legislation has passed which has aided reform and begun to close, but not eliminate, the disparities between men and women under the laws of the United States. Initially, redress was sought through judicial avenues. When brought before the Supreme Court, these cases often tested the racial limits of the Fourteenth Amendment as established by such precedents as *Slaughter-House*, 1873.

The Fourteenth Amendment provides for more than the right of male citizens to vote. It also provides for the equal protection of all citizens born or naturalized in the United States. The first section of the Fourteenth Amendment of the Constitution states as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws [emphasis added].

The aspect of the Fourteenth Amendment emphasized is known as the "equal protection clause." Lacking specific application to a particular sex, this clause provided an avenue for cases to be brought before the Supreme Court in challenging gender-based discrimination. The Supreme Court, however, did not deem this clause to be applicable to women until 1971, and then, only narrowly. (Bem 1993, 66)

Briefly summarized, Bern points out that, for over a century the Supreme Court repeatedly ruled that the equal protection clause did not apply to discrimination against women. The day after the landmark decision was rendered in the *Slaughter-House Cases*, for example, the Supreme Court used the ruling to uphold an Illinois law that excluded
women from the practice of law in the case of *Bradwell v. Illinois*, 1873. (ibid.) This, in turn, was followed by rulings such as upholding a Missouri law which denied women the right to vote (*Minor v. Happersett*, 1875) and overturning a law of West Virginia which excluded minorities from jury selection with the caveat, however, that the state could still exclude women (*Struader v. West Virginia*, 1879). (ibid.)

The view that women represented a separate "class" of citizens was clearly shown in the decision rendered by the Supreme Court in the case of *Muller v. Oregon*, (1908). This ruling upheld the right of the state (on the basis of biological difference) to restrict the number of hours that a woman could work in order to protect her health and reproductive function in society, despite the Court's ruling in 1905 that such restrictions imposed by a state interfered with the contractual "rights of individuals." (ibid., 68-69)

The separate and unequal treatment of women continued to be upheld through their exclusion from the protections offered under the Fourteenth Amendment. Even when the Supreme Court finally *did* apply these protections to women in *Reed v. Reed*, 1971 (i.e. in ruling that the administration of an estate should not automatically be granted to males in the absence of a will), the Court, to this day, has not subjected discrimination on the basis of sex to the same level of "strict scrutiny" that is applied in cases of racial discrimination. (ibid., 70-71)

In the absence of such a precedent, under the current laws of the United States discrimination on the basis of sex is allowed, provided that "such classification serves important government objectives and is substantially related to the achievement of those objectives." (Halberstam and DeFeis 1987, 92) As Halberstam and DeFeis note, however,
The Court has not satisfactorily articulated the criteria either for determining what constitutes an “important government objective” or whether “the classification by gender is substantially related” to that objective. (ibid.)

Of interest, in arguing that the ratification of international treaties such as CEDAW would serve as an alternative to the ERA to prevent the continuation of discriminatory practices, the authors note:

The most appropriate way to prohibit gender-based discrimination would have been the application of the Equal Protection Clause to bar gender-based discrimination, as it has been applied to bar racial discrimination. (ibid.)

Bearing this in mind, it is difficult to accept the characterization of the Equal Rights Amendment as a “radical” attempt to secure equal protection for women under the laws of the United States.

Attempts to ratify an equal rights amendment began in 1923, when Alice Paul’s 1921 version was first submitted to the Judiciary Committee of the United States House of Representatives. (ibid., 16) Halberstam and Defeis cite the original version as having read as follows:

Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. (ibid.)

The authors go on to note, as does Bem, that the Equal Rights Amendment (subject to slight revision) “…was reintroduced into Congress every year between 1923 and 1970.” (ibid.)

Within the context of the civil rights movement and against the backdrop of the Vietnam War, there emerged renewed interest in securing rights for women. Legislation was passed which enhanced women’s rights such as Title VII and Title IX of the Civil Rights Act of 1964, and support for the Equal Rights Amendment became widespread.
By 1970, the ERA was passed by the House of Representatives and was favorably released from the Senate in 1972. (The Annals of America 1969-1973 1976, 109). The final version stated the following:

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

Although many states quickly ratified this amendment to the Constitution, over time opposition grew and targeted states which had not yet ratified. The positive effects of ratifying the ERA were soon overshadowed by heated (and often misinformed or irrational) controversy. Supporters came to be characterized as radical, overly-liberal, and even militant or men-hating feminists who posed a threat to the very fabric of traditional social customs and values. For example, opponents often used appeals to popular prejudice to distort the effects of ratifying the ERA, as shown by the perception that “unisex toilets” would be mandated under the law. In brief, the basic view that the ERA would simply function as a substitute for the failure to recognize sex discrimination (i.e. to the same degree as racial discrimination) under the Fourteenth Amendment seemed to be completely obscured.

In the midst of intense emotional and political debate, the momentum for the ratification slowed and some states reportedly “voided” prior ratifications. (ibid.) In the end, after the seven-year deadline and three-year presidential extension expired, the Equal Rights Amendment fell three shy of the thirty-eight states (or three-fourths) needed for ratification. (Halberstam and DeFeis 1987, 93) Of note, the ERA was resubmitted for the approval of Congress, and most recently it was announced (but not widely reported) that this was also the case in 1997.
Though interest in securing rights for women has waxed and waned on the national level over the past one hundred and fifty years, a parallel movement began to form internationally. When World War II drew to a close, the United Nations was conceived and, despite numerous political, economic, and cultural differences, began to thrive. Within the Charter of the United Nations itself, equality between men and women was formally recognized in 1945. Shortly thereafter, the Commission on Human Rights was created and resolutions, declarations, and international treaties gradually began to address women’s rights as human rights.

From the 1948 Universal Declaration of Human Rights and the Human Rights Covenants, through the 1952 Convention on the Political Rights of Women and the 1967 Declaration on the Elimination of All Forms of Discrimination Against Women, the rights of women have been recognized as an international human rights concern. Over the course of the decade following 1967, efforts began focusing on the development of a human rights treaty that would embody, and codify into law, the principles contained in the declaration. In the interim, the women’s movement began to thrive on an international level. The United Nations designated 1975 “International Women’s Year” which coincided with the first World Conference for Women held in Mexico City that summer.

In addition, 1975 marked the beginning of the United Nations “Decade for Women: Equality, Development, and Peace.” By 1979, prior to the second World Conference for Women of 1980, the efforts to codify the 1967 UN declaration were finally realized. The result was a comprehensive multilateral human rights treaty bearing the
official title, “Convention on the Elimination of All Forms of Discrimination Against Women,” or CEDAW.

To this day, CEDAW is a document that stands unparalleled in its guarantees of rights for women around the world. Unfortunately, it is also a document which, in a very short period of time, was rendered into obscurity. Currently, the general public is largely unaware that CEDAW even exists, let alone understands its potential significance for the people and laws of the United States. It is hoped that, through the application of critical thinking processes in the pages which follow, the reader will come to recognize the importance and relevance of this treaty and develop, not only a deeper understanding of women’s rights as human rights, but also the need for careful and skilled reasoning.
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In recent years, the world has heralded in a new era of technological advancement of unparalleled complexity and significance which directly impacts the information available to the public. Through increasingly sophisticated modes of communication it is now possible to access information from around the world within seconds. The mass media now provides "on the spot" coverage of international and national events via networks and satellites. This information is transmitted to television stations and news services across the globe, then transformed into headlines or newscasts and reported if deemed to be of public interest or import.

Within the framework of these advancements, the public has become accustomed to various concepts affecting information with respect to its flow, scope, and form. These concepts range from information superhighways and the new world order to sound bites and spin doctors. As Aldous Huxley cautioned in his foreword to *Brave New World Revisited*, "...brevity can never, in the nature of things, do justice to all the facts of a complex situation." (Huxley 1960, vii)

While acknowledging the necessity of brevity when discussing broad and complex social themes, Huxley continues by stating:

Omission and simplification help us to understand-- but help us, in many cases, to understand the wrong thing; for our comprehension may be only of the abbreviator's neatly formulated notions, not of the vast, ramifying reality from which these notions have been so arbitrarily abstracted. (ibid.)
Such warnings are by no means unique. Statements of caution in accepting information as having merit without critical analysis have been issued by philosophers and theorists throughout history. Indeed, critical thinking as a discipline has often been linked to the Socratic Method of questioning the basis of one's beliefs and the soundness of one's conclusions.

Contemporary theorists have also expressed concern regarding the form information assumes and the skills required to identify problems associated with more modern forms such as televised images. Neil Postman is among the educational theorists who have voiced concern on this issue. In his article, “Critical Thinking in the Electronic Era,” Postman focuses on the impact of technological advancements and speaks to the need for educators to prepare students accordingly with the requisite skills of critical thinking.

One of the most salient conclusions made by Postman concerns the degradation of information by the mass media into what he terms “disinformation.” Postman defines this concept as follows:

Disinformation does not mean false information. It means misleading information—misplaced, fragmented, irrelevant, or superficial information—information that creates the illusion of knowing something, but which, in fact, leads one away from knowing. (Postman 1985, 6)

Of equal importance is Postman's acknowledgment that in the past, one of the primary concerns of theorists and philosophers has been focused upon the accessibility of information to the public. While Postman admits that in the modern world such access has been increased by technological advancement, the form this information assumes tends to limit comprehension when the audience lacks the requisite skills to identify, analyze, and thereby, counter-balance the occurrence of “disinformation.” (ibid.)
Economic Considerations

While Postman predominantly addresses the problems generated by form, Ben Bagdikian emphasizes the need for economic awareness with respect to the flow of information within the mass media. In his article entitled "Global Media Corporations Control What We Watch (and Read)," Bagdikian suggests the public must also be aware of the almost invisible connection between large corporate interests and information which ultimately becomes accessible. Bagdikian notes the corporate trend of consolidation and alleged announcements that...

...by the mid-1990s they--five to ten corporate giants--will control most of the world's important newspapers, magazines, books, broadcast stations, movies, recordings, and videocassettes. (Bagdikian 1990, 84)

Bagdikian continues his opening statements with the following assertion:

Moreover, each of these planetary corporations plans to gather under its control every step in the information process, from creation of "the product" to all the various means by which modern technology delivers media messages to the public. "The product" is news, information, ideas, entertainment, and popular culture; the public is the whole world. (ibid.)

Although some might argue that this position is extreme (if not conspiratorial) in nature, one cannot ignore facts such as media consolidation and the potential for bias and censorship that this creates. One should also not dismiss the notion that the individuals who control the multinational media corporations have political and economic agendas which may supersede their assumed "duty to inform" the public.

Once such facts and possibilities (e.g. the potential for bias and censorship) are recognized, it is virtually impossible to ignore the economic and political roles that corporations play in influencing the dissemination of information, especially when conflicts of interests arise. As Bagdikian points out, when information adversely affects corporate interests, the support that provides the economic base for the release of such
information can be, and often is, quickly withdrawn. Bagdikian illustrates this point by example, including such occurrences as the cancellation of accounts by two cigarette companies (R. J. Reynolds and Brown & Williamson) with a firm which also produced anti-smoking advertisements. (ibid., 88-89)

**Citizenship in a Global Village**

A combination of the issues raised by both Postman and Bagdikian can be seen in an article concerning public policy and education entitled, “Steal this TV: How Media Literacy can Change the World.” Don Adams and Arlene Golbald begin this article with the simple statement, “Democracy requires critical thinking.” (Adams and Goldbard 1990, 68) The article initially echoes Postman, citing the need for literacy within a democracy and claiming that literacy in the modern world must include media awareness “[t]o enter social and political debates as a full participant.” (ibid.) Adams and Goldbard then connect this to Bagdikian’s concerns with a brief summation of the problem as they see it. They state:

The massive interlocking complex of business interests that make up the mainstream media have been allowed to develop pretty much as they wish, in the pursuit of commercial success. Meanwhile, the essential public issue— the media role as our primary public forum, its tendency to erode democratic life— has been pushed further and further into the background. (ibid.)

There is no doubt that global communication has dramatically changed the way we view the world. What is perhaps less obvious is how such communication affects our society as a whole. While the present thesis addresses women’s rights, one should remember the broad implications that the mass media holds for democracy and the world in general, whether in the realm of politics, education, and culture, or personal relations, attitudes and beliefs.
Making Decisions: Based on Fact or Fiction?

Equally if not more alarming then the limited public awareness regarding world events is the knowledge that elected representatives may lack in forming opinions and making decisions which affect public interest. One example of such lack of knowledge, as well as reluctance to admit ignorance, was revealed by the hoax of Spy magazine in interviewing twenty new members to the United States House of Representatives in 1993 about the role of the United States in the fictitious nation of “Freedonia.” Under the guise of being a New York radio talk show host, Spy reportedly “a series of innocuous questions” which then led to one of the following two questions:

1) Do you approve of what we’re doing to stop what’s going on in Freedonia?
2) Do you approve of what we’re doing to stop ethnic cleansing in Freedonia?

(Associated Press 13 January 1993, 3[A])

Answers from the newly elected members of the House of Representatives ranged from voiced approval to evasiveness (e.g. “It’s a different situation than the Middle East.”) with one admission of not being “familiar” with the situation but that “…a blind eye to it for the next 10 years is not the answer.” (ibid.)

What is truly unfortunate about such responses to questions about Freedonia, the media-created nation of the Marx Brothers’ film Duck Soup, was perhaps summarized best by Jamie Malanowski, national editor of Spy magazine. He is quoted as saying:

In talking to 20 people, not one of them said, “Where?” or “What country?” or expressed irritation at a silly question. (ibid.)

Under the conditions arranged by Spy, most individuals undoubtedly would not wish to be embarrassed by lacking knowledge of alleged world events. At the same time, however, our elected representatives have a duty to be informed in order to make decisions on state, national, and international matters which reflect the views and interests of the public.
Perceptions versus Realities

John Yemma, foreign editor for the Boston Globe, provides some insight into these matters and the issue of the limited scope of information presented by the mass media in an article entitled, "Crisis of the Week." Emphasizing the brevity and intensity of the media's coverage of worldwide crises as they occur, Yemma draws a distinction between a crisis “as seen on TV” and an actual crisis. (Yemma 5 February 1995, 5[A]) He labels the former a “virtual” crisis which dominates the media (and, thereby, public attention and concern) for approximately a week and then seems to disappear. Yemma describes a “real” crisis as follows:

A real crisis is when real people starve and bleed for excruciatingly long periods of time and often without a hope or a prayer. A real crisis is ugly, intractable and hard to describe in a 20-second voice-over. You can find real crises in books and documentaries. It's pretty much what history has been about, at least up to the mid-1980s. (ibid., 1[A])

Multiple examples such as Haiti, Bosnia, Rwanda, Somalia, and Iraq are used to illustrate how the real crisis is forgotten once the virtual crisis (i.e. media attention) ends. Yemma notes that despite the intense coverage that these events received, in reality nothing ultimately changed. He observed in the beginning of 1995 that,

... Somalia is still in the hands of warlords, ethnic cleansing grinds on in Bosnia, Saddam Hussein is still able to threaten Kuwait and his own people. (ibid., 5[A])

While Yemma applies his assertion that “TV News Enlarges Events, Then Shrinks Their Consequences” to wars or conflicts, this assertion also finds support in times of peace. Such support can be evidenced, for example, by examining the history of the women’s rights movement, particularly when viewed as a quest for human rights.
It is one intention of the present analysis to reveal support for this hypothesis through an examination of the women's rights movement in the United States as including human rights. Specific emphasis is placed on one of the most significant yet obscure human rights documents designed to address a broad spectrum of women's issues which has been virtually excluded from public awareness and debate. Based on the findings of this analysis, Yemma's assertion concerning the impact of television on public awareness is thus expanded to include how the mass media, reference materials, and even certain "official" documents also can "enlarge events then shrink their consequences." (ibid.)

**Human Rights and the United Nations**

In beginning an analysis of women's rights as a human rights concern, it is helpful to provide a frame of reference through which such rights can be more fully understood. The principal body or organization which addresses human rights concerns and laws is the United Nations, formed during the summer of 1945 in the wake of World War II. The Charter of the United Nations was signed on June 26th of 1945 in San Francisco, with the expressed determination "to save succeeding generations from the scourge of war,...to reaffirm faith in fundamental human rights,...to establish conditions under which respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom."

(United Nations 1978, 3) The Charter of the United Nations was ratified by the United States, having been passed by an overwhelming majority vote of the US Senate.

Included among the stated purposes of the United Nations that relate to fostering and maintaining universal peace and security, is the third purpose which reads as follows:
To achieve international co-operation in solving international problems of an
economic, social, cultural, or humanitarian character, and in promoting and
encouraging respect for human rights and for fundamental freedoms for all without
distinction as to race, sex, language, or religion. (ibid., 5)

In the years following the creation of the United Nations, a variety of resolutions,
declarations, and treaties were developed in order to achieve the humanitarian goals as
stated above, beginning with the Convention on the Prevention and Punishment of the
Crime of Genocide and the United Nations Universal Declaration of Human Rights of
1948. Subsequent treaties produced by the United Nations address a broad spectrum of
global concerns, including slavery, racism, traffic in persons and prostitution, the rights of
women and children, torture, the status of refugees, which grew out of the initial concerns
to promote and protect international economic, social, cultural, civil, and political rights.

The United States, however, has failed to become an official party to the majority
of the human rights treaties produced by the United Nations despite active participation
and the fact that the treaties address such pressing national concerns as the rights of
women and children. Perhaps because treaties are classified as instruments of international
law, domestic implications are minimized, not readily accessible to the public, ignored, or
even misconstrued. Before accepting such a conclusion as to the embarrassing fate which
human rights treaties historically have faced on the national level, however, it is necessary
to assess the accuracy of this claim and the evidence upon which it may be based from a
critical thinking perspective.
**Women's Rights as Human Rights**

A strong argument can be made that the United States has failed to adequately address the issue of the rights of women both domestically and abroad by its failure to ratify the *Convention on the Elimination of All Forms of Discrimination Against Women*, also known as CEDAW and, at times, as simply the Women's Convention. CEDAW is a multilateral treaty of the United Nations which attempts to define the legal rights of women within the framework of universal human rights. As a binding international agreement, the ratification of this treaty could have substantive and far-reaching impacts on the direction of law, particularly on the national level.

The Constitution of the United States vests the President with the following authority with respect to treaties such as CEDAW:

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. (Constitution Article II, section 2)

In addition, Article VI of this cornerstone document of national law provides that:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (ibid., Article VI)

Briefly stated, the ratification of CEDAW would necessarily lead to consideration of the principles and standards created by this treaty in the assessment of current (as well as the potential implementation of future) domestic legislation and its constitutional validity as determined by the United States Supreme Court.
In conducting an analysis of the status of CEDAW, few individuals seem knowledgeable and few references adequately explore this treaty, its history, or potential impacts on the rights of women in the United States. The treaty (included as Appendix A) consists of thirty articles divided into five parts. It is designed to address numerous social concerns ranging from conditions of poverty, education, and employment to guarantees of access to health services, childcare and other social guarantees, as well as protection against discrimination based on age, marital status, or maternity.

**The Fourth World Conference for Women**

In September of 1995, the United States joined a host of other countries in attending the United Nations World Conference for Women held in Beijing, China. This event marked the fourth official United Nations meeting on this topic in twenty years. For a brief period, this conference and the consideration of women's rights as human rights were in the spotlight of the mass media and topics of national interest.

Unlike the conferences held before, the Beijing World Conference received front-page headlines and was among the top-ranking stories in television newscasts. In the past, with rare exception, the UN Conferences for Women were placed among the accent pages of newspapers, such as in the "Style" section of the *New York Times*. As a result, prior participants increasingly understood the need to attract mainstream versus fringe or solely female-oriented media coverage.

Although global communication technology existed which allowed access to mainstream coverage, past experience had shown that mere access was not enough to generate headline placement which might lead to serious public consideration of the issues.
In order for the issues addressed by the conference to reach a mainstream audience in the United States, attention needed to be drawn to both the national and international significance of human rights and the inclusion of women's rights as human rights. Significance is often conveyed symbolically in the realm of world politics, for example, by the attendance of high-ranking officials representing the United States. In the case of human rights, the most notable work in the field was performed by Eleanor Roosevelt who undertook the task of shaping "The Universal Declaration on Human Rights" of 1948 and served on the United Nations Commission during its formative years.

**Symbolism and Controversy**

Part of the attention given to the 1995 World Conference for Women can undoubtedly be attributed to the fact that for the first time, since the days of Eleanor Roosevelt, the United States delegation was to include the First Lady, Hillary Rodham Clinton. Prior to the opening of the Fourth World Conference for Women, however, China's arrest and detention of a Chinese-American citizen engendered an unanticipated national controversy. This event propelled the Fourth World Conference for Women into the headlines and provided a mainstream focus.

In light of China's detention of an American citizen, participation in the World Conference by the United States and the First Lady were subject to uncertainty. Like the Iran hostage crisis more than fifteen years earlier, the detention of an American citizen by a foreign country was widely reported and generated a national public outcry. Simply stated, this situation could well have precluded the United States from sending an official
delegation to Beijing, despite a remarkable interest in attending this World Conference expressed by numerous non-governmental human rights, social, and religious organizations.

Harry Wu, the American citizen being held by China, was described as a human rights activist "...convicted of spying, posing as a government worker and illegally obtaining, buying and providing state secrets to foreigners" according to a quote from the Xinhua news agency. (Farrell 24 August 1995, 1) The article also noted that:

House Speaker Newt Gingrich and Senate Majority Leader Robert Dole led unsuccessful efforts by congressional Republicans to block Mrs. Clinton's trip, citing Wu's arrest and China's dismal human rights record. (ibid., 28)

China expelled Wu before the conference began, however, and he returned to the United States without serving the imposed 15-year sentence. Wu's release prior to the start of the Fourth World Conference for Women removed the most immediate major obstacle to participation by the United States.

Later John Farrell would report of Hillary Clinton:

Though she had publicly announced her desire to go, she agreed with US foreign policymakers that she would not make the trip until after dissident Harry Wu had been released by the Chinese government. (Farrell 4 February 1996, 24)

Despite continued political objections concerning China's human rights record, a delegation was sent to the Fourth World Conference for Women which, for the first time, included the First Lady.

The Mass Media and Fragmentation of Issues

A factor of mass media coverage is that it focuses on events occurring almost instantaneously. As a result, coverage of events is fragmented in such a way that potential significance is often missed. During the conference most of the mainstream media focused
on socio-cultural differences between the United States and China. This may account for
the intense scrutiny of China's domestic policies as the host country, giving rise to specific
allegations under the guise of general criticisms.

Particular attention was paid to speeches made by Hillary Clinton which
condemned practices such as forced abortion, sterilization, bride-burning and the
devaluation of female children as associated with women's human rights. When viewed
within a socio-cultural framework, however, some of her remarks tended to be interpreted
as targeting China. The Boston Globe printed a response to Hillary Clinton's speech
which was attributed to Chen Jian, described as a "spokesman" for China. ("Quotes of
Note" 9 September 1995, 11) The statement read as follows:

Some people from some countries made unwarranted remarks or criticism of other
countries. We would like to caution these people to pay more attention to their
own countries. (ibid.)

Unfortunately, the controversy that resulted tended to mute significant issues and distract
public attention away from factors that may be linked to such identified concerns.

Media reports at the time failed, for example, to review events such as the delinking
of human rights with United States economic policies toward China in the past. This policy
decision was made in May of 1994 under reported pressure from American businesses. In
brief, it allowed China to retain its Most Favored Nation trade status with the United States,
according to a quote attributed to President Clinton, in so far as it "divorced the human
rights dialogue from the trade issue with China." (Los Angeles Times 22 December 1995,
17) In sum, without timely review, events which may have substantive impacts in areas
such as domestic and international law or policy can be easily overlooked. It should also be
emphasized that even subsequent review neither guarantees the transmission of important information to the public nor that the factors which may have adversely affected such issues will be examined.

The Problem of Omission

Mrs. Clinton received substantial praise for her role in representing the United States at the Fourth World Conference for Women. A few reporters, however, were critical of the speeches she made while attending the conference. One author noted, for example:

She might have admitted she comes from the only industrialized nation that has refused to ratify the 16-year-old UN treaty on women's rights... (Ehrenreich 18 September 1995, 130)

The *Time* magazine essay cited above, however, fails to even name or otherwise identify the United Nations treaty in question.

This information is omitted despite the fact that the ratification of this treaty could have broad social and legal implications for the domestic rights of American women. Thus, essayist Barbara Ehrenreich falls prey to her own criticism of omission on the part of Hillary Clinton. Despite the fact that Ehrenreich was one of the only commentators to note the existence of a treaty which addresses the rights of women, she neither informs the public of its identity nor does she discuss its potential significance if ratified by the United States.

The treaty is none other than the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, otherwise known as CEDAW to those familiar with the parlance of international human rights law. Over a twenty-year span of time and of all the documents produced by each of the four of the United Nations World Conferences for Women, however, CEDAW is the *only* document produced
bestowed with the power to bind member nations to fulfill its provisions in accordance with international law. CEDAW is also currently the sole document in the form of a binding international treaty that addresses a broad spectrum of women’s issues with potentially far-reaching domestic impacts.
CHAPTER II

THE UNITED NATIONS DECADE FOR WOMEN

Three International World Conferences for Women: Equality, Development, and Peace preceded the 1995 World Conference for Women held in Beijing. Each of the three conferences was a part of what was officially designated by the United Nations as the Decade for Women. Each was also disrupted to varying degrees by foreign policy issues. The first, held in Mexico City in 1975, signaled the official observance of the United Nations International Women's Year and the beginning of United Nations Decade for Women.

In *The Annals of America*, the issue of women's constitutional and international rights during the mid-1970s received special consideration, consisting of an overview of the Equal Rights Amendment as a domestic concern and the address given by the US delegate to participants at the First World Conference for Women. The text provided by this historical series is comprised of two selections and a pictorial insert with editorial commentary. The first selection is entitled "Pros and Cons of the Equal Rights Amendment" and consists of a debate, argued in favor by Elaine Gordon as a member of the Florida House of Representatives in 1975 and opposed by Trudy Camping, a former state senator of Arizona. (*The Annals of America*: 1974-1976 1977, 150)
The second selection is an address by Patricia Hutar as a United States delegate and member of the United Nations Commission on the Status of Women which was read to participants to the First World Conference For Women in Mexico City, 1975. It is entitled “International Women’s Year” and was originally published in the Department of State Bulletin of August 18, 1975. (ibid., 159) After offering a greeting from First Lady Betty Ford, Hutar spoke both to national and international incentives of the United States with respect to the conference goals of equality, development, and peace. She also made note that the United States introduced a resolution to the United Nations calling for a World Conference and promised the commitment of the United States in support of the conference document entitled “World Plan of Action.” (ibid., 159-163)

The third component included in the series is called “Women’s World.” It consists of a collection of photographs with commentary summarizing the interest in women’s rights during the 1970s. The United Nations World Conference of 1975 is included in both, designated at the time as the “World Conference for International Women’s Year” and special mention is made of the “World Plan of Action.” (ibid., 155)

While the pictorial commentary notes that there was an “upsurge of interest in women’s rights” around the globe, the summary of the conference itself is primarily based in the conflicts which arose between member states of the United Nations. (ibid.) The editors report and conclude:

There was little unanimity at the conference, however, because Communist and “third world” countries were intent upon making a “new international economic order” and liberation from “capitalist imperialism” the leading priorities. The condition and needs of women thus took second place to these issues. (ibid.)
Though the introductory note to Patricia Hutar's address to the First World Conference for Women sheds some light on the outcome of the event for the United States, nevertheless, it remains ambiguous. In brief, no mention is made as to whether the United States ultimately supported the "World Plan of Action" as promised, but only that it was adopted. As a result, if one fails to distinguish the "World Plan of Action" from the United Nations declaration also voted upon at the conference, one might conclude that the United States voted against the ten-year plan. Such confusion may result simply from the closing sentence of the introductory note which omits referring to the "World Plan of Action" conference document and offers the following summation:

Because of numerous disagreements the United States delegation voted against the conference declaration. (ibid., 159)

No mention is made of the United Nations International Decade for Women, despite the fact that this would provide a context of continuity to an otherwise fragmented presentation of the history of women's rights over the course of twenty years.

Although a brief and partly inaccurate description of the United Nations Decade for Women appears within a pictorial commentary in the subsequent volume of The Annals of America, 1977-1986, only the Third World Conference for Women of 1985 is mentioned. (The Annals of America 1987, following page 208) This overview, entitled "The New Women," entirely omits any reference to the Second World Conference for Women of 1980 held in Copenhagen which, as a result, is not identified as being a part of the Decade for Women. Thus, the Convention on the Elimination of All Forms of Discrimination Against Women (despite its potential impact on both domestic and international law and policy) and any discussion as to its content is conspicuously absent.
In the United States, International Women's Year of 1975 and the First World Conference for Women in Mexico City was followed by the National Women's Conference of 1977 in Houston, Texas. This precedent-setting domestic event was later described by Gloria Steinem as a “belated Constitutional Convention for women.” (Steinem 1994, 202)

The description continued:

Inspired by the United Nations' International Women's Year in 1975, it was funded by congressional legislation written by Congresswomen Bella Abzug and Patsy Mink, and was made up of conferences in each state and territory, some with as many as twenty thousand participants each. Out of those deliberations came proposals for a National Plan of Action, a list of core issues and actions crucial to equality for women, as well as two thousand delegates who were elected to decide on its form in Houston. That final three-day conference turned out to be the most economically, racially, and geographically representative gathering this country had ever seen. (ibid.)

The Houston Conference was the first national forum of its kind, having been mandated and funded by Congress. The conference's resultant National Plan of Action proved quite ambitious, addressing a broad spectrum of issues confronting American women. The National Plan of Action noted that the conference included delegates from the fifty states (as well as from the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories). In addition, the National Plan attempted to connect the history of American women by issuing a broad and inclusive “Declaration of American Women” which, for example, linked the 1977 Houston event to the first national gathering of women at the Seneca Falls Convention of 1848 held more than a century before. (National Plan of Action 1977, 1-3)
The National Plan of Action

As needed and welcomed as the 1977 Houston Conference may have been, however, many of its aspirations were never fully realized. Indeed, one important mandate of the National Plan of Action was the formation of a committee which would “take steps to provide for the convening of a Second National Women’s Conference to assess the progress made toward achieving the recommendations of this 1977 conference.” (ibid.) Although Steinem notes that a National Advisory Committee for Women was established, she asserts it soon faced political pressures, such that members “...found themselves operating under a new executive order, with a limited mandate that prevented them from advocating the plan in Congress.” (Steinem 1994, 202-203)

Although a Second National Conference was never organized, not all of the recommendations of 1977 were ignored. Regarding events of the United Nations, the National Plan of Action recommended that the United States:

... give vigorous support to the goals of the UN Decade for Women, Equality, Development, and Peace... give financial support to Decade activities and... participate fully in the 1980 mid-Decade World Conference to review progress toward targets set in the World Plan of Action adopted unanimously by the World Conference of International Women’s Year, 1975. (National Plan of Action, 18-9)

Indeed, the second World Conference for Women of 1980 listed the United States among more then one-hundred registered delegations to the event.

The Mid-Decade World Conference for Women

The second World Conference of the Decade for Women opened in Copenhagen in 1980, during a presidential election year in the United States and amidst heightened political controversy at home and abroad. According to an article by Georgia Dullea in
the *New York Times*, the mid-Decade Conference for Women was originally scheduled to
be held in Iran but this offer was withdrawn after the Shah was overthrown. (Dullea 14
July 1980, 12[B]) Reporter Frank J. Prial supports this describing,

About 1,000 delegates from 118 countries have gathered here, including groups
from Iran, where the conference originally was to be held. Iran withdrew its bid to
hold the conference after the Islamic revolution of February 1979. (Prial 15 July
1980, 10[A])

Prial goes on to note:

The conference is officially discussing politics for the first time. The United Nations
General Assembly, which sponsored the meeting, asked the delegates to consider
three specific situations: the effect of apartheid on the women of Southern Africa;
the situation of Palestinian women inside and outside the occupied territories, and
the plight of women refugees all over the world. (ibid.)

Later, political analysts would point to such upheavals as occurred in Iran as
significant events, not only regarding the level of controversy during the Copenhagen
Conference, but as events that even affected the presidential election in the US. In
particular, the failure to rescue American hostages held at the time can be asserted to have
been a notable factor in President Carter's defeat in his 1980 bid for re-election. With
respect to apartheid as a situation submitted for formal consideration, the United States
continued under subsequent Administrations to refuse to apply economic trade sanctions
against South Africa. In addition, regarding the outcome of the Second World
Conference for Women of 1980, the equation of Zionism with racism proved to be an
insurmountable obstacle for the United States.

As was discussed in the case of Harry Wu's detention prior to the Fourth World
Conference for Women, the timing, location, and nature of world events contribute heavily
to the tone and content of media reports concerning such meetings. One need only recall
the relationship between the United States and Iran in 1980 and how this was presented in the mass media. The mid-decade World Conference for Women would have taken place in Iran during the American hostage crisis. Relocating the World Conference to Copenhagen in 1980 effectively avoided increased media focus on the hostage situation, though tensions with the Middle East were still widely reported. This crisis, which remained dominant in domestic news for over a year, most likely would have precluded participation by the United States entirely if Iran had served as the host country.

Dullea's report explained how Copenhagen was chosen as the alternative site after Iran withdrew. In fact, Denmark was reported to be the sole volunteer offering to host the events of the mid-Decade World Conference for Women. It was also noted that the cost to the new host country was “an estimated $3 million to sponsor the two-and-a-half week conference.” (Dullea 14 July 1980, 12 [B])

Indeed, this expense, coupled with additional political tensions and an apparent reluctance of other member states of the United Nations to serve as the host country, makes the fact that the conference was held at all somewhat remarkable. Despite such unanticipated obstacles, the conference was held on schedule and a delegation was sent to represent the interests of the United States. Indeed, participation by the United States may reflect an unparalleled level of commitment of under the Carter Administration to maintain an international dialogue on the human rights of women. It is unfortunate that this dialogue was to be virtually silenced for the duration of the United Nations Decade for Women and its themes of Equality, Development, and Peace.
Official Foreign Policy

Foreign policy is an ongoing process which provides a general context for addressing international events and vice versa. It is inevitable that conflicts between countries will occur which can define the official stance taken by a delegation to a world conference and how this is presented by the media. This seems particularly evident when the issues to be addressed are related to actions or practices associated with human rights.

The most prevalent official foreign policy issues confronting the United States throughout the Decade for Women were apartheid and the equation of Zionism with racism. Under mounting tension during the Mexico City World Conference for Women in 1975, specific references to these issues were successfully removed from the official “World Plan of Action” conference document. (Sciolino 10 July 1985, 10[C]) As mentioned previously, however, according to The Annals of America, these issues were incorporated into the United Nations conference declaration. Compounding the problem, soon after the First World Conference for Women came to a close, the United Nations formally adopted a resolution equating Zionism with racism.

Georgia Dullea offered a retrospective account of the 1975 First World Conference for Women at the opening of the 1980 United Nations World Conference of the International Decade for Women: Equality, Development, and Peace. Dullea wrote of the prior conference and its declaration:

It was also in Mexico that Zionism was first linked to racism, in the Declaration of Mexico Document, signed by most delegations there over the protest of the Zionist states and Israel. (Dullea 14 July 1980, 12[B])
Dullea continued her contemporaneous report in 1980 by noting of the Zionism issue that,

At a news conference today, Lucille M. Mair, the secretary general of the conference, was asked to comment on "fears" that the time devoted to the agenda item would "overshadow" the conference. (ibid.)

Dullea observed that the United States was one of a few nations that publicly objected to the agenda item. Dullea also described Sarah Weddington, who was one of the two presiding delegates, as "stressing the country's commitment against any resolution" which would condemn Israel. (ibid.) Needless to say, the result of this general foreign policy stance played an unanticipated role for the United States in the Decade for Women.

The 1980 World Conference for Women in Copenhagen produced a conference document entitled "Programme of Action" and was reported to have been approved by a vote of 94 to 4, with 22 nations abstaining. (UN Monthly Chronicle 1980, 54) The political tensions, though similar to those previously encountered in Mexico City, were intensified in 1980 by the United Nations resolution which officially equated Zionism with racism. Thus, the final outcome of the second World Conference for Women proved to be ambiguous for the United States.

Contrary to outcome of the first World Conference for Women of 1975 held in Mexico City, the 1980 United Nations World Conference produced a global agenda addressing the status and rights of women which did not include participation by the United States. In brief, the United States found itself in the awkward position of being among the four nations voting against the endorsement of the plan produced by the second World Conference for Women. The United States, along with Israel, Canada, and Australia, were
the only four countries in 1980 which failed to join the majority of the United Nations participants supporting the plan. (ibid.)

In different article entitled, “UN Decade for Women: Can US Save Its Role?”

Georgia Dullea quoted the following reaction:

“This is the first time,” said Sarah Weddington, co-chairman of the United States delegation to the United Nations World Conference of the Decade for Women, “that we have had a decade in which we started out participating and then, at mid-decade, we had to vote against the entire program. We didn't expect that this was going to happen.” (Dullea 9 August 1980, 44)

The issues of both apartheid and the equation of Zionism with racism were incorporated into the official document produced by the Second World Conference for Women. This inclusion effectively blocked the United States in the middle of the International UN Decade for Women from participating in any event regarding women's issues worldwide if it was associated with the 1980 conference document, “Programme of Action.”

This “limited role” was acknowledged by Dullea in a description attributed to Koryne Horbal, the representative of United States to the United Nations Commission on the Status of Women in 1980. Dullea wrote:

Whenever a document referring to the Copenhagen plan of action appears, [Horbal] said, the United States must either have the reference removed or disassociate itself from the program in question. (ibid.)

Under such conditions, which might be likened to removing select pages from a history book, it is easy to understand why American women would be uniformed, both to the historical context of what was simply labeled by the mass media in 1995 as the “Fourth World Conference for Women” as well as the existence of CEDAW as an international treaty designed to address women’s rights as human rights.
Ending the Decade for Women

In 1985, the International UN Decade for Women came to a close in Nairobi, Kenya with the completion of the Third World Conference for Women. The United States delegation to the Nairobi World Conference included Alan Keyes as Ambassador to the United Nations Economic and Social Council in 1985. Keyes was appointed to the delegation by former President Ronald Reagan, as was Reagan's daughter Maureen. Maureen Reagan was reported to be the “head” of the delegation. She was also described in relation to Keyes, however, as merely the “titular head” of the United States emissaries. (Loye 1985, 27)

Like the conferences before it, the event was riddled with political strife and controversy, once again failing over the foreign policy issues of apartheid and the equation of Zionism with racism. Perhaps the most significant difference, however, was that Americans attending the “unofficial” conference called “Forum ’85” found themselves at odds with their own official delegation from the United States. This was particularly true with respect to three domestic (as opposed to international) issues: 1) the 1977 National Plan of Action, 2) the failure of the United States to ratify the ERA, and 3) legalized abortion, each of which engendered intense disagreement, at times within the delegation itself. (Sciolino 20 July 1985, 48 [A1])

The United States and the National Plan of Action

A day after the opening of the Nairobi World Conference Ambassador Keyes publicly criticized the domestic agenda of the United States as established in Houston by the 1977 National Conference. According to the article by Elaine Sciolino, Keyes distressed
American participants of the corresponding "unofficial" conference called "Forum '85" with his criticism of the 1977 National Plan of Action. During a press conference Keyes was reported to have said,

Well, you know, one would have to raise some questions about how much the Houston Plan of Action represented the women of the United States. (Sciolino 20 July 1985, 48 [A1])

Reactions from the Forum '85 participants cited by Sciolino included two women of particular note. The first was from Bella Abzug, who was described by Sciolino as a former Representative from New York and presiding officer of the 1977 National Women's Conference in Houston. Abzug was quoted as saying of the conference, "It was one of the most representative meetings ever held in our country," and, noted of the document it produced that, "The Plan of Action was voted in by the democratically assembled delegates." (ibid.)

The second was from Arvonne S. Fraser, who Sciolino depicted as a senior fellow at the University of Minnesota's Humphrey Institute of Public Affairs and a delegate to both of the two prior UN World Conferences of the Decade for Women. Fraser was quoted as having stated:

The Plan of Action was the cumulative efforts [sic] of 50 states. American women at the state, national and local level have been proceeding to carry it out and have even moved beyond it. Has Ambassador Keyes read it? (ibid.)

As an outgrowth of the Nairobi Conference, Fraser would move on to direct the then newly-founded International Women's Rights Action Watch (or IWRAW). In the next decade, Fraser would also testify before the Senate Committee on Foreign Relations in support of international women's rights as an area of human rights concern and, later, would
become a United States representative to the United Nations as a member of the Commission on the Status of Women.

Scioli no observed in her report, that to the Forum ’85 participants, “the United States delegation represented the views of the Reagan Administration on women’s issues” and made specific mention legal, political and moral issues of debate. (ibid.) Speaking in general to these issues, Keyes allegedly remarked:

I think that the American people have made it pretty clear that their support of President Reagan and his policies is fairly strong, and despite the usual efforts that have gone on within our constitutional system to get them to change their minds, they were rather resounding in their lack of desire to do so. (ibid.)

Certainly this position can be interpreted, in part, as a comment on the failure of the United States to ratify the Equal Rights Amendment, a hope that was expressed five years earlier by President Carter and the delegation to the 1980 mid-Decade World Conference for Women held in Copenhagen. It should not, however, be construed as a statement reflecting public opinion concerning the ratification of CEDAW, particularly in light of the absence of presidential endorsement needed to facilitate public testimony and Senate action.

The Failure of the Equal Rights Amendment

It is of note that the circumstances of the women’s rights movement at the time of the Copenhagen World Conference in 1980 were quite different from those of 1985 with respect to the Equal Rights Amendment, or ERA. After a half of a century of being introduced into Congress every year since 1923, the ERA was passed by both the House of Representatives and the Senate in 1970. In 1980, as a result of an extension of the deadline for ratification by Congress signed by President Carter, the fate of the Equal Rights
Amendment rested in the hands of a minority of states which had not yet voted in favor of its passage.

By the time of the Nairobi World Conference in 1985, however, the deadline for ratification had expired and the ERA had fallen three states shy of becoming national law. Therefore, in 1985 supporters of the ERA faced not simply its passage by a few states but, rather, initiating the entire process of congressional and state approval all over again. In contrast, as the Second World Conference for Women began in July of 1980, the domestic politics of the United States were in the midst of heated controversy concerning the Equal Rights Amendment, in addition to the issue of legalized abortion.

In this respect, the view expressed by Alan Keyes in 1985 that the American people were “rather resounding in their lack of desire” to amend the Constitution is open to question. The same would be true of his rejection of the 1977 National Plan of Action based upon the generalization that it might not represent the women of the United States. At the same time Maureen Reagan, acting in her capacity as the officially designated head of the 1985 United States delegation to Nairobi, rather ironically contended that “all legal barriers to political equality [had] long since been eliminated in the United States.” (ibid.)

**The Abortion Controversy and Domestic Rights**

Over the years, concepts traditionally included in the quest for women’s rights, such as affordable child care, maternity leave, and equal pay for equal work, among countless others, were largely overshadowed by the issue of legalized abortion. In 1973, the US Supreme Court rendered a landmark decision in the case of *Roe v. Wade* which, for the first time in the history of the United States, granted the legal right to abortion
under the rights of privacy recognized by the Supreme Court. In the wake of this decision, the abortion controversy grew to unprecedented heights in national debate.

This controversy has continued to grow to the extent that from 1980 to the present, abortion has served as a dividing line between political parties, as evidenced by the pro-life Republican and pro-choice Democratic election platforms. Since that time, our nation has had to come to grips with events such as the bombing of family planning clinics that also provided abortion as a health care service, the harassment of patients, employees, and ultimately, the vigilante-style wounding or deaths of individuals working as receptionists, security guards, and physicians. While these extreme acts were generally committed by individuals proclaiming a pro-life ideology, publicly these actions have been denounced by official pro-life organizations.

Although within the context of the World Conferences for Women the abortion controversy did not erupt on the international level until 1985, it can be asserted that in 1980 the United States symbolically portrayed a pro-choice position in Copenhagen. This assertion is supported by the fact that Sarah Weddington, who was selected to head the United States delegation with Donald McHenry, was none other than the lawyer who had successfully argued the case of *Roe v. Wade* of 1973. Later, Weddington personally documented the growth of the abortion controversy in the years following *Roe v. Wade* and made note of the 1980 Republican platform pledge which she described as including,

> 'the appointment of new justices to the Supreme Court who respect traditional family values and the sanctity of all innocent human life.' (Weddington 1992, 197)

If commitment to this platform pledge is sustained, nothing less than a broader view in the evaluation of jurisprudence and, ultimately, the balance of power within the United States
Supreme Court is at issue. In essence, abortion would be an issue with the power to “tip the balance” in Senate confirmation proceedings for nominees seeking appointment to the US Supreme Court, based solely upon their views as to whether or not abortion should be allowed under federal law.

**International Pro-Life Politics**

In 1985, the End of the Decade World Conference for Women in Nairobi was attended by a United States delegation representing the Reagan Administration. In keeping with the Republican party platform, Reagan continued to espouse a pro-life position throughout the two terms of his presidency. Unfortunately, to the preclusion of a variety of other important issues related to the rights of women, such as the rights included in CEDAW, the national debate over legalized abortion was raised to an international level in such a way that it engendered division instead of constructive discussion.

For the official delegation to Nairobi, Sciolino reported that the division over the issue of abortion occurred in a “late-breaking” fashion, with wire services informing some of the delegates (well after the fact), of a move taken by the Reagan Administration to criminalize abortion on the opening day of the Third World Conference for Women. Despite divisions created between the “unofficial” Forum '85 participants and the official United States delegation (resulting from incidents such as the criticism voiced by Ambassador Keyes concerning the 1977 National Plan of Action and the Equal Rights Amendment), Sciolino reported the reaction to the Reagan Administration’s request to
the Supreme Court concerning abortion as one possible source of "common ground"

between the two groups. She characterized this reaction as being:

...distress at the decision of the Reagan Administration to ask the Supreme Court
to overrule its 1973 decision on abortion on the grounds that its principles are so
sweeping as to block state and local efforts to limit abortion. (Sciolino 20 July
1985, 48 [A])

At the non-governmental Forum '85 conference, heated exchanges were reported
in an earlier article by Elaine Sciolino, entitled "A Clash on Family Planning At Kenya
Parley on Women" and dated July 16, 1985, the second day of the official End of the-
Decade World Conference. (Sciolino 17 July 1985, 1[C]) Briefly summarized, during a
family planning workshop offered at the Forum '85 gathering, the "unofficial" World
Conference participants found themselves forced into one of two categories, described by
Sciolino as:

...those at the conference who assert that women must control their own bodies
and a small but well-organized group that calls abortion murder and any artificial
method of contraception "abortiofacient"-- "abortion-making." (ibid.)

Sciolino additionally pointed to parallel conflicts between "industrialized" and
"developing" nations with respect to both accessibility as well as opposing cultural views
regarding both abortion and birth control measures. Sciolino further reported that the
"primary target" of the pro-life group was the "International Planned Parenthood
Federation." (ibid., 1,11[C])

Based on Sciolino's description, the tone and content of the exchanges between
the pro-life and pro-choice groups were oppositional versus constructive in nature. For
example, Sciolino quoted an official of the American Life League, James L. Deger,
denouncing Planned Parenthood as "racist" and "bigoted." (ibid., 11[C]) Deger was
reported to allege further that, "Basically, all their activities very easily fall within the
definition of genocide." (ibid., 11[C])

Of particular note, the only mention of CEDAW made in all of the reports
provided by the New York Times in 1985 was in the article addressing abortion. Sciolino
wrote at the time:

The antiabortion groups also oppose the Convention on the Elimination of
Discrimination in All Forms [sic] Against Women, which the United States has
signed, asserting that it concentrates on placing women in the work force and fails
to recognize men's role in procreation. (ibid.)

It would seem that as a result of omission and selective reporting that the significance of
CEDAW, as a binding international treaty specifically designed to address a multitude of
women's issues as human rights, was successfully diminished in 1985 within the context of
pro-life politics. This is particularly distressing, not only because CEDAW was designed
to be "abortion neutral," but also because such characterizations tend to distort public
perceptions of issues through the use of fallacy. In sum, employing inflammatory
emotional appeals, with total disregard to standards of critical thinking, serves only to
prevent the public from being informed and precludes rational debate of the actual issues.
CHAPTER III
THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

On July 17, 1980, at the mid-decade World Conference for Women in Copenhagen, the United States was reported to have signed the Convention on the Elimination of All Forms of Discrimination Against Women. This multi-lateral human rights treaty of the United Nations, also known as CEDAW, is composed of a comprehensive series of resolutions which, in the case of the United States, has the potential to legally define and enhance the rights of American women. Such definition, grounded in the constitutional powers of the President and Senate, would essentially mandate the assessment of women as a disenfranchised group and provide potential avenues for redress if discrimination is found to exist.

The United States played a key role in drafting this document, the foundation of which dates back to the United Nations Declaration on the Elimination of Discrimination Against Women of 1967 and beyond. Despite years of active participation, however, the United States has never become an official party to CEDAW under the guidelines established by the United Nations. As is the case for all treaties transmitted by a President, two-thirds of the Senate must give its advice and consent before CEDAW can be ratified and incorporated into national law. In addition, in order for the United States to be
recognized by the United Nations as an official party to this treaty, it must be submitted to the UN Secretary-General.

As the delegation for the United States departed for the Second World Conference for Women, President Carter issued a statement on July 11, 1980 which read, in part, as follows:

I am proud to authorize Sarah Weddington to sign, on behalf of the United States, the Convention on the Elimination of All Forms of Discrimination Against Women. Following the signing ceremony in Copenhagen on July 17, the Convention will be subjected to the normal constitutional processes of the United States. (US President 1980, 1336)

Weddington's role was that of "Presidential Assistant." She co-chaired the delegation to Copenhagen together with the United States Ambassador to the United Nations, Donald F. McHenry. (ibid.)

CEDAW and the Equal Rights Amendment

The day before CEDAW was to be signed, the New York Times carried a report which listed an additional qualification regarding signature by the United States. The article stated:

Sarah Weddington, co-chairman of the American delegation, said the United States could not sign the United Nations convention on the elimination of all forms of discrimination against women until at least 38 states had approved the equal rights amendment to the constitution. (Prial 16 July 1980, 3 [A])

Two days later, however, the New York Times carried another article by the same reporter which covered the historic July 17th ceremony. It read as follows:

The United States joined 52 other nations tonight in signing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women....Signing for the United States was Sarah Weddington....(Prial 18 July 1980, 4 [B])

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Compounding the confusion generated by these two articles, was a letter to the New York Times regarding CEDAW. It was dated July 16, 1980, and published on July 23, 1980. Citing the article of July 16, the letter reiterated the alleged ERA “qualification” and was printed without editorial comment or clarification. It began by stating:

Probably few realized the United States cannot sign the United Nations convention...until 38 states have approved the Equal Rights Amendment to the Constitution. (MoDermott 23 July 1980, 20[A])

Critical Thinking versus Logic

In the first 1980 newspaper item cited above, it is asserted that the United States was unable to sign CEDAW because the Equal Rights Amendment had not been ratified. From the standpoint of logic, since the United States had not ratified the ERA, one might conclude that Weddington could not have signed the convention as was subsequently reported. On the basis of the first report, the principles of logic can be employed to reduce the argument into a causal, if-then form of reasoning which might read as follows:

If the US signed CEDAW, then the ERA was ratified.
The ERA was not ratified.
Therefore, CEDAW was not signed.

This argument is most clearly reflected in the letter to the editor of the New York Times. Although this argument is clearly valid, it is not necessarily sound because it may contain a false premise. Whereas logic assists in structuring arguments and detecting fallacies, it is not interchangeable with critical thinking. While from the standpoint of logic the identification of a false premise is sufficient to complete one's analysis, this is not the case with respect to critical thinking.

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Exploring the realm of logic, three possible conclusions can be formulated. They are as follows:

1) The United States could not and, therefore, did not sign the Convention on the Elimination of All Forms of Discrimination Against Women.
2) The United States could and did indeed sign CEDAW.
3) The United States could have signed CEDAW but did not.

Of all of these possible conclusions, however, none resolve the inconsistencies between the accounts found in the New York Times.

Unlike logic, critical thinking goes beyond identifying false premises and seeks explanations when inconsistencies are encountered. In this respect, the identification of a false premise might be viewed as the starting point for critical analysis. Thus, in order to meet the demands of both logic and critical thinking it is necessary to determine whether or not CEDAW was or was not signed. Beyond making this determination, from a critical thinking perspective questions of why, to what end, and on the basis of what evidence guide one's analysis and interpretation of inconsistencies encountered.

Exploring the Problem Space

Before moving on to determining whether CEDAW was signed, it may be helpful to examine some of the questions that would arise in beginning a critical thinking analysis. In each case, observations and judgments relevant to these questions should be clearly noted. For example, one might begin with the observation that the statement attributed to Weddington does not appear as a direct quotation. Is it possible then that Weddington was simply misquoted? Did either Weddington or the reporter have a reason to distort the facts? Could there be problem with the reliability of the source of information, in this case

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being newspaper articles, when used as definitive, factual evidence? Is it possible, for example, that Weddington, the reporter, or perhaps the editor mistakenly identified CEDAW instead of the Programme of Action as the conference document that the United States was compelled to reject?

Working from the assumption that CEDAW was signed, it would indeed seem possible that the reporter may have misinterpreted and subsequently misrepresented Weddington's statement about CEDAW. Such an error could result from either a simple misidentification or could have resulted from a more complex misunderstanding of the law. It is doubtful that the reporter would have reason to distort the facts, particularly since the same individual wrote the subsequent article stating that CEDAW had been signed by Sarah Weddington on behalf of the United States. The reporter, however, may have lacked the legal knowledge of the process by which the United States becomes an official party to a multilateral treaty. If this was the case, the statement regarding the inability to sign CEDAW may have been intended to encompass its transmission to and approval by the Senate as well as its submission by the President to the United Nations Secretary-General. Any error may well thus have been simply linguistic or hermeneutic in nature or lacking in scope with respect to explaining a domain-specific, legal, or official process.

On the one hand, if Weddington's statement was accurately reported, one would need to assess whether Weddington had reason to distort the truth, if in fact the truth was distorted. As a delegate for the United States and prominent lawyer concerned with the rights of women, it would be highly improbable that Weddington was not thoroughly briefed regarding President Carter's position and intent with respect to CEDAW. While it
may be possible that Weddington's statement was an eleventh hour appeal for the ratification of the ERA, a misrepresentation of such magnitude would undoubtedly be at great cost, both to her career and personal reputation.

On the other hand, it may have been the case that Weddington was informed that the President would not seek the advice and consent of the Senate unless the ERA was ratified. President Carter made no mention of such a condition when he authorized Weddington to sign CEDAW on the behalf of the United States. It must be remembered, however, that the absence of evidence cannot be used as proof that this was or was not the case. (Weddle 1978, 27)

Missing Pages

In the fall of 1992, Sarah Weddington published a book about her career entitled A Question of Choice. Included in this book is Weddington's personal account of her 1977 transition to Washington and appointment within the Carter Administration. Weddington recalled the thoughts which led her to accept a position in the United States Department of Agriculture as follows:

I began to think of that wider world I had always wanted to explore and the bigger levers of power in Washington, levers that I thought could be used to advance the position of women. (Weddington 1992, 187)

Weddington briefly discusses her first meeting with the President in 1977 and the subsequent offer she received a few months later to join the White House staff. Weddington describes her appointment with enthusiasm and writes,

My White House job, as special assistant and then assistant to the president, was the most exciting I have ever had. (ibid., 193)
Weddington also described herself as “the point person for any issue of special interest to women” and writes of her excitement when the President extended the deadline for the Equal Rights Amendment, as well as of her disappointment when it failed to be ratified. (ibid., 194) Almost inexplicably, however, Weddington makes no mention of the Convention on the Elimination of All Forms of Discrimination Against Women, or of her role in 1980 at the United Nations mid-Decade World Conference for Women held in Copenhagen. In brief, Weddington's book fails to offer direct testimony in 1992 to corroborate or refute any claim that CEDAW was or was not signed.

**Broadening the Search Parameters**

In order to adequately answer the questions raised regarding the status of the Convention on the Elimination of All Forms of Discrimination Against Women in 1980, it is necessary to broaden the search parameters in order to reasonably support or refute the accuracy of any conclusions that might be drawn. This extension is necessary both in logic and the critical thinking process, especially in light of Weddington's subsequent omission of relevant information concerning this issue. Of note is that any attempt to draw a conclusion on the basis of the limited information presented would be purely speculative.

The directions from which a critical thinking analysis can proceed are variable, particularly when contending with complex and ill-defined problems. One might begin expanding the data base, for example, by gathering more information from additional newspaper reports, writing to government offices, or writing to individuals such as Sarah Weddington herself. In this particular instance, such directional choices rendered
interesting results. This can be shown in the examination of other accounts regarding the status of this comprehensive human rights treaty.

At the time of the 1980 United Nations mid-Decade World Conference for Women, one newspaper report clearly distinguished the Programme of Action from CEDAW. In addition, the article explained the rejection of the Programme of Action by the United States and three other member states of the United Nations. Offering the following description of CEDAW, which lends support to the assertion that this document was indeed signed, Georgia Dullea wrote:

Mrs. Weddington and others are more sanguine on the chances for Senate ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which has been signed by 65 nations and which was viewed by many American delegates as the only positive achievement of the fiercely politicized conference. Since the convention is a separate document, not part of the plan that includes the anti-Zionist language, a good argument could be made for its ratification, they said. (Dullea 9 August 1980, 44)

Unfortunately, despite being offered by a different reporter, this description does not resolve the problem of the reliability of information since it leads directly back to statements made by Sarah Weddington and anonymous “others.”

A Decade Later

In 1990, an article entitled, “UN Women’s Rights Convention, 10 Years Old, Gets Mixed Review” appeared in the New York Times as a “special report” from the United Nations. The report highlights three specific points. The first addresses the status of CEDAW within the body of the United Nations. Second, the report makes note of a three-day seminar as an event designed to evaluate and increase public awareness as to the
existence of this treaty. Lastly, the report offers a description of the domestic status of CEDAW in 1990 with respect to the United States.

Accordingly, it is related that, the "United Nations Convention on the Elimination of All Forms of Discrimination Against Women, was adopted by the General Assembly in December 1979" and that "101 countries had ratified the treaty" as of January 22, 1990. ("UN Women's Rights Convention, 10 Years Old, Gets Mixed Review" 24 January 1990, 2[A]) While offering a description of this document as "an international bill of rights for women" the report notes of its signatories that "few had made any significant efforts to eliminate discrimination against women." (ibid.) This being the case, the committee established to monitor the impacts of the treaty was reported to call for greater emphasis to be placed on establishing and protecting the rights of women. (ibid.)

Next, the article mentions a seminar arranged by a non-governmental organization, International Women's Rights Action Watch, which was reported to have been working on an analysis of interests of the United States with respect to CEDAW. This event was held in conjunction with the opening of the 1990 annual session of the United Nations and marked the tenth anniversary of this treaty. Arvonne Fraser, co-director and founder of the organization was quoted as saying of the seminar,

"The world does not recognize that there is a women's human rights document and this is an effort to broaden that recognition. (ibid.)"

From a critical thinking perspective, Fraser's expertise serves to lend support to the general accuracy of the New York Times report. It is only possible, however, to weigh expertise upon knowing or learning more about an individual's history, experience, or qualifications. It is helpful to remember, for example, that during the 1985 World
Conference of the United Nations Decade for Women in Nairobi, Fraser was described as follows:

...[a] senior fellow at the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota, who was a delegate to both the international Decade for Women conferences at Mexico City and Copenhagen and to the Houston conference. (Sciolino 20 July 1985, 48 [Al])

In addition, on August 2, 1990, Fraser testified before the United States Senate Committee on Foreign Relations in support of CEDAW. Joining numerous individuals and prominent organizations, Fraser included a statement of support for CEDAW from International Women’s Rights Action Watch (which she describes as having been “originated or founded at the Nairobi Conference”) to the Congressional Record. (US Congress, Senate Hearing 1990, 71-79) Eloquently ending her personal testimony, Fraser thanked the Committee and its members, urging the Senators with the words, “Let us no longer apologize. Let us just ratify.” (Ibid., 73)

Unfortunately, in most instances, knowledge of this extent about an individual cited in a newspaper report is not immediately available. For the average reader, the likely tendency would be to simply finish the article and either take it as fact or look for other means of corroboration. Following this approach, one finds that, beyond citing a need for legal guarantees to combat discrimination and the hopes that CEDAW may serve as the “Magna Carta” for women’s rights, the New York Times report asserts:

While the United States joined the General Assembly consensus in adopting the convention, the Senate has not approved it. (“UN Women’s Rights Convention, 10 Years Old, Gets Mixed Review” 24 January 1990, 2[AJ])

The final section of this report, carrying the sub-heading “Treaty Before Senate,” addressed the domestic status of CEDAW in the beginning of 1990. The report cited two
sources, Fran Westner of the State Department and an unidentified spokesman for the Senate Foreign Relations Committee. According to the report, Westner indicated that CEDAW was "before the Senate" and the unidentified Senate spokesman said,

Secretary of State James A. Baker 3d had classified it as "under review, which means this Administration is not pushing it." (ibid.)

Another Perspective

While the above article supports the conclusion that CEDAW must have been signed by the President and transmitted to the United States Senate for its advice and consent, a seemingly different view was presented nearly two years later in the Boston Globe. In a December 15, 1991 essay commemorating the bicentennial anniversary of the Bill of Rights, Robert Drinan cited a need for the United States to broaden constitutional guarantees to protect the rights of women, minorities, and the economically disadvantaged. One means by which such guarantees may be extended to citizens, Drinan asserted, would be to ratify internationally recognized human rights treaties which address such issues.

Speaking to the rights of women as human rights, Drinan specifically centered on the Convention on the Elimination of All Forms of Discrimination Against Women as a means to guarantee constitutional protection from discrimination. Drinan wrote under the sub-heading "Equality for Women," copied in its entirety:

One hundred and nine nations-- more than two-thirds of the world-- have ratified the United Nations Covenant on the Elimination of Discrimination against Women. No US president has ever proposed that the US ratify this compelling document the guarantees of which are now a part of customary international law. The US failed to even ratify the equal rights amendment, which is arguably less sweeping in its commitment to equality for women; Congress gave two-thirds approval to the ERA, but only 35 of the necessary 38 states approved the measure. The US consequently offers less constitutional protection for the rights of women than all of the other major powers of the earth-- all of whom have ratified
CEDAW. Indeed, neither the Constitution or its Bill of Rights even mentions
gender or sex; women did not even have the right to vote until 1920; and the 14th
Amendment, which guarantees “equal protection of the laws,” provides no specific
protection against discrimination based on sex or gender.

The bicentennial of the Bill of Rights has to be a sober reminder that the US may
have been a leader in proclaiming such political rights as free speech and religious
freedom. But as in 1791—more so in 1991—the US lags behind the collective
consensus and conscience of the world in fulfilling the rights of women. (Drinan 15
December 1991 29[A])

In light of the assertion that “[n]o US president has ever proposed that the US ratify this
compelling document” it is possible to draw the reasonable inference that, lacking
presidential endorsement, CEDAW was either not signed or was not sent to the Senate for
its advice and consent.

Drinan’s expertise in the field of international human rights law is not easily
dismissed. As a well-respected legal scholar and member of the US House of
Representatives from 1970 through 1980, it is unlikely that he would have been unaware
of the role played by the United States in the United Nations Decade for Women or of the
outcome of the Copenhagen World Conference of 1980. Furthermore, it would be
doubtful in light of Drinan’s interest in and support for human rights, that he would
intentionally misrepresent the status of CEDAW in his 1991 essay. In fact, less than three
years later, Drinan also personally testified in support of CEDAW before the Senate on

Irreconcilable Differences?

From the standpoint of a critical and creative thinking analysis, one is faced with
questions in 1990 and 1991 as to the reliability of information regarding the status of
CEDAW similar to those raised in 1980 and left unanswered by Sarah Weddington in 1992.
If one chooses to assert that the Convention on the Elimination of All Forms of Discrimination Against Women was signed and sent to the Senate for its advice and consent, how is it possible to reconcile this opinion with Drinan's claim that no President had ever proposed that CEDAW be ratified? In turn, if one chooses to assert that CEDAW had neither been signed nor transmitted to the Senate, how is it possible to reconcile this view with the 1990 New York Times report from the United Nations? Alternatively, could it be the case that neither article conflicts with the other?

It is only through a balanced analysis that some degree of certainty can be attained as to veracity of a particular individual's statements. It is necessary, for example, to pose the same questions concerning the statements of others as were raised with respect to Weddington. One such question might be whether Drinan in 1991 or the unidentified 1990 UN reporter had reason to distort the facts as to the status of CEDAW, if indeed they were distorted. Additionally, if the articles do not conflict, what information needs to be brought to light to resolve the appearance of contradiction?

It should be recalled that the issue of ratifying the Equal Rights Amendment was rendered virtually moot prior to the 1990 and 1991 newspaper articles cited. In brief, the ERA would again have to be subject to congressional approval and be returned to the ballots of individual states. As a result, one is faced with the question as to what other factors or issues might explain the later confusion encountered regarding the status of CEDAW. Could it be the case, for example, that Drinan had a greater understanding of what is entailed in proposing that a human rights treaty such as CEDAW be ratified?
Other Sources and the Problem of Reliability

Based on the review of reports cited thus far, it is possible only to state that by the end of 1991, the ambiguity of the status of the Convention on the Elimination of All Forms of Discrimination Against Women had not been resolved. Under the circumstances, the importance of using simultaneous and diverse searches to obtain reliable information to corroborate or refute a given conclusion can not be over-emphasized in performing a critical thinking analysis. This being the case, the need to pursue alternative avenues of inquiry regarding the status of CEDAW once again becomes evident.

To this end, one might shift the focus of inquiry to books, reference materials, or official records of the United Nations or federal government. From the standpoint of critical thinking, it is important to assess where accurate information is more likely to be found. Weighing information presented in relevant books or reference materials versus official records, for example, the latter would generally be more desirable to utilize. The reason supporting this choice rests with the principle of employing primary, as opposed to secondary, sources of information. In brief, where official records might be viewed as primary sources carrying the official weight of law and policy, relevant books and articles would tend to be considered secondary sources ultimately carrying only the weight of opinion. Viewed along a spectrum of reliability, reference materials would tend to fall in the middle as sources providing mostly accurate, albeit secondary, information. Although one can turn to secondary sources for answers, regardless of their placement on the spectrum of reliability, they may not provide accurate, clear, or complete information as was demonstrated by reviewing various newspaper reports.
This is further evidenced by comparing two reference sources covering United Nations treaties. The first is Parry and Grant’s 1986 *Encyclopedic Dictionary of International Law* which cites the Convention on the Elimination of All Forms of Discrimination Against Women in its entirety and provides documentation of relevant United Nations General Assembly Resolutions. (Parry and Grant 1986, 437-8) It also notes that a Committee was established under the terms of this treaty, “...to examine reports from States Party (art. 18) and to report annually, through ECOSOC, to the UN General Assembly (art. 21).” (ibid., 438) In brief, this source indicates that CEDAW was adopted by the General Assembly on December 18, 1979 and entered into force on September 3, 1981. (ibid., 437)

The second source is Osmanczyk’s 1985 *Encyclopedia of the United Nations and International Agreements* which provides information on five topics, including a section under the broad heading of “Women’s Rights.” (Osmanczyk 1985, 929-31) The other four topics listed are as follows: 1) “Women’s International Year, 1975,” 2) “Women’s Labour,” 3) “Women’s Political Rights Convention, 1952” and, 4) “Women’s Rights, UN Declaration, 1967,” the latter two of which include full texts and descriptions. (ibid.)

Both sources discuss the United Nations 1967 *Declaration* on the Elimination of Discrimination Against Women. Only the summary offered in the first source, however, links this declaration directly to CEDAW. Unfortunately, neither source provides information as to the status of CEDAW with respect to the United States.

What is offered under the heading of “Women’s Rights” in the *Encyclopedia of the United Nations and International Agreements*, seemingly provides a comprehensive
summary of international conventions, declarations, and actions addressing the rights of
cwomen over the span of nearly one hundred years. The framework employed for covering
more recent events appears to be that of the 1970-1980 Second United Nations
Development Decade as opposed to the United Nations Decade for Women: Equality,
Development, and Peace. Nonetheless, it is almost inexplicable that CEDAW, as a
binding international treaty, is completely excluded from this 1985 encyclopedia. Rather,
the period in history pertinent to CEDAW and the UN Decade for Women is reduced
under the section entitled “Women’s Rights” as follows:

In 1980 the UN General Assembly adopted a number of resolutions related to the
protection of women’s rights. (ibid., 930)
CHAPTER IV

OFFICIAL RECORDS AS RELIABLE SOURCES

In the Government Documents section of major public libraries, one can access official records from a variety of offices and departments which may clarify the status of CEDAW. For example, the Department of State Bulletin was a monthly publication by 1980, the year in which CEDAW was reportedly signed. The preface of this publication states:

The Department of State Bulletin, published by the Office of Public Communication in the Bureau of Public Affairs, is the official record of US foreign policy. The Bulletin's contents include the US Mission to the United Nations and treaties and other agreements to which the United States is or may become a party. (US Department of State 1980, i)

In the December 1980 issue, the Department of State Bulletin carried a report entitled "World Conference on the UN Decade for Women Held in Copenhagen." (ibid., 62-86) The report begins with the following statements:

The world conference of the UN Decade for Women was held in Copenhagen July 14-30, 1980. The US delegation was co-chaired by Donald F. McHenry, US Ambassador to the United Nations, and Sarah Weddington, Assistant to the President. Following are statements made by Ms. Weddington in plenary sessions on July 16 and July 30, the text of the Programme of action adopted by the conference on July 30, a review and assessment of US participation, and a list of the resolutions adopted at the conference. (ibid., 62)
Despite the twenty-four page bulk and seeming completeness of this government report, the only mention of CEDAW is, once again, made by Sarah Weddington. On July 16, 1980, she is quoted as stating:

The President of the United States, who has made equality of women before the law a personal commitment, has instructed me to sign the Convention Eliminating [sic] All Forms of Discrimination Against Women. (ibid.)

In addition, Weddington’s July 30, 1980 statement offers the conclusion, “We return to pursue ratification of the convention that the US delegation signed here.” (ibid., 64)

These statements, although ultimately attributable to Weddington, lend support to the view that CEDAW was indeed signed under direction of President Carter during the 1980 United Nations World for Conference for Women in Copenhagen. This support is grounded in the fact that the statements are presented in an official report from the Department of State. Since this agency bears responsibility for overseeing treaty affairs, it is highly unlikely that a misstatement concerning the signing of CEDAW would escape editorial review by Department of State officials. Unfortunately, however, no independent corroboration is presented within the body of this particular report which would either support or refute the President Carter’s subsequent endorsement and transmission of CEDAW to the Senate for its advice and consent.

It is of note, however, that the timetable of events is narrowed with respect to the possibility that President Carter transmitted CEDAW to the United States Senate. James Earl Carter was defeated in his bid for re-election in November of 1980 and Ronald Reagan assumed the presidency in January of 1981. Through an examination of State Department records or other official sources, one should be able to determine more readily whether CEDAW was in fact transmitted to the Senate prior to Carter leaving the Office of the President. If CEDAW was not transmitted to the Senate, in order for the 1990 New York Times report from the United Nations to be correct, this treaty would have to have been sent to the Senate for ratification by either Ronald Reagan or his 1988 successor, George Herbert Walker Bush.
Conflict versus Corroboration

The Department of State, in addition to publishing its monthly Bulletin, also issues an annual publication entitled Treaties in Force, compiled by the Office of Treaty Affairs under the authority of the Office of the Legal Advisor. Upon checking the issue published closest to the date of Robert Drinan's 1991 essay, one finds that CEDAW is omitted from the list of treaties provided. Furthermore, the criteria for inclusion is such that, if this treaty had been signed and transmitted to the Senate, CEDAW would appear to merit being listed. This, in apparent conflict with the New York Times 1990 report, lends support to Drinan's claim that CEDAW, as of December 15, 1991, had not received presidential endorsement necessary for ratification by the Senate.

In brief, Treaties in Force purports to use the term treaty in "...the generic sense as defined in the Vienna Convention on the Law of Treaties" which, for the United States, "denotes international agreements made by the President with the advice and consent of the Senate in accordance with Article II, section 2 of the Constitution." (US Department of State September 1991 / February 1992, i) This document, however, also claims to expand its listings as follows:

In addition to such "treaties," this publication covers international agreements in force for the United States which have been concluded by the Executive (a) pursuant to or in accordance with existing legislation or a prior treaty, (b) subject to congressional approval or implementation, and/or (c) under and in accordance with the President's Constitutional powers. (ibid.)

In the event that one believes an omission has occurred, for example by reason of it being classified as a certain type of agreement, one is instructed to contact the Office of Treaty Affairs at the Department of State.

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It is truly unfortunate that following this instruction (as was done by this writer) apparently does not require that the Treaty Affairs staff respond to individuals who may be inquiring about the status or omission of a treaty such as CEDAW. It has been stressed that an absence of evidence cannot be used to support or refute a given claim. A lack of response from public officials, however, certainly points to matters of grave concern for the survival of a democracy and the need for an informed citizenry.

**Corroboration of Official Records**

From the standpoint of critical thinking, a lack of reliable information does not allow one to make reasonable determinations about the veracity of a given claim. One aspect of establishing reliability is corroboration. Though employed in the present analysis, the importance of corroboration has not been fully addressed. In brief, the utilization of a single source of information is generally insufficient in performing a comprehensive critical thinking analysis, whether the source be newspaper articles or Department of State reports.

Potentially conflicting information is not always encountered. In fact, it may be more rare than common to discover apparent contradictions, especially to the extent as was found in attempting to determine the status of CEDAW. When differing views are encountered, the need for corroboration becomes an obvious step in the process of resolving disparities.

The need for corroboration is less obvious in the absence of conflict. Corroboration is nonetheless essential to the process of critical thinking as a means for eliminating bias as well as error. Equally as important, as has already been mentioned, is the need to assess
what additional data will yield accurate information when seeking corroboration between
reliable, authoritative sources.

The Convention on the Elimination of All Forms of Discrimination Against Women
is a multilateral human rights treaty of the United Nations. As such, it would be reasonable
to turn to the official records of the United Nations as one avenue for inquiry which might
clarify the status of CEDAW with respect to the United States. At the very least, one could
expect to determine on the international level whether or not the United States ever became
an official party to this treaty.

Upon reviewing a wide variety of reports and indexes relating to CEDAW (and the
majority of other human rights treaties) available from the United Nations, one finds the
United States to be conspicuously absent. While such sources indicate that the United
States did not become an official party to CEDAW, only one of the sources reviewed
specifically confirms this. In a chart of ratification as of March 31, 1991 entitled Human
Rights. Status of International Instruments, one finds CEDAW listed as signed but not yet
ratified by the United States. (United Nations 1991, 10)

Such confirmation is helpful in resolving the question as to whether or not CEDAW
was signed. Nonetheless it fails to shed light on the domestic fate of this treaty with respect
to its possible transmission to the United States Senate by President Carter or his
successors. Being an international entity, however, the United Nations would not be the
most reliable or informative source for pursuing domestic occurrences within the political
history of the United States. Rather, the most obvious records to research would be those
specifically related to actions of the Senate and President of the United States.
Reliability, Corroboration and Public Records

Upon reviewing multiple official records it is indeed possible to establish an acceptable level of corroboration regarding the actions of this Senate, President, and, to some degree even the Department of State with respect to the fate of CEDAW. In brief, the official records cited thus far do reveal a consistent chronology of events related to CEDAW through 1991. However, since these records do not fully answer questions as to the status of this human rights treaty, additional information is needed.

From the standpoint of critical thinking, information that is to be taken as fact must be subject to the “acid test” of strict and multiple standards of reasoning. Beyond corroboration and reliability based on authority (e.g. official records or reference materials versus newspaper accounts), lie other factors which potentially affect both. Perhaps the most significant is the issue of to what extent secondary sources, even in the form of “official” records, are utilized and ultimately deemed authoritative.

As has been revealed in the preceding pages, apparent conflict as opposed to corroboration resulted in the internal analyses of both newspaper and Department of State accounts as to the domestic status of CEDAW. One need only recall it was reported in the New York Times both that the United States could not and did sign the Convention on the Elimination of All Forms of Discrimination Against Women, creating ambiguity not only at the time of the Copenhagen Conference, but also ten years later. In turn, “official” publications of the Department of State point to similar, disparate conclusions which have been rectified by neither time nor history.
Indeed, the inclusion of the United States in the United Nations list Human Rights: Status of International Instruments as an independent official record adds weight to the view that CEDAW was signed. The omission of CEDAW from the Department of State’s official list of Treaties in Force cannot, however, be simply dismissed. As in logic, valid conclusions may be may be drawn from the corroboration of premises, yet such conclusions may not be sound if one or more of the premises is false. Thus, corroboration must be considered concurrently with the issue of reliability as an interdependent factor in determining the veracity of one’s conclusions.

**Record of Initial Actions and Possibilities**

The Congressional Record reveals that the Convention on the Elimination of All Forms of Discrimination Against Women was received by the Senate as “Executive R” on November 12, 1980 and was subjected (along with three unrelated international treaties) to a vote calling for four actions to be taken by the full Senate. (US Congress, Senate 12 November 1980, 29358) The first action was the “Removal of Injunctions of Secrecy” obtained by unanimous consent. (ibid.) The other actions offered by Senator Robert Byrd and accepted by the Senate were as follows:

[T]hat the treaties be considered as having been read for the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President’s message be printed in the Record. (ibid.)

Initial corroboration is established by the inclusion of President Carter’s November 12, 1980 letter transmitting CEDAW “[w]ith a view to receiving the advice and consent of the Senate to ratification” in the Congressional Record as requested. (ibid.) This is further
supported by the subsequent printing of this treaty and accompanying papers as

"Executive R" by the US Government Printing Office in 1980. (US Congress, Senate
1980, Senate Executive Documents: Letters A-Z, iii-ix, 1-19) This subsequent printing
includes: 1) President Carter’s "Letter of Transmittal" addressed to the Senate (ibid., iii­iv-iv), 2) The Department of State "Letter of Submittal" dated October 23, 1980 and
addressed to The President from Edmund S. Muskie (ibid., v-ix) accompanied by the State
Department report, "Memorandum of Law" (ibid., 1-9) and, 3) The "Convention on the
Elimination of All Forms of Discrimination Against Women" (ibid., 9-19).

The information gained by President Carter’s letter to the Senate of the United
States includes points of substantial note. Corroborating newspaper and Department of
State reports of Sarah Weddington’s signing of CEDAW the President wrote:

The Convention was adopted by the United Nations General Assembly on
December 18, 1979 and signed on behalf of the United States of America on July
17, 1980. (ibid., iii)

The question raised but left unanswered is what significance this signature has with respect
to the United States commitment to upholding (or conforming to) the provisions
established by this convention.

Contradicting the view that the United States was unable to sign or otherwise
ratify CEDAW without prior passage of the Equal Rights Amendment are statements put
forth both in the Department of State "Memorandum of Law" and by President Carter.
The Department of State notes the extension granted for the ratification of the ERA under
comments concerning Article 2 of the Convention, regarding the "obligation to eliminate
discrimination.” However, citing Craig v. Boren, 429 US 190 (1976), the Memorandum also points out that for the United States:

Regardless of whether the ERA is ratified, the 14th and 5th Amendments to the Constitution provide a basis to invalidate any federal or state classification or distinction based on sex if it is not substantially related to an important government objective. (ibid., 1)

In turn, President Carter offers support to this legal opinion of the Department of State in his letter of transmittal. He writes:

The great majority of the substantive provisions of the Convention are consistent with the letter and spirit of the United States Constitution and existing laws. However, certain provisions of the Convention raise questions of conformity to current United States law. Nevertheless, the Departments of State and Justice and other interested agencies of the Federal Government concur in the judgment that, with the adoption of certain qualifications and, possibly, appropriate implementing legislation, there are no constitutional or other legal obstacles to United States ratification [emphasis added]. (ibid., iii-iv)

As previously cited, the Department of State “Memorandum of Law” specifically addressed the question of whether the adoption of CEDAW would be contingent upon the ratification of the Equal Rights Amendment and found that it was not.

In arriving at this conclusion, it is important to take into consideration the Department of State’s reliance upon the ruling of the Supreme Court in determining the compatibility of CEDAW with the laws of the United States. In brief, the case of Craig v. Boren (1976) takes into account that the Supreme Court view that sex discrimination is subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. However, the level of scrutiny applied in sex discrimination cases is “middle-tier” as opposed to the “strict” level of scrutiny which is applied in cases involving racial discrimination. (Halberstam and Defeis 1987, 92)
Yet another potential dimension of debate is added by the view of the Department of State in 1980 that CEDAW should not be considered “self-executing” and proposed a declaration to this effect be offered by the United States. If this proposal were to be followed, legislation on the level of individual states and the inclusion of the House of Representatives would be a required preliminary step in attempting to achieve the goals put forth under CEDAW. Perhaps to this end, the Congressional Staff Advisors to the US Delegation submitted a report to the Committee on Foreign Affairs of the US House of Representatives, entitled “UN World Conference of the UN Decade for Women: Copenhagen, Denmark, July 14-30, 1980.” (US Congress, House 1980)

Lingering Questions and Subsequent Senate Action

Upon reaching the conclusion that the Convention on the Elimination of All Forms of Discrimination Against Women was signed and transmitted to the Senate by President Carter, who recommended “...that the Senate give early and favorable consideration to this Convention,” the question as to the status of CEDAW in 1980, as well as in the present, remains. (US Congress, Senate 1980, Senate Executive Documents: Letters A-Z, iv) In the decade following the President’s November 12, 1980 transmittal and reception of CEDAW by the Senate and the Committee on Foreign Relations, the Convention was the subject of three congressional hearings. The first was a field hearing before the US Senate Subcommittee on Terrorism, Narcotics and International Operations, held in Boston on December 5, 1988 under the initiative of Senator John Kerry of Massachusetts. The second consisted of a two-day hearing held before the US House of Representatives Subcommittee on Human Rights and International Organizations on March 21, 1990 and
July 26, 1990. A few months after the hearing before the House of Representatives Subcommittee, the first hearing on CEDAW was held before the Senate Committee on Foreign Relations on August 2, 1990.

The Senate Foreign Relations Committee shares jointly in the responsibility (in conjunction with the Departments of State, Justice, and other affected agencies) for reviewing the status of international treaties and proposing recommendations regarding the laws and policies of United States. The Senate Foreign Relations Committee, however, bears the responsibility of returning such treaties and any recommendations for ratification to the full Senate for approval or rejection. This being the case, the August 2, 1990 Senate Committee Hearing can be viewed as carrying more official weight than either the 1988 Senate Subcommittee Field Hearing or the 1990 hearing before the US House of Representatives Subcommittee.

This is particularly true since the record of the 1990 Foreign Relations Committee Hearing includes official testimony from the Office of the Legal Adviser for the Department of State. As noted previously, the Department of State bears a great deal of responsibility in the process of analyzing international treaties with a view toward ratification and the Office of the Legal Adviser is directly responsible for providing this review. Unfortunately, the Department of State representatives were ill-prepared to offer any substantive answers before the Senate Foreign Relations Committee regarding the status of CEDAW in 1990.
The Senate versus the Department of State?

Upon reviewing the Department of State testimony provided in the hearing of August 2, 1990 before the Senate Foreign Relations Committee, several key issues and potential conflicts were revealed. This testimony was provided by Alan Kreczko in his capacity as Deputy Legal Adviser for the Department of State. Under direct questioning by Chairman Claiborne Pell of Rhode Island and Senator Paul Sarbanes of Maryland, these issues and potential conflicts were both identified and largely clarified.

The first issue addressed was the attempt by the Bush Administration to link the completion of any review of the human rights treaties pending before the Committee on Foreign Relations to the favorable passage of the Torture Convention, which had already been transmitted from the Committee back to the full Senate for its advice and consent. Senator Sarbanes pointed out that Mr. Kreczko's written statement, submitted for the record, included this condition which Senator Sarbanes found to be "totally unacceptable" and in contradiction to Kreczko's oral testimony. (US Congress, Senate Hearing 1990, 43) While Mr. Kreczko amended his official testimony, he did not entirely eliminate the condition that the Torture Convention be passed by the Senate prior to initiating reviews for any of the unratified human rights treaties pending before the Committee on Foreign Relations. (ibid., 44)

Subsequently, Senator Sarbanes questioned why such a condition was being established and whether or not it was possible for the Department of State to review more than "one convention at a time." (ibid.) Mr. Kreczko responded that in working with the Committee and other concerned parties on the Torture Convention,
...no one suggested to us that we should be trying to do another human rights convention simultaneously....No one in that consultative process took issue with that process. (ibid.)

From the standpoint of critical thinking, this response is obviously inadequate since it avoids answering the question as to whether or not it is in fact possible for the Department of State to review treaties simultaneously. Although continuing to raise the issue, Senator Sarbanes did not pursue a line of questioning which might have shed some light as to the existence of any precedent which might support or discount the legitimacy of establishing such conditions for reviewing human rights treaties.

Identifying Contradictions: CEDAW and the Process of Review

Senator Sarbanes pointed out that Secretary of State James A. Baker III had written to Senator Pell, Chairman of the Committee on Foreign Relations, in May of 1989 and had indicated that the Department of State was "reviewing the Women's Convention." (ibid.) Mr. Kreczko was questioned about this in comparison to his own written statement which reportedly read, before being stricken,

As soon as the Torture Convention passes the Senate, we will review the other conventions. (ibid.)

Under further examination, Mr. Kreczko admitted that the review of CEDAW had not been done. (ibid.) This admission stands in apparent contradiction to Secretary Baker's claim more than a year earlier that CEDAW was in fact "under review" by the Bush Administration.

The central question raised by this seeming contradiction is what it means for a treaty to be "under review." This issue was repeatedly raised during the 1990 hearing on
CEDAW and the use of this designation was highlighted on the basis of its ambiguity.

Upon calling the hearing to order, Chairman Pell provided the following observation in his opening remarks on CEDAW:

For the last decade, the convention has been pending before the Senate because the Reagan and Bush administrations have had it “under review.” For the Reagan administration, “under review” was a euphemism for “no action.” (ibid., 1)

As the hearing progressed, Senator Sarbanes became more sharply critical concerning the lack of action on CEDAW, characterizing the treaty as being placed “in cold storage” and “put into deep freeze within the Reagan administration.” (ibid., 53-54)

While such characterizations may indeed reflect the facts, they nonetheless fall into the category of pejorative language. Weddle acknowledges that the use of pejoratives (and honorifics) can be justifiable in the conclusion of an argument or debate, but that generally pejorative language tends to “trigger aversion or avoidance.” (Weddle 1978, 51)

Speaking to these effects, Mr. Kreczko’s responses became noticeably defensive and departed from the issues posed by Senator Sarbanes. In asking about whether the preparatory work on CEDAW had been done by the Department of State under the Bush Administration, Senator Sarbanes received the following response from Mr. Krezcko:

I don’t think it is fair to characterize this administration as inattentive to human rights treaties. (US Congress, Senate Hearing 1990, 46)

Similarly, Sarbanes’ questioning concerning the Reagan administration’s failure to address CEDAW led Kreczko to defend the executive branch by accusing the Senate of “antipathy” or resentment. He asserted:

Senator, I think it is not fair to basically point the finger exclusively at the executive branch on action on these treaties. The executive branch tried for 30 years on the Genocide Convention; the Reagan administration did work on the Genocide Convention. It took us a long time to get that through the Senate. One
of the things we have to bear in mind is that there has been a certain antipathy in
the Senate to human rights conventions as a method of affecting domestic law.
(ibid., 53-54)

Defining "Under Review"

Avoiding pejorative language, Chairman Pell noted simply that CEDAW had been
"under review" during the two terms of Reagan’s presidency. He then asked the
Department of State representative whether "...any analysis or recommendation [came]
out of the Reagan administration for consideration by the Bush administration." (ibid., 53)
Mr. Kreczko replied, “Not that I am aware of, Senator.” (ibid.) In addition to obtaining
an answer as to whether the Reagan administration had taken any action in preparing
CEDAW for ratification, the Chairman also attempted to elicit a definition from the State
Department of the designation “under review.”

Although this would appear to be a rather basic concept to explain, Mr. Kreczko
testified in response to a question posed by Senator Sarbanes that, in his opinion,
...it means different things with respect to different treaties. In the case of a
particular treaty, it may mean that we are actually reviewing the text of the treaty;
in the case of another treaty, it may mean that we are reviewing whether to move
the treaty forward at all. (ibid., 57)

This is a clear example of equivocation which Weddle identifies in logic as the “illegitimate
switching of meanings in midargument.” (Weddle 1978, 57) In keeping with this fallacy,
Mr. Kreczko failed to offer any clarification as to the status of CEDAW with respect to
these different meanings.

Chairman Pell later returned to the definition of the term “under review” in light of
the letter he had received from the Secretary of State, in which Secretary Baker “talked
about the treaties currently under review." (US Congress, Senate Hearing 1990, 62) Mr. Kreczko responded,

Senator, if this is an important point, it might be better that I get you an answer to that in writing. (ibid.)

As a result, the following definition of "under review" with respect to pending treaties (including CEDAW) was later added to the official record of the Senate:

The Department of State annually advises the Senate of the priority the executive branch accords to treaties currently pending before the Senate for advice and consent to ratification. Treaties are placed in one of six categories, namely: (1) treaties for which there is an urgent need for Senate approval; (2) treaties which should be given very high priority; (3) treaties which the administration believes are generally desirable and should be approved; (5) treaties currently under review; and (6) treaties not yet before the committee which may require action prior to the adjournment of the current session of Congress. When a treaty is classified as "under review," it indicates that a new administration has not yet determined whether to support the treaty or that, in the case of an administration in office, it is reassessing its position, for example, in light of subsequent developments. (ibid.)

From a critical thinking perspective, several observations are important to note regarding this definition. First, the reader will again note the problem of equivocation or, perhaps more clearly, the use of a "smokescreen," i.e. avoiding the question while attempting to give the appearance of providing an answer. (Weddle 1978, 32) Senator Pell specifically asked for a definition regarding the treaties Secretary of State James A. Baker III had described as currently under review. If a definition was indeed provided, it is tautological (or circular) in that the fifth potential designation for a treaty under review is that it is "currently under review."

In view of this tautology and/or the failure to specify whether the review of CEDAW was current, it is impossible to arrive at a meaningful or substantive definition of this designation. Furthermore, the six designations for treaties provided in response to the
question of defining “under review” were unavailable and thus not subject to discussion at the time of the Senate Foreign Relations Committee hearing. As a result, no information was provided in the testimony as to which category CEDAW was placed at the time. Similarly, no information regarding the Bush Administration’s stance on CEDAW was provided in the course of the testimony offered by the Department of State. Briefly summarized, no attempt was made to eliminate the problems of equivocation or obfuscation in order to arrive at a reasonable understanding of the review status of CEDAW.

Review and Responsibility

Mr. Kreczko stated of the review process that inconsistencies between CEDAW and existent US laws would be identified. Further, he testified that proposed resolutions would be presented, although the Department of State was “...not in a position to do that at [that] point” due to the fact that the review had not been completed. (US Congress, Senate Hearing 1990, 62) When pressed on the issues of how far the review of CEDAW had actually progressed and how long a review would take to complete, Mr. Kreczko provided evasive or, at best, confusing responses. For example, Mr. Kreczko attested under oath to the Committee that the Department of State had “begun its review of the Women’s Convention.” Sworn under oath, Mr. Kreczko also told the Committee:

The Justice Department has conducted a preliminary review of potential conflicts between the convention and current law, the results of which are indicated in the testimony that I have submitted for the record. (ibid., 47)
Mr. Kreczko further stated that, “This preliminary review confirms the major areas of concern identified in the original transmittal package” sent by the Carter Administration. (ibid., 47)

With respect to this review, Mr. Kreczko later added that the Department State had “solicited the views of the Justice Department” approximately “three weeks” prior to the hearing but that he was unsure of the “exact date.” (ibid., 57) No corroboration was provided from either the Department of State or the Justice Department that such a preliminary review had indeed occurred, despite requests made to both agencies under the Freedom of Information Act. Once again research attempts resulted in an absence of relevant data which, as has been noted previously, cannot be used as evidence that a review did not in fact take place.

In completing his testimony, Mr. Kreczko admitted under questioning that he would in fact be the “operative person” responsible for completing a review of CEDAW if the Department of State was so directed. (ibid., 60) He continued by identifying three aspects of the review process that would be considered by the Department of State as significant factors. The first was described as “consistency with law” in the assessment of human rights conventions. (ibid., 61) The second element was identified as the interest expressed by “human rights groups.” (ibid.) Lastly, Mr. Kreczko identified “receptivity in the Senate.” (ibid.)

Of the three factors cited by Mr. Kreczko, questions focused repeatedly on the first step of determining consistency with domestic law. Senator Sarbanes presented a hypothetical situation where a convention assumed priority “at a very high level” and had
receptive support in the Senate, but where “the basic analysis of its consistency” had not been done. (ibid., 63) Senator Sarbanes concluded by speculating that, under such conditions, Mr. Kreczko would become “a roadblock that completely upsets the possibility of moving forward” due to the fact that the Department of State and Mr. Kreczko had not fulfilled the responsibility of performing the required legal analysis. (ibid.)
CHAPTER V
THE US GOVERNMENT: A HURDLE FOR HUMAN RIGHTS?

In the preceding pages, a great deal of emphasis was placed upon the responsibility of the Department of State for clarifying the status of the Convention on the Elimination of All Forms of Discrimination Against Women. Indeed if one were to take the record of the 1990 Senate Foreign Relations Committee hearing on CEDAW at face value, one might conclude that the Department of State (or perhaps even Mr. Kreczko alone) bore sole responsibility for the failure of the United States to move forward toward its ratification. From a critical thinking perspective, however, such a conclusion would be premature, being based neither on sufficient evidence and not subject to the standards of "...reasonable reflective thinking that is focused on deciding what to believe or do." (Ennis 1987, 10)

Upon re-examination of the testimony provided and the questions raised during the 1990 Senate Foreign Relations Committee hearing, one particularly salient aspect should not be overlooked. Mr. Kreczko provided testimony acknowledging that the review of CEDAW was indeed the responsibility of the Office of the Legal Adviser and that he personally would be expected "...to do the work." (US Congress, Senate Hearing 1990, 60-61) In speaking to the issue of responsibility and the failure to complete a basic analysis of the consistency of CEDAW with respect to existing law appeared, at the very
least, embarrassing for the Department of State. Is, however, embarrassment of a United States government official and the corresponding agency the ultimate goal in discussing the fate of a human rights treaty before the United States Senate? Additionally, it should be emphasized from a critical thinking perspective that Senator Sarbanes' characterization of the Deputy Legal Adviser being a "roadblock" with respect to moving CEDAW toward possible ratification was based on a hypothetical situation.

Theories of Responsibility

The hypothetical situation in question consisted of three factors. Only one of the three, however, namely the failure of the Department of State to complete its review of CEDAW, was subject to scrutiny. The other factors were the hypothetical conditions of 1) CEDAW being designated as a high priority by the President or executive branch, and 2) the Senate being "receptive" to moving the treaty forward. (ibid., 63) Since both of these additional factors would be considered essential to the process of ratification, it is almost incomprehensible that they were neither discussed nor analyzed at any length.

In addressing the factor of the designation of a treaty as a high priority issue several points should be made. The first is that the importance of executive support was duly noted by Chairman Claiborne Pell. In commencing the Committee's hearing on CEDAW, Senator Pell stated as follows:

Obviously, without administration support, a treaty stands almost no chance of being approved by the Senate. Moreover, even with the Senate's advice and consent, the treaty would not go into effect without presidential action in the form of ratification. (ibid., 1)
Secondly, the Department of State is part of the executive branch of government. This being the case, it would be reasonable to assert, based on Mr. Kreczko’s testimony in his capacity as Deputy Legal Adviser, that President Bush did not support CEDAW to the extent needed to move it forward toward possible ratification. If President Bush indeed supported the ratification of CEDAW, why did he not direct the Department of State to complete the review of CEDAW for consideration by the Senate Foreign Relations Committee? Does this indicate that the President was responsible for the ill-preparedness of the Department of State and the resultant inaction of the Senate Foreign Relations Committee or, perhaps, the entire United States Senate with respect to the possible ratification of CEDAW?

**Position of the Department of State?**

It should be recalled that there was a fifteen month period following the letter of May 8, 1989 from Secretary of State James A. Baker III to Chairman Pell indicating that CEDAW was “currently under review.” Yet the Department of State, according to Mr. Kreczko’s sworn testimony, waited until only “...about three weeks” prior to the Committee hearing to solicit a “preliminary review” from the Department of Justice. (ibid., 57) Despite sending several letters to the Department of State, including Mr. Kreczko, and even filing a Freedom of Information Act request [Case no. 9205245] to substantiate that a preliminary review had been conducted, the information received was non-responsive to this aspect of the inquiry.

During the course of the Senate Committee hearing, Mr. Kreczko never once claimed that CEDAW did not have the endorsement or support of President Bush.
Rather, he repeatedly (if not evasively) contended that it had not yet been decided
"...which of the other human rights treaties ought to come next" for consideration by the
Senate. (ibid., 52) Moreover, with respect to CEDAW, Mr. Kreczko also testified that,
"The administration has not formulated a position on the convention." (ibid., 58)

The last statement of Mr. Kreczko cited above would be questionable for at least
three reasons. The first is the fact that President Bush had served eight years as Vice-
President under the previous two terms of the Reagan Administration. Over the course of
these eight years preceding his subsequent election to the Office of the President, it is
extremely difficult to accept the notion that President Bush was not or should not have
been familiar with the Convention on the Elimination of All Forms of Discrimination
Against Women. This is especially difficult to accept in view of the fact that the 1985 End
of the Decade World Conference for Women was held during the Reagan years when
George Bush held the Office of the Vice-President, President Bush's prior service to the
United Nations and international role as director of the Central Intelligence Agency.
("George Herbert Walker Bush" 2 February 1992, 6)

Secondly, there is the letter of May 8, 1989 from Secretary of State James A.
Baker III to Chairman Claiborne Pell of the Senate Foreign Relations Committee
indicating to him that CEDAW and the other human rights treaties pending before the
Committee were "currently under review" fifteen months prior to the 1990 hearing. (US
Congress, Senate Hearing 1990, 62) Relevant to this letter is the opening sentence
regarding the definition of "under review" provided by the State Department and added to
the Congressional Record after the fact. It reads:

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The Department of State annually advises the Senate of the priority the executive branch accords to treaties currently pending before the Senate for advice and consent to ratification. (ibid.)

In sum, it seems quite unlikely that President Bush, after nearly a decade of exposure and having had to twice accord priority to the treaties pending before the Senate, that he would not have formed an opinion as to whether or not he supported the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

Support of the United States Congress?

The last factor which draws into question Mr. Kreczko's sworn statement that the President had "...not formulated a position on the convention" is by far the most intriguing. (ibid., 58) It also would seem to be only a matter of chance that such relevant information was entered into evidence in the Congressional Record. Briefly summarized, a letter dated June 11, 1990 was sent to President Bush in support of CEDAW by thirteen Republican Members of Congress. The group consisted of twelve female members of the House of Representatives a one male Senator who was then a current member of the Foreign Relations Committee. Collectively, they urged "...administration support for the United States ratification of the Convention on the Elimination of All Forms of Discrimination Against Women." (ibid., 38) The letter cited the lack of constitutional barriers to ratification, two legal studies by the American Bar Association concurring with this opinion, and the need to further address the issue of discrimination against women in the United States. The letter concluded by pointing to "difficulty" faced by US diplomatic representatives in international forums addressing human rights in light of the failure of the United States to ratify the instruments such forums have produced. (ibid., 38-39)
addition, the letter requested that "...this convention be given priority status by the administration and that the Senate Foreign Relations Committee be urged to hold hearings on US ratification." (ibid., 38) At the time of the 1990 Senate Committee hearing on CEDAW, however, three of the original thirteen members of Congress went on record as having withdrawn their support for the ratification of this treaty. (ibid., 95-97)

Position of the President?

The response to the letter discussed above came from Janet G. Mullins, Assistant Secretary for Legislative Affairs of the Department of State, reportedly at the request of President Bush in June of 1990. While this letter of response foreshadowed much of the testimony of Mr. Kreczko with respect to the passage of the Torture Convention and indecision as to which of the human rights treaties should be considered next as a priority, three sentences are worthy of note. They read as follows:

As you know, this administration is committed to promoting and protecting the human rights of all individuals, and we are particularly concerned about the rights of women. Five human rights conventions drafted under UN auspices— including CEDAW— are currently pending Senate approval. This administration, like its predecessor, has urged approval. (ibid., 39)

Contrary to Mr. Kreczko's sworn testimony, this letter would appear to indicate that President Bush had indeed "formulated a position" regarding CEDAW and that it was, in fact, one of support.

Before accepting the notion that President Bush (or, for that matter, President Reagan) truly supported or "urged approval" of CEDAW, any such conclusion must be subject to critical analysis. The questions to be raised include: On the basis of what evidence can this claim be supported? Is there evidence that either Mr. Kreczko or Ms.
Mullins may have been biased, distorted the truth, or simply misspoke? Is it possible for the President to have "urged approval" when a position allegedly had not been formulated?

Speaking to the position of the President, is it possible that he (like the three individuals who were members of the House of Representatives) changed his mind? If so, what were the reasons for this sudden withdrawal of support in less than two months? Could this apparent change of heart have occurred either in view of the reasons given by the three members of Congress or further reassessment on the part of the President? If either were the case, would these reasons, when subject to the standards of critical analysis, be based upon "reasonable reflective thinking focused on what to believe or do," in this instance, whether or not to seek the ratification of the CEDAW as a human rights treaty formally supported by the United States? Is it possible to determine the whether each could be said to have acted in the best interests of their constituents and the general public by reassessing and/or withdrawing support for the ratification of CEDAW?

The Power and Receptivity of the Senate

Based on the 1990 Senate Foreign Relations Committee hearing, it can be reasonably asserted the executive branch was ill-prepared or, perhaps, even disinclined to address CEDAW as a human rights treaty to be moved forward through the Committee for the advice and potential consent of the Senate for ratification. As Chairman Claiborne Pell opined in commencing the August, 2 1990 hearing on the Convention on the Elimination of All Forms of Discrimination Against Women:
This administration has had more than 18 months to review [CEDAW]. That is more than enough time to determine whether and under what conditions the United States should ratify this treaty. (ibid., 1)

While this again speaks to the need of presidential endorsement in order for the Senate to move toward the ratification of any given human rights treaty, it does not fully address the issue of review. Rather ironically, for example, Senator Sarbanes indicated earlier in the hearing that, contrary to his own characterization of there being a “roadblock,” a review by the Department of State was not actually needed for the Committee to take action on CEDAW.

When first recognized by Chairman Pell to speak during the Foreign Relations Committee hearing on CEDAW, Senator Sarbanes began with the following statement:

First I want to commend you very strongly for holding this hearing and seeking to move this convention on the agenda. This administration, successive administrations, have now had this matter “under review,” and, while we are always interested in what the administrations think, it seems to me if they cannot bring that review to a speedy close, we may need to move ahead without it, frankly. (ibid., 40)

In addition, during his questioning of Mr. Krezcko, Senator Sarbanes indicated that it was within the scope of the Committee’s power to vote to have the Department of State complete its review of CEDAW. (ibid., 60)

This view is substantiated by Rule XXVI concerning Committee Procedure. Section 8 (a) of this rule reads in part as follows:

...Committees may carry out the required analysis, appraisal, and evaluation themselves, or by contract, or may require a Government agency to do so [emphasis added, rule in effect 1990]. (US Congress, Senate 1993, 46)

From the above, one will note that not only does the Senate Foreign Relations Committee appear to possess the power to direct the Department of State accordingly, but also that
the Committee can perform the review independently, either by themselves as a body or even by contracting the work outside of the federal government.

It is understandable that the Senate Foreign Relations Committee would not seek to move CEDAW forward if it did not have the active support of the President. It is difficult to understand, however, why the Committee would not pursue having the review of CEDAW completed, especially since this was one of the major points discussed during the 1990 hearing on CEDAW. This is particularly perplexing in light of the fact that the American Bar Association, or ABA, had performed three separate and "extensive" legal analyses of CEDAW, each in support of the ratification with the final conclusion "...that US law is compatible with the convention." (US Congress, Senate Hearing 1990, 68)

Further, it is reflected in the Congressional Record that several analyses of CEDAW were offered for review by the government without apparent cost or restriction. Catherine Bocskor, Vice-Chair of the Section of International Law and Practice of the ABA, appeared before the Senate Foreign Relations Committee in 1990 to testify in support of CEDAW "...at the request of L. Stanley Chauvin, Jr., President of the American Bar Association." (ibid., 69) The relevant aspect of Ms. Bocskor's oral testimony reads as follows:

Let me also offer the assistance of the various bar associations that have been studying this convention and other international human rights conventions for many years, that is, not only the ABA but the Federal Bar Association, the American Society of International Law, and the Women's Bar Association of Washington, DC. We will all be happy to give the State Department and Justice Department the benefit of our legal studies. (ibid., 88-89)
A History of Senate Opposition

One author speaks directly to the difficulties human rights treaties have historically faced with respect to receiving the advice and consent to ratification by the United States Senate. In a book entitled, *Human Rights Treaties and the Senate: A History of Opposition*, Natalie Hevener Kaufman undertakes a study of the history and fate of human rights conventions in the hands of the Senate from the late 1940s to the mid-1980s. Kaufman identifies a typology of arguments which have been utilized over time to oppose the ratification of human rights instruments and examines the "future prospects" of the ratification of human rights treaties by the United States.

In Part I, entitled "Politics of Fear," Kaufman describes the historical context of the Cold War and the civil rights movement and how this socio-political environment helped shape the initial opposition to ratifying human rights treaties. Interestingly enough, the analysis begins with an examination of the role and influence of the American Bar Association in opposing human rights treaties when this issue first emerged before the Senate in the late 1940s and early 1950s. (Kaufman 1990, 9) Kaufman observes that the basis of "...conservative fears and the rationale behind them were most elaborately developed and articulated by Frank Holman, president of the American Bar Association in 1948-49." (ibid., 16)

Kaufman begins by reviewing the history of the first post-World War II treaty, the Convention on the Prevention and Punishment of the Crime of Genocide. The Genocide Convention, emerging in response to the atrocities of the war, was described as having substantial broad-based support from a variety of organizations, collectively representing...
"approximately 100 million people." (ibid., 37) In contrast, the ABA Special Committee on Peace and Law Through the United Nations was described as testifying before the Senate "...as almost the lone opposition to ratification." (ibid.) The Special Committee succeeded in its opposition, despite the fact that the Association was itself divided and "[t]he organ of the ABA that normally addressed international legal issues was outmaneuvered and outvoted." (ibid., 9)

Noting that the Genocide Convention was "strategic starting point for the opposition," Kaufman asserts:

The major arguments enunciated against all human rights treaties were first articulated against the Genocide Convention. (ibid., 37)

Kaufman identifies three distinct "themes" (which she later uses to formulate a typology of arguments) that were integral to the initial and subsequent ABA opposition arguments, as follows:

...that these treaties would result in (1) violation of domestic jurisdiction resulting in loss of sovereignty and curtailing of rights, (2) expansion of the powers of the federal government in violation of states' rights, and (3) enhancement of Communist influence and the transformation of the American system to socialism. (ibid., 17)

One important purpose of Kaufman's historical analysis of the Genocide Convention (and the Human Rights Covenants which followed shortly thereafter) was to "...draw attention to the legalism that pervaded the discussion" of human rights issues before the Senate. (ibid., 38) She asserts, "Political arguments were minimized or ignored as legalistic reasoning took center stage" and that, as a result, the basic question of "Why not ratify human rights treaties?" was reversed, shifting the burden of proof under the prevailing view of the 1950s that such instruments were "defective and dangerous." (ibid.)
The United States Senate, like the American Bar Association, rapidly became divided over the issue of ratifying human rights treaties. Indeed, the division proved to be so great that it resulted in a series of Senate proposals during the 1950s “to amend the treaty-making provisions of the Constitution” and/or otherwise curtail “the president’s power to conclude executive agreements.” (ibid., 94) Kaufinan states that collectively these proposals are now referred to as falling under the “Bricker Amendment” which was only narrowly defeated in the Senate. (ibid., 95, 105) After presenting a refined version of the original “themes” of opposition as a typology of arguments, Kaufinan concludes:

The short-term effect of the Bricker Amendment hearings, and of the public debate surrounding them, was the defeat of efforts to ratify human rights treaties...even though the Bricker Amendment did not pass.... The long-term effect was also executive and legislative resistance to action on human rights treaties. The proponents of the Bricker Amendment, with official ABA sanction, successfully branded human rights treaties as dangerous and, perhaps more important, as controversial— labels most likely to deter consideration by the United States Senate. (ibid., 116)

Fear of Human Rights: An Acceptable US Legacy?

Part II of Kaufinan’s study entitled, “Legacy of Fear,” undertakes an analysis of the fate of human rights treaties which unfolded in the years following the Bricker Amendment controversy of the 1950s. Kaufman begins with President John F. Kennedy’s attempt to resurrect discussions of human rights issues in 1963 by sending three treaties to the Senate, “...the contents of which were in complete harmony with state and federal law.” (ibid., 119) In what is described as a “trial balloon,” this action was interpreted by Kaufman as a means to determine whether “uncontroversial agreements,” sent without reservations and just one understanding, would also face opposition in the Senate. (ibid.)
Kaufman notes, "The Senate responded by not holding hearings on these treaties until 1967." (ibid.) Two of the three treaties ultimately gained Senate approval, despite the fact that points of intense controversy during the 1950s, namely "questions of domestic jurisdiction, federal-state conflict, and international adjudication," were equally applicable to the two treaties that received advice and consent to ratification. (ibid., 120)

**A Sign of Hope or Hasty Acceptance?**

The first of the human rights treaties transmitted by President Kennedy in 1963 gained consent to ratification by the Senate in 1967. A compilation of human rights instruments affecting the rights of women and children, cited as "Appendix 4: United Nations Instruments Pertinent to Elimination of Discrimination and Violence Against Women and Children" by Gordon R. Chapman, was offered into evidence to the House of Representatives Committee on Foreign Affairs during its 1990 hearings. Entitled, "International Human Rights Abuses Against Women," these hearings also specifically addressed CEDAW. (US Congress, House 1990, 1, 174-187). The formal title of this human rights document is recorded in Appendix 4 as the "Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery" of 1956, included in the record of the 1990 House hearings with the belief that the subject matter was pertinent to the rights of women and children. (ibid., 182)

It is difficult to understand how an international agreement designed to protect individuals from slavery worldwide would be ignored or considered controversial and then, after a decade, be embraced by the Senate for ratification. Kaufman seeks to explain this sudden and somewhat remarkable reversal of the Senate by emphasizing two factors
of particular note. One was that the Supplementary Slavery Convention was an extension of a treaty to which the United States was already a party. As a result, Kaufman asserts, it "gained acceptability as an extension of a former, quite popular treaty rather than as a new human rights treaty." (Kaufman 1990, 143) She continues by stating:

Second, the treaty was presented as a desirable way for the United States to celebrate the United Nations Human Rights Year...[and] US commemoration of the year [1968] was mentioned many times during the hearings as a reason for ratification. (ibid., 144)

Kaufman writes that the Supplementary Slavery Convention was "...ratified with no reservations or understandings and no threats of filibuster or cries of imminent destruction of the nation." (ibid., 143) Yet, this treaty nevertheless fit the typology of dangers espoused by previous opposition arguments. Kaufman offers the observation,

There was, then, a major inconsistency in voting to approve this treaty while continuing to give these reasons as the basis for opposing other human rights treaties. (ibid.)

The First Human Rights Convention for Women?

The second treaty sent to the Senate in 1963 was the Convention on the Political Rights of Women, which was entered into force for the ratifying or acceding member states of the United Nations on July 7, 1954. (ibid., 122) Ironically, with respect to the issue of domestic jurisdiction, this treaty "...was twice rejected by the [United Nations] Economic and Social Council on the grounds that its subject was not appropriate for international legal formulation" before finally gaining the acceptance of the UN General Assembly in 1952. (ibid.) Indeed, addressing women's rights as human rights was also the "newest topic" to be addressed by the United Nations through a formal and binding
multilateral treaty. (ibid.) Speaking indirectly to the issues of Senate opposition to
ratifying international human rights instruments and the reluctance of the President to
transmit such treaties after the Bricker Amendment hearings, Kaufman notes that "...the
Eisenhower administration's withdrawal of support for UN treaty-making on human rights
explicitly included [the Convention on the Political Rights of Women]." (ibid., 120)

As for the Senate Foreign Relations Subcommittee and special Committee hearings
on this and the other two treaties considered in 1967, Kaufman states that the Convention
on the Political Rights of Women received the support of the Subcommittee for
ratification but was strongly rejected by the American Bar Association. Kaufman notes
that the treaty was not only rejected by the ABA Committee on Peace and Law through
the United Nations (which led the opposition against human rights in the 1950s), but also
the ABA Section on International and Comparative Law and even the ABA House of
Delegates by a 115-92 vote. (ibid., 125-126)

The repeated and predominant ABA argument against ratification of this treaty
was that the issues addressed by the Convention on the Political Rights of Women were
matters of domestic as opposed to international concern and jurisdiction. (ibid.) Kaufman
emphasizes the special status of the ABA and the influence on the action taken by the
Senate. She reports that,

After the subcommittee of the Foreign Relations Committee had completed its
hearings on these three treaties, the full committee delayed consideration of the
subcommittee report at the request of the ABA. (ibid., 126-127)

The result was that the Senate Foreign Relations Committee followed the "compromise"
of the ABA House of Delegates. Thus in 1967, the Supplemental Slavery Convention was
approved for ratification, and the UN Commission on the Status of Women’s Convention on the Political Rights of Women, along with the UN International Labor Organization’s Convention Concerning Forced Labor, were indefinitely “delayed” for consideration by the Senate. (ibid.)

The Triumph of the Senate Over ABA Opposition?

In 1975, the Senate held hearings on the Convention on the Political Rights of Women for the second time to determine whether or not to give advice and consent to the United States ratification of this human rights treaty which offers three fundamental guarantees to women around the globe. They are as follows:

Art. I. Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Art. II. Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Art. III. Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination. (Osmanczyk 1985, 929)

For the general public, these guarantees would hardly seem controversial in 1975, especially in light of the Nineteenth Amendment of 1920 which granted women of the United States the right to vote and subsequent rulings of the Supreme Court which protected the rights of women to hold public offices. Why, then, were these guarantees considered controversial, radical, or dangerous when viewed as international human rights?

Of particular note is the fact that in 1975 the opinion of the American Bar Association remained unaltered. It was reported that the ABA was “specially contacted
for its position on the treaty" and that, "The response was that the stand of the
organization had not changed, but no one was sent to testify against the convention."
(Kaufinan 1990, 144) Kaufman asserts that this response was one among at least three
factors which contributed to the ratification of the Convention on the Political Rights of
Women, which Kaufman characterized as being the "most severely criticized as being
domestic in nature" by the ABA. (ibid., 139)

The second factor pointed out by Kaufinan was the symbolic influence of 1975
being designated International Woman's Year by the United Nations, which also marked
the beginning of the World Conferences for Women. Kaufman states that "the treaty's
passage had been identified as a significant symbol for US observance." (ibid.) A
movement evolved across "numerous women's groups" and Senator Charles Percy was
reported to have "led the move to tie the treaty to the International Women's Year
celebration." (ibid., 144-145)

Kaufman also notes that advocates for the ratification of this human rights treaty
pointed to its consistency with United States law and that its ratification "would cost
nothing." (ibid., 145) Additionally, Kaufman confers the judgment that,

Proponents wisely introduced the proposal during the closing days of the
congressional session, a busy time when more weighty matters of state were likely
to hold the attention and energy of the members. (ibid.)

It cannot be definitively established as to why, how, and to what extent these combined
factors influenced the Senate decision to give unanimous consent to ratification despite
the stated resistance of the American Bar Association. Kaufman describes this unlikely
scenario as follows:
For twenty-one years [the Convention on the Political Rights of Women] awaited Senate floor consideration and approval, until 1975 when the Senate deliberated less than a month and unanimously voted for ratification with no reservations. (ibid., 120)

Kaufman correctly raises the question as to how, in light of the ratification of the Convention on the Political Rights of Women, "the argument of domestic jurisdiction could effectively be applied" in future human rights deliberations before the Senate. Indeed, this point would seem particularly relevant to the ratification of highly "domestic" human rights treaties, as is true of CEDAW.

**Reservations: Senate Opposition to Human Rights Revitalized?**

Kaufman continues her analysis of the fate of human rights treaties before the Senate in the years following the 1975 passage of the Convention on the Political Rights of Women in two chapters entitled "The Reservations Game" and "Current Situation and Future Prospects." In the former, Kaufman examines the Human Rights Covenants as a case study. In the latter, Kaufman examines four additional human rights instruments transmitted by President Carter to the Senate in 1978 for advice and consent. In addition, Kaufman examines the typology of arguments against the Convention on the Prevention and Punishment of the Crime of Genocide, which was ultimately gained the consent of the Senate for ratification in 1986.

Throughout the course of these closing chapters, it is asserted that the fears, which provided the impetus in the 1950s for the Bricker Amendment and the basis for Kaufman's typology of opposition arguments, have become a deeply rooted legacy in human rights debates. Instead of taking shape as a proposed amendment, however, it is suggested that
the practice of making extensive reservations or attachments to human rights instruments emerged as an alternative strategy. Kaufman describes this as "a strange sort of meeting ground," utilized by opponents as well as proponents of human rights treaties. (ibid., 148)

Kaufman attempts to "demystify" the role that reservations or attachments have come to play in more recent attempts to ratify human rights treaties. First, Kaufman expresses her intent to examine the recommendations of the Carter administration with respect to the UN Human Rights Covenants, which "formally codified the principles in the Universal Declaration of Human Rights," and to provide a "drafting history . . . for each treaty provision for which an attachment was recommended." (ibid., 64,150) Second, Kaufman proposes to individually assess these provisions for incompatibility with the Constitution and to attempt to determine "whether a need exists for the particular recommended attachment." (ibid.) Lastly, Kaufman projects reaching conclusions "as to what the reservations game reveals about the underlying assumptions that guide executive and legislative consideration of human rights treaties." (ibid.)

One of Kaufman's stated purposes is to again expose how political issues of debate (which she asserts lie at the heart of opposition arguments) have been repeatedly cast in terms of legal arguments and concerns. (ibid., 149) Kaufman argues that the effect of the legitimization of a "legalistic framework for debate" has not only "effectively disqualified nonlegal players," but has also masked the political core of opposition arguments in such a way that political debate has been "effectively excluded or minimized." (ibid.) Kaufman claims that this legalistic "reservations game" reached new heights under President Carter,
not only during Senate debates, but also in the Administration’s preparation of the human rights treaties for Senate consideration. (ibid., 150-151)

In the conclusion of “The Reservations Game” chapter, Kaufinan discusses how advocates for the ratification of human rights treaties, including the Carter Administration, fell prey to the opposition arguments assertion which stressed an alleged need for reservations, understandings, and declarations. She writes that,

Proponents, attempting to gain acceptance for the treaties, designed legally correct attachments, which they claimed met the oppositions objections. Yet in adopting the legal framework, they yielded major ground, implying that the opposition’s stated arguments were legitimate and nonpolitical. (ibid., 173)

Speaking to the impact of this practice, Kaufinan continues with the assertion:

The effect of this concession was to cast future debates in legal terms, with the designing of ever more elaborate and detailed attachments becoming the routine method of addressing actual and potential opposition. (ibid.)

As for Kaufinan’s review of the reservations and attachments proposed by the Carter Administration to the Human Rights Covenants, the conclusion is reached that, “With one exception, the attachments are unnecessary.” (ibid.) This exception is none other than one designed to protect the First Amendment right of free speech, a guarantee that Eleanor Roosevelt had also deemed essential during earlier Human Rights Commission debates. (ibid., 164-170)

Reasonable Assumptions or Fallacy of Fear?

Turning to the “fundamental assumptions” which Kaufman claims have come to “guide executive and legislative consideration of human rights treaties,” two are identified in her case study of the Human Rights Covenants. Kaufman covers the
exchanges which took place with respect to the Human Rights Covenants between the executive branch, the Senate, and the United Nations, from the time of Eleanor Roosevelt to President Carter. The first assumption, Kaufman describes as an “ethnocentric notion” that the United States system of government is either perfect or superior to all others in the world, with the obvious inclusion of the United Nations. (ibid., 173) Kaufman notes:

The United States could, as many other ratifying states have, accept the obligation to bring its legal system into compliance... There is no constitutional or other legal bar to this option. (ibid., 173)

Kaufman briefly discusses how the reservations game undermines the intent of human rights treaties and serves to “highlight US reluctance to accept international human rights standards and contradict any claim the nation might have to leadership” on these issues. (ibid.) She then offers the speculation that,

US government officials in both the legislative and executive branches appear to believe that under no circumstances could an international formulation of human rights hold the potential for any improvement in the human rights of US citizens. (ibid., 174)

Another related assumption guiding the government’s consideration of human rights instruments is identified by Kaufman as follows:

... that no political objective, however strong, could outweigh the need to resist any possible legal alteration, however small, however unlikely. (ibid.)

Kaufman asserts that it is only through knowledge of such assumptions that we are able “...to understand otherwise incomprehensible reservations such as the need to reserve the right to execute [children and] pregnant women.” (ibid., 159, 174) Kaufman concludes, in light of the findings of her analysis, that “one can see the assumption of controversy and opposition that is the legacy of the 1950s.” (ibid., 174)
In Kaufman's view, it is undoubtedly a legacy of fear as opposed to reasonable concern which grew even stronger by the 1980s. President Reagan, after unexpectedly announcing his endorsement in 1984 during a campaign speech, finally received the advice and consent of the Senate to the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide in 1986. (ibid., 181) Speaking to the assumption of human rights treaties being controversial or even dangerous, after thirty-eight years of Senate consideration the consent rendered was so laden with “advice” in the form of reservations, understandings and declarations, as to restrict the ability of the President to formally deposit this human rights treaty with the United Nations for two more years.

From Past to Present to Future?

Kaufman concludes her book with an analysis of whether the opposition arguments against human rights treaties have continued to influence Senate consideration and debates, beyond the United Nations Covenants on Human Rights and through the final passage of the Genocide Convention. Kaufman presents “additional data” supporting the view that, stated in the extreme, the Bricker Amendment may just as well have been passed in the 1950s. This data is drawn from two studies which employ comparative analysis, interviews with ten Senate staff members who were granted anonymity, and the application of Kaufman’s typology of arguments to Senate hearings. (ibid., 175-176)

Kaufman’s first investigation utilizes testimony from the 1979 hearings on four human rights treaties, sent to the Senate on February 23, 1978 by President Carter, to analyze the extent to which the opposition arguments have changed when compared to the testimony favoring the Bricker Amendment in the Senate hearings of 1953. (ibid., 176)
Kaufman limits the "content analysis" of this first investigation to "...the testimony of those witnesses who either supported the Bricker Amendment in the 1953 hearings or opposed any of the treaties discussed at the 1979 hearings." (ibid.) Eleven categories were identified by two independent coders and additional review was arranged for inconsistencies. (ibid., 177)

Kaufman's results supported that the arguments of the 1953 hearings on the Bricker Amendment were substantially consistent with the arguments presented during the 1979 hearings on the four human rights treaties transmitted by President Carter. She reports a 93.5% correlation between the arguments of 1953 and 1979. Additionally, Kaufman notes:

The two principle arguments in both periods-- that the treaties would diminish basic rights and violate states' rights-- held the same rankings and together accounted for a substantial proportion of the total arguments (38.2 percent in 1953 and 56.1 percent in 1979). (ibid., 178)

Kaufman's results support the view that little has changed with respect to opposition arguments since 1953. (ibid.) Kaufman does, however, note the emergence of two new arguments in 1979. The first addressed a "covenant provision on permanent sovereignty over natural resources." (ibid.) Of interest, the second argument was that American women would be deprived of "important protections," and is described by Kaufman as arising from "domestic opposition to the women's movement, particularly the Equal Rights Amendment." (ibid.)

The second investigation combined information gleaned from interviews with Senate staff members, their ranking of five factors viewed as inhibiting Senate action on human rights treaties, and the application of Kaufman's typology of arguments to the
1980s Senate debates concerning the Genocide Convention. Speaking to the factors that were assessed by the ten Senate staff members in January of 1984, a nonpartisan analysis revealed the following ranking:

1. Support of administration,
2. Internal Senate politics,
3. Public opinion,
4. Content of treaties, and
5. Current international situation. (ibid., 180)

In light of President Reagan’s unexpected endorsement of the Genocide Convention, the swift approval of the Senate Foreign Relations Committee, and its formal enactment two years later, Kaufman concluded that the opinions provided by the Senate staff members were validated with respect to the need for the support of an administration. (ibid., 181, 193)

Upon reviewing the Senate hearings on the Genocide Convention in the 1980s, Kaufman confirms the continued use of opposition arguments which corresponded to both the Bricker Amendment hearings and the 1979 Senate hearings on four human rights treaties transmitted by President Carter. The typology developed by Kaufman cites nine basic arguments made against the ratification of human rights treaties. These arguments are identified as having the following impacts:

1. Diminish basic rights,
2. Violate states’ rights,
3. Promote world government,
4. Enhance Soviet / Communist influence,
5. Subject citizens to trial abroad,
6. Threaten the US form of government,
7. Infringe on domestic jurisdiction,
8. Increase international entanglements, and
9. Create self-executing obligations. (ibid., 177)
In each instance, although not ranked for frequency, Kaufman is able to show that these arguments persisted in the Senate hearings on the Genocide Convention in the 1980s. In addition, Kaufman notes that, "[W]hen the convention was approved, eight debilitating attachments were necessary to make the treaty acceptable to the necessary two-thirds majority in the Senate." (ibid., 182)

Of particular note is the fact that Senator Jesse Helms staunchly opposed the Genocide Convention and he proved to be a major force in persuading the Senate that these extensive attachments, known as the Lugar-Helms Provisos of 1985, were necessary. (ibid., 145, 148, 184-193, 209-210) Further, despite taking an active role in drafting these attachments and advocating their acceptance by the Senate, Senator Helms remained among the eleven who voted against ratification. (ibid., 148, 184) Kaufman's final conclusion is that "the 1986 ratification of the Genocide Convention does not portend any significant change in the reception of human rights treaties in the United States Senate." (ibid., 5) While concurring with this assessment, it should also be noted that the outlook for human rights treaties such as CEDAW may have worsened since the 1990 publication of Kaufman's analysis. Indeed human rights may remain locked within the confines of the Senate Foreign Relations Committee in the years to come, under the current chairmanship of none other then Senator Jesse Helms.
CHAPTER VI
CEDAW REVISITED

In the preceding chapter, many questions were raised about the treatment of the Convention on the Elimination of All Forms of Discrimination Against Women by the Senate in 1990. This, in turn, led to a more extensive review of the historically negative reaction of the Senate to human rights treaties in general, based primarily upon the work of Natalie Hevener Kaufman. Of note, however, CEDAW was not mentioned anywhere in Kaufman’s analysis of action taken by Senate with respect to human rights treaties.

Since determining the degree of information about CEDAW available to the general public is a primary focus of the current analysis, it is important to examine or otherwise account for this omission. For example, it should be remembered that Kaufman’s analysis primarily addressed the fate of human rights treaties which were subject to hearings before the Senate Foreign Relations Committee or had already been determined by the Senate. CEDAW, however, was not subject to a full hearing before the Senate Foreign Relations Committee until 1990, the year in which Kaufman’s book was published. This being the case, any extensive discussion of CEDAW might be reasonably dismissed as inappropriate within the context of Senate action established by Kaufman.

It should be noted, however, that despite the overall quality of Kaufman’s work, CEDAW was nevertheless omitted from her citation of the human rights treaties signed by
by President Carter. In discussing the results of interviews with ten Senate staff members, Kaufman wrote:

     Respondents often referred to the Carter administration, which did sign three human rights treaties and formally supported their passage in the Senate [emphasis added]. (Kaufman 1990, 180)

Kaufman identified these three treaties as the United Nations Human Rights Covenants (i.e. consisting of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights) and the American Convention on Human Rights. (ibid., 176)

     Since it has been reasonably established that CEDAW was also among the human rights treaties signed by President Carter, what would account for this omission? First (and perhaps most likely), is the fact that Kaufman’s interviews were limited to the 1979 Senate hearings on the package of four human rights treaties (including the International Convention on the Elimination of All Forms of Racial Discrimination signed in 1966) which were transmitted by President Carter to the Senate in 1978. There is, however, another possible explanation for the omission of CEDAW.

     The reader will note that Kaufman’s description of the treaties discussed in the interviews conducted includes the caveat that the treaties were “formally supported” for passage by the Senate. Similar to the State Department terms “under review” and “concluded by the Executive,” it is unclear what this term actually means. Since CEDAW was sent to the Senate without specific reservations, understandings, or declarations but noted areas of potential concern, it may well be the case that the treaty was not considered to have “formal” support. In addition, CEDAW was transmitted to the Senate after
President Carter was defeated in his bid for re-election, a factor which also might affect how CEDAW was perceived by the individuals interviewed, in terms of this treaty having the formal support of the Administration.

**Senate Reconsideration of CEDAW**

In a personal letter dated January 6, 1994, Senator Claiborne Pell expressed his continued support for the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women and optimism that the Foreign Relations Committee would "...consider the Convention and work towards its ratification during the coming year." (Pell, 1994) In addition, the Chairman wrote that he had recently "...urged President Clinton to send [the Committee] the package of necessary modifications which would allow Congress to act on the Convention." (ibid.) By the fall of 1994, the hopes expressed by Senator Pell were partially realized.

On September 27th of 1994, the Senate Foreign Relations Committee held its second full hearing on CEDAW. Lasting fifty-three minutes and with only Chairman Pell and Senator Paul Simon representing the Committee, the hearing was small and brief, but nonetheless, significant. Five individuals publicly testified, including Jamison S. Borek in her capacity as Deputy Legal Adviser for the Department of State. In contrast to Alan Kreczko in 1990, Ms. Borek appeared fully prepared before the Committee, supporting ratification and offering a detailed legal analysis of CEDAW as well a package of reservations, understandings, and declarations proposed by the Clinton Administration. Ms. Borek was accompanied by another State Department official as well as by an official
from the Department of Justice who were “...available to answer questions if necessary.”

(US Congress, Senate Hearing 1994, 2)

After noting Chairman Pell’s “strong support over many years for ratification,”

Ms. Borek began her sworn testimony on CEDAW, stating:

We are also aware that a majority of the members of this committee, and indeed of
the Senate as a whole, are on record in support of ratification. The administration
shares that view. (ibid., 2-3)

The Deputy Legal Adviser continued by summing up the history and status of CEDAW
for the United States in 1994 as follows:

As you know, this Convention was adopted by the United Nations in December of 1979. The United States did participate actively in its negotiation, voted in favor
of its adoption and signed it in July 1980. Until now, however, there has not been
a final review of the conformity of the Convention with US law and a definitive
proposal for ratification. We have now conducted such a review, and on the basis
of its conclusions believe it is time to ratify. (ibid., 3)

Unfortunately, in keeping with Natalie Hevener Kaufman’s predictions, support of the
Clinton Administration contained nine extensive conditions, consisting of four
reservations, three understandings, and two declarations. In essence, these attachments
were designed to nullify the impact of CEDAW upon ratification such that the US would
not be obligated to meet any of the Convention’s provisions which potentially conflicted
or were not already covered by the laws of the United States. (see Appendix B)

Official and Symbolic Support for Ratification

The official submission of the CEDAW for active consideration by the United
States Senate came from Secretary of State Warren Christopher. In a letter to Chairman
Pell dated September 13, 1994 he wrote:
On behalf of the President, I am writing to convey the Administration’s strong support for prompt ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. As you are aware, this important human rights treaty has been pending before the Senate since 1980, when the United States signed it. Despite the expression of strong support for ratification by a wide spectrum of the non-governmental community at several Congressional hearings, prior Administrations did not embrace the Convention. Consequently the process of ratification has languished. Over 130 States [of the United Nations] are now parties to the Convention; the United States is not. It is time to remedy this situation. (US Congress, Senate Report 1994, 8-9)

The Secretary of State continued by pointing to various recent strides that the United States had made in the field of human rights with respect to the promotion of universal rights for women under the Clinton Administration and offered several reasons why the ratification of CEDAW would be in the best interests of the United States.

Warren Christopher specifically mentioned the Fourth World Conference for Women to be held in Beijing the following year as a reason “to ratify this treaty promptly.” (ibid., 9) In addition to the testimony provided at the hearing, twenty statements and two letters were submitted to the Foreign Relations Committee for inclusion in the record.

The same sentiment voiced by the Secretary of State regarding the United States participation in the 1995 Beijing Conference was reiterated by approximately half of the submitted public statements from various non-governmental organizations. (US Congress, Senate Hearing 1994, 60, 61, 63, 67, 70, 73, 74, 75)

This occurrence echoes one of the factors mentioned by Kaufman, namely a corresponding international event to which ratification of a given human rights instrument can be symbolically linked. The reader will recall that in the case of the Supplemental Slavery Convention, ratification occurred prior to what was designated International Human Rights Year, 1968. Similarly, the Convention on the Civil and Political Rights of
Women of 1952 was ratified prior to International Women’s Year and the 1975 First World Conference of the United Nations Decade for Women: Equality, Development and Peace held in Mexico City. The question in 1994 was whether or not the 1995 Fourth World Conference for Women would provide sufficient motivation to ratify CEDAW, especially in light of guarantees which could potentially enhance the rights of women both in the United States and abroad.

**Senate Comments Regarding Ratification**

The report issued by the Foreign Relations Committee cited four purposes which would be served through the ratification of CEDAW by the United States. They are as follows:

First, [ratification] will reaffirm the United States’ commitment to the principle of equality between men and women and to the promotion and protection of women’s rights at home and abroad. Second, it will enhance the credibility and effectiveness of US efforts to lead the international community’s efforts to end discrimination against women. Third, it will enable the United States to shape those efforts through participation in the work of the committee established by the Convention. Fourth, it will allow the United States to participate in the upcoming Fourth World Conference on Women as a party to the Convention, rather than as the one Western state that has refused to ratify. (US Congress, Senate Report 1994, 3-4)

In addition, the report addressed certain areas of international concern, public support for the ratification of CEDAW and opposition arising over the issue of abortion, clarification of this issue with respect to CEDAW, and the degree of consistency between CEDAW and US law. (ibid., 4)

Specifically, the 1994 report mentioned the “violent human rights abuses committed against women in Bosnia, Rwanda, and Haiti” as examples which pointed to
the need for international protection and promotion of women's rights. (ibid.) Speaking to public support for the ratification of CEDAW, the report described the support expressed during the three Senate hearings on CEDAW since 1988 as being “substantial” and representing “a broad range” of organizations. (ibid.) In response to concerns raised over abortion, the report stressed that CEDAW is “abortion neutral.” (ibid.) Despite this stated rejection of the view that CEDAW “creates an international right to abortion and sanctions abortion as a means of family planning,” the Committee was nevertheless compelled to make this assurance explicit by voting to accept yet another, added understanding proposed by Senator Helms. (ibid.)

As for the consistency of CEDAW with US law, the report concluded that US law is “largely consistent with the provisions of the Convention.” (ibid.) However, once again fulfilling Kaufman's predictions, the report stated, “In those few areas where US law and the Convention differ, the administration has proposed a reservation or other form of condition....” (ibid.) The reader may recall that Kaufman identified the use of attachments to prevent any alteration in US law (regardless of whether or not such alteration would be beneficial to US citizens) as being based upon a fundamental, ethnocentric assumption of the superiority of the laws of the United States, even though the US could exercise the option to “accept the obligation to bring its legal system into compliance” with any provision contained in a given human rights treaty such as CEDAW. (Kaufman 1990, 173)

Public Opposition and the Abortion Issue

Public submissions for inclusion in the 1994 Congressional Record (i.e. excluding the Departments of State and Justice) totaled twenty-five in number. Of these twenty-five,
twenty-three expressed support for ratification. With respect to the remaining two, the Ethics and Public Policy Center offered no opinion regarding the ratification of CEDAW but requested an understanding that CEDAW would not grant an internationally recognized “right to abortion” or sanction “abortion-on-demand” as an acceptable form of “family planning.” (US Congress, Senate Hearing 1994, 60)

The sole statement opposing the ratification of CEDAW was issued during the hearing by Cecilia Acevedo Royals for the National Institute of Womenhood. Voicing similar concerns with respect to abortion, Ms. Royals framed her entire statement within the context of the UN International Conference on Population and Development which was assumed by Ms. Royals to have a direct or binding relationship to CEDAW. (ibid., 19) While acknowledging the concern expressed over abortion, the remainder of Ms. Royals' testimony consisted of broad generalizations, speculation, and emotional appeals that addressed CEDAW a manner which served to preclude dialogue and failed to adhere to the standards of critical thinking. An examination of the fallacies contained in the statements of Ms. Royals would undoubtedly be helpful in furthering a basic understanding of the application of critical thinking processes. However, as is the case when confronting fallacies, an attempt to examine them fully often diverts discussion away from the issue at hand, in this case identifying full and conditional public support or rejection with respect to the ratification of CEDAW.

Chairman Pell addressed the concerns raised by Ms. Royals during the hearing, asking whether she approved of certain parts or disapproved of the treaty in its entirety. (ibid., 54) Ms. Royals responded that she did not entirely disapprove of the provisions
contained in CEDAW but asserted that "...the parts that are good are already protected by our laws and our culture." (ibid.) This assertion is at the very least questionable unless Ms. Royals objected to the provisions of CEDAW not recognized by US law, such as the health care and employment provisions that guarantee rights including paid maternity leave, child care, free health services (e.g. during and after pregnancy), and protections designed to guarantee job security, seniority, and benefits in the event of pregnancy and the birth of a child.

Ms. Royals specifically objected to "...the language that says the rights of women to determine the number and spacing of their children and the means to do so" on the basis "...that it be considered the rights of couples." (ibid.) Contrary to Ms. Royals' assertion, this provision specifies the need for the equality of both men and women in making this determination and does not specify or sanction any means for achieving this most private and intimate decision of men and women with regard to having children or planning their families in any way which would undermine personal or religious beliefs and practices. (see Appendix A)

Chairman Pell appropriately called upon Robert Drinan, who represented the ABA at the 1994 hearing, for his reaction to Ms. Royals' statement. As a Jesuit priest, Drinan's ultimate allegiance is to the Catholic Church which opposes abortion under any circumstances. This allegiance would essentially prohibit him from offering personal testimony, in defiance to the Pope, in favor of a document promoting abortion. While it is truly unfortunate that the Holy See has yet to ratify CEDAW, this reluctance can be easily understood in relation to a desire to preserve the traditional (male) priesthood.
Drinan’s response reiterated the view of the Department of State that CEDAW is “abortion neutral.” (US Congress, Senate Hearing 1994, 55) He added, in response to Ms. Royals’ citation of China being a signatory of the Convention and its sanctioning of abortion as a national policy, “…that the coercion that everyone agrees goes on in China would be, as I see it, forbidden by CEDAW.” (ibid.) Although it was not brought forth in the hearing, it is extremely important to note that Ms. Royals’ citation of China is an example of what is known as “special pleading.” In other words, Ms. Royals fails to take into account or acknowledge countries in which abortion is illegal (such as Ireland, which is also predominantly Catholic) that have also ratified CEDAW.

Public Support for Ratification

All of the remaining twenty-three public submissions voiced strong support for the ratification of CEDAW. In addition, eight offered specific statements regarding the proposed reservations, understandings, and declarations of the Clinton Administration and three additional submissions alluded to these attachments. Of the latter three, Yale Law School, for example, appeared to support the proposed attachments with the statement, “It will remain for the Congress and state legislatures to reach appropriate decisions on these questions” in reference to issues such as “the status of women in combat,” “comparable worth,” and “the availability of paid maternity leave” which the faculty members considered to be inconsistent with US law. (ibid., 84) The General Federation of Women’s Clubs also urged the acceptance of the Clinton Administration’s proposed package, but provided the reason “…so that the Senate can ratify without delay.” (ibid., 62) In contrast, Amnesty International USA appeared to reject the attached reservations,
understandings, and declarations, stating that "the United States should be prepared to
conform itself to the same standards as other countries...." (ibid., 73)

However, while each of the organizations cited above expressed strong support for
ratification, only indirect references were made to the proposed reservations,
understandings, and declarations. As a result, it is unclear whether they fully or
conditionally supported or rejected acceptance of the proposed attachments. On the basis
of this ambiguity, none of the three were included in the analysis which follows.

**Public Reaction to Reservations, Understandings, and Declarations**

Over one-third of the public organizations submitting statements for inclusion into
the Congressional Record in support of the United States ratification of CEDAW
specifically addressed the issues of proposed reservations, understandings, and
declarations. Ironically, the majority of studies and statements, reflecting expert and
public opinion, disagreed with almost all of the attachments proposed by the Clinton
Administration. Indeed, the strong opposition of the public to the proposed reservations,
understandings, and declarations can perhaps be viewed as the emergence of a new
phenomenon with respect to the ratification of human rights treaties by the United States.
This opposition may even reflect a growing awareness of the US public that such
attachments may in fact be unnecessary or undesirable roadblocks in the path to securing
universal human rights for women both at home and abroad.

As noted above, over one-third or, more precisely, eight of the twenty-three
organizations supporting the ratification specifically addressed the proposed reservations,
understandings, and declarations. Four of the eight urged that CEDAW be ratified with
minimal, modified, or no attachments. Two organizations, namely the Meiklejohn Civil Liberties Institute and the Women’s Environment and Development Organization, both issued statements calling for the unconditional ratification of CEDAW. (ibid., 63, 75)

While three other organizations issued similar statements, the International Human Rights Law Group suggested a Senate ratification statement for one understanding and suggested a revision of an understanding regarding the protections of the First Amendment. Similarly, a second organization, the Lawyers Committee for Human Rights, expressed that it was “deeply troubled” by the attachments proposed by the Clinton Administration, with the exception of the understanding concerning First Amendment rights. (ibid., 77) Lastly, the Minority Rights Group (which detailed its rejection of several of the attachments), did not provide a position on one reservation, three understandings and one declaration. (ibid., 64-7) The analysis provided by this organization, however, concluded with the statement, “The Minority Rights Group urges the Senate to give its advice and consent to ratification with maximal speed and minimal reservations.” (ibid., 67)

In order to clarify the positions of the organizations which both supported the ratification of CEDAW and offered statements concerning the proposed attachments, it is necessary to present the responses submitted to each of the proposed attachments for inclusion into the Congressional Record. Of the eight organizations falling into this category, as noted above, two simply offered statements rejecting the proposed attachments. The remaining six, however, provided fairly detailed analyses and rationales
for the rejection of specific reservations, understandings, or declarations which may serve as a basis for identifying the issues of debate.

Public Organizations Addressing Proposed Attachments

As noted earlier, the Clinton Administration's proposed package of conditions for the ratification of CEDAW consisted of four reservations, three understandings, and two declarations. The six organizations which provided detailed analyses to the Senate Committee on Foreign Relations regarding these attachments are as follows:

1) B'nai B'rith Women, represented by the law firm of Morrison and Forster,
2) The American Bar Association, represented by Robert F. Drinan, S.J. of Georgetown University,
3) The International Human Rights Law Group, represented by Executive Director Gay J. McDougall,
4) The Minority Rights Group, submitted by Director Bernard Hamilton,
5) Human Rights Watch, submitted by Executive Director Kenneth Roth, and,
6) The Lawyers Committee for Human Rights, jointly submitted by Executive Director Michael Posner, Program and Policy Director Stefanie Grant, and NOW Legal Defense and Education Fund's Legal Director, Deborah A. Ellis and Martha F. Davis, Senior Staff Attorney.

Upon reviewing the conclusions made by the six organizations with respect to each attachment, it indeed becomes possible to identify issues of debate and expose concerns raised for public consideration.

The American Bar Association was among the organizations that provided a framework labeling each attachment identifying the areas of US laws that could potentially be affected by the ratification of the Convention. Using this framework, the reservations proposed included one relating to Private Conduct, a second addressing Combat Assignments, a third regarding Comparable Worth, and a fourth concerning Paid Maternity Leave. (ibid., 23-24) In turn, the proposed understandings included one relating
to Federal-State Implementation, a second addressing Freedom of Speech, Expression, and Association, and a third regarding Free Health Care Services. Lastly, the proposed declarations consisted of one concerning the status of CEDAW as a Non Self-Executing Treaty and a second related to Dispute Settlement. (ibid., 24-25)

Public Opinion and Proposed Reservations

With respect to Private Conduct, half of the six organizations cited above offered qualified support for this reservation and the other half opposed it. Of the former, the ABA offered its support "in principle" in 1994. (ibid., 23) Although the 150-page analysis prepared on behalf of B'nai B'rith was placed on file with the Foreign Relations Committee, it was not included in the printed transcript but the testimony also reflected qualified support. The testimony on behalf of B'nai B'rith expressed the belief that this concern could be addressed by a "First Amendment declaration" but offered to support the reservation as proposed. (ibid., 18) Lastly, Human Rights Watch found the proposed recommendation to be "unnecessarily narrow" and recommended that it be modified. (ibid., 68)

The Combat Assignments reservation met with almost unanimous opposition. Four of the six organizations provided statements regarding this attachment. The remaining two failed to clarify their positions with respect to this issue. The Minority Rights Group simply omitted any reference to the reservation and the ABA, while not rejecting the reservation outright, referred to its policy of equality for women established in 1972. (ibid., 24)
The third reservation concerns Comparable Worth, a term which is not even mentioned in the text of CEDAW. According to the Foreign Relations Committee report, however, the reservation was attached for the following reason:

In the view of the administration, this provision [Article 11(1)(d)] reflects a potentially broad definition of the concept of equal pay for women, requiring equal compensation for jobs judged to be of comparable worth according to requisite knowledge, skill, effort and responsibility, and considering the conditions under which the work is performed ... a broader view than would comport with existing US law. (US Congress, Senate Report 1994, 6)

This reservation, as was the case regarding Combat Assignments, faced strong objection. Two-thirds of the organizations cited stood in opposition to this proposal. Human Rights Watch omitted discussing the reservation. As for the remaining organization, the ABA took no position but pointed out that in 1984 it had not proposed any attachments “... in the employment area.” (US Congress, Senate Hearing 1994, 24)

The public opposition to the proposed Paid Maternity Leave reservation was even stronger. There was almost unanimous objection to this reservation. The sole exception came from the ABA which took “no specific position.” (ibid.)

Public Opinion: Proposed Understandings and Declarations

As was noted previously, the Clinton Administration proposed three understandings, one which addressed Federal-State Implementation, a second which concerned Freedom of Speech, Expression, and Association, and a third which covered Free Health Care Services. The two declarations proposed addressed the status of CEDAW as a Non Self-Executing Treaty and the issue of Dispute Settlement. Each of the proposed understandings and declarations were met with varying degrees of opposition.
The Federal-State Implementation understanding faced opposition equal to the support for this attachment. Human Rights Watch and the Lawyers Committee for Human Rights stood opposed to the understanding. In contrast, B'nai B'rith and the ABA both voiced support. The International Human Rights Law Group took a separate course, stating:

Although unnecessary, the Law Group would not oppose the insertion of an Administration statement in the record at the Senate ratification hearing that the United States will fulfill its obligations under the Convention through means appropriate to the federal system. (ibid., 50)

In turn, the Minority Rights Group did not provide a position statement on this matter.

The understanding concerning Freedom of Speech, Expression, and Association, which was designed to protect First Amendment rights did not face blanket rejection by any of the six organizations. The Human Rights Law Group did, however, offer a revised understanding that they believed would be acceptable in addressing First Amendment concerns raised by both the proposed Private Conduct reservation as well as the Freedom of Speech, Expression, and Association understanding. The Minority Rights Group did not state opposition, support, or qualification regarding this issue.

The final proposed understanding addresses Free Health Care Services. Three groups, B'nai B'rith, the ABA, and the Lawyers Committee for Human Rights, all objected to the Clinton Administration's proposed understanding. The remaining organizations did not provide any position statements concerning this attachment.

The first proposed declaration, recommending the status of CEDAW upon ratification be that of a Non Self Executing Treaty, received a mixed reaction. Only one organization, namely the ABA, went on record in full support of the declaration. The
statement for B’nai B’rith indicated that the organization was “prepared to accept” this
attachment, but did not voice full support. (ibid., 18) The Minority Rights Group did not
issue any statement regarding this issue and the remaining three organizations stood in
opposition to the declaration.

The second and last declaration regarding Dispute Settlement was met with even
stronger opposition than the first. Once again, B’nai B’rith went on record as being
“prepared to accept” this attachment but did not state that this declaration was one that
the organization would have chosen to support. (ibid., 18) The remaining five
organizations were both unanimous and strong in their opposition. The ABA even went
as far as presenting a resolution passed by the House of Delegates in August of 1994,
recommending “…that the United States Government present a declaration recognizing as
compulsory the jurisdiction of the International Court of Justice” and provided the form
that such a declaration should take. (ibid., 29-30)
CLOSING THE BOOK ON CEDAW?

The first steps in the process for the ratification of a treaty are the responsibilities of Presidents. In sum, a treaty must be signed and then transmitted to the Senate for its advice and consent. When a treaty is sent to the Senate, it is accompanied by a review of its contents with respect to its consistency with the current laws of the United States. This review involves several government agencies and is coordinated by the Department of State.

Once a treaty is received by the Senate, it is subject to three possible actions, in accordance with Rule XXX concerning Executive Session—Proceedings on Treaties. Section 1. (a) of this rule stipulates:

When a treaty shall be laid before the Senate for ratification, it shall be read a first time, and no motion in respect to it shall be in order, except to refer it to a committee, to print it in confidence for the use of the Senate, or to remove the injunction of secrecy. (US Congress, Senate 1993, 56)

It should be recalled that, in the case of CEDAW, the injunction of secrecy was removed and it was referred to the Senate Foreign Relations Committee upon its receipt on November 12, 1980.

As it has already been shown, it is possible for a human rights treaty to remain within the confines of this Committee for decades without being subject to public hearings or further Senate action. In the case of CEDAW, it was eight years before a Senate
subcommittee field hearing took place and ten years before the Senate Foreign Relations Committee first publicly addressed this treaty. In both instances, no action was taken by the Committee which would allow CEDAW to be subjected to a vote by the full Senate for its advice and consent to ratification.

Record of Action?

In 1994, however, the Senate Foreign Relations Committee did take action on CEDAW which would allow for its consideration by the full Senate. Despite the acceptance of nine extensive (and mostly unnecessary) conditions, CEDAW was favorably voted out of the Committee on September 29, 1994 and sent back to the Senate for the first time after nearly fourteen years. (US Congress, Senate Report 1994, 3) Although the vote of the Foreign Relations Committee was split, the recommendation that CEDAW be ratified retained a comfortable simple majority, with thirteen in favor and five against. (ibid.)

The Committee report issued to the Senate consisted of fifty-four pages divided into eleven sections. The report on CEDAW contained statements on the following: 1) purpose, 2) background, 3) Committee action, 4) Committee comments, 5) Major provisions, 6) Relationship to US law, 7) Clinton administration conditions, 8) Clinton administration submission, 9) Cost estimate, 10) Text of the resolution of ratification, and 11) Minority views. (ibid., 1) While most of the sections identified are self-explanatory, others are of particular interest, especially with respect to how they might affect the reception of CEDAW by the full Senate and the requirement that two-thirds of the Senators present agree to its ratification.
In 1994, the Senate Foreign Relations Committee not only accepted the entire package of conditions proposed by the Clinton Administration, but also added another known as the “Helms understanding.” (ibid., 3) It seems incredible, in light of the predominantly negative public reaction to the proposed reservations, understandings, and declarations and long-standing public support of CEDAW, that the Committee did not attempt to amend these conditions except to add another unnecessary declaration. This is as ironic as it is unfortunate, considering a reaffirmation was reported to have been made at the 1993 World Conference on Human Rights in Vienna that member States of the United Nations should limit “the extent of any reservations * * * and regularly review any reservations with a view to withdrawing them.” (US Congress, Senate Hearing 1994, 37)

Further, there was reported to have been “voiced concern” regarding CEDAW, specifically concern over the “particularly large number of reservations to the Convention.” (ibid.)

Minority Views Opposing the Ratification of CEDAW

The five-person minority of the Foreign Relations Committee opposing the ratification of CEDAW wrote a two-page position statement for inclusion in the Committee’s report to the full Senate. This statement consists of three principle arguments, entitled “Dilution of moral suasion,” “Diversion of resources,” and “Better approaches.” (US Congress, Senate Report 1994, 53-54) The latter two arguments rely on the basic rejection of CEDAW on the grounds that: 1) focusing on ratification diverts “resources (despite the estimate that ratification would cost nothing) and political will” away from promoting the standards CEDAW creates, and 2) that CEDAW is an
"unenforceable" treaty to which the United States need not become a party in order to "criticize or encourage other governments in their practices regarding women," but offers nothing with respect to identifying "better approaches." (ibid., 50, 54)

The first argument regarding "dilution of moral suasion," however, is of particular interest. This section also received the highest degree of attention in the minority's position statement. Ironically, the points made in this argument could easily be applied to arguments in support of ratification and in rejecting extensive, unnecessary, or undesirable attachments. First, the minority contended that,

Because the convention depends to a great extent on the voluntary compliance of States, we are hesitant to invest much hope that it will lead to real changes in the lives of women...[and] it is unlikely to convince governments to make policy changes they otherwise would avoid. (ibid., 53)

While voluntary compliance is true for most member States of the United Nations, in accordance with the Constitution of the United States, ratification would codify into national law the standards established by CEDAW.

This being the case, it would become the responsibility of America to internally mandate progressive change with respect to viewing women's rights as human rights. Faced with such a challenge, perhaps United States would assume a position of leadership in this area and provide a model for governments worldwide. It would seem that the best way to avoid this national challenge and global responsibility to over one-half of the population would be to either block the ratification of CEDAW or dismantle its objectives through the attachment of extensive, unnecessary, and incompatible conditions prior to its acceptance.
Second, the minority asserted a need to “guard against treaties that overreach” in protecting and improving individual rights. (ibid.) An attempt was then made to connect this assertion with a grave moral risk. The minority argued that,

We must take care not to promise more than we can deliver or we risk diluting the moral suasion that undergirds existing covenants on fundamental human rights. (ibid.)

Multiple examples of ideas and goals can be cited throughout the history of the United States, and indeed the entire world, which undoubtedly were considered at the time of their pursuit to be “overreaching.” They include everything from the abolition of slavery and securing the rights of women to speak, vote, or otherwise participate fully in society, to the exploration of space. Viewing human rights as unattainable and as something to be avoided, however, undermines even trying to facilitate progress toward actualizing ideals, as embodied by treaties such as CEDAW.

Minority Views Regarding Attachments and Enforcement?

Lastly, and most ironic of all of the statements offered in this section of argument offered in opposition to the ratification of CEDAW, the minority cited the attachments of both State parties to the convention, as well as those proposed by the United States, as a major reason not to ratify. (ibid., 53-54) Paradoxically, Senator Helms (who replaced Senator Pell as the Chairman of the Foreign Relations Committee in the following session of Congress), for example, pursued the acceptance of an additional understanding then joined with the minority in voting against the ratification of CEDAW, citing the problem of attachments. Senator Helms joined the minority in making the argument that the adoption of conditions contrary to the intentions of CEDAW are not subject to “serious
opposition," and thus, "cheapen the coin" of treaties addressing human rights. (ibid.)

What makes this more bizarre is the fact that such complaints regarding a lack of opposition and enforcement against attaching conditions contrary to the "object and purpose" of CEDAW would even be voiced by the Senate, let alone taken with any degree of seriousness.

One need recall not only the Bricker Amendment, but also the historical aversion of the United States with respect to accepting the compulsory jurisdiction of the World Court, i.e. the International Court of Justice, or ICJ. This aversion can be identified as early as 1946 by the Connally Amendment to the UN Charter which excluded the Court from having jurisdiction over "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America" (emphasis added)." (US Congress, Senate Hearing 1994, 31) Fear of the jurisdiction of the ICJ is also evidenced by the reaction to the Court’s ruling of 1986 against the United States in the case of Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) which was brought before the Court in 1984. (United Nations 1986, 103-104) In response to the ruling, the United States withdrew its declaration accepting the compulsory jurisdiction of the ICJ that same year. (US Congress, Senate Hearing 1994, 30) Of note, despite the American Bar Association’s recommendation in 1994 that the United States again submit a declaration accepting the compulsory jurisdiction of the Court (ibid., 29-30), this recommendation was rejected in the report issued by the Foreign Relations Committee to the full Senate. (US Congress, Senate Report 1994, 49-50)
Speaking generally to the concern expressed by the minority over conditions attached to CEDAW, the position statement offered the following summation:

The large number of reservations, understandings and declarations [S]tates found it necessary to adopt with respect to this convention, combined with an apparent inability to prohibit even the broadest reservations, indicate that CEDAW may reach beyond the necessarily restrictive scope of an effective human rights treaty [emphasis added]. (ibid., 54)

While the argument leading to this conclusion relied heavily on special pleading (e.g. in its one-sided emphasis on Libya’s conditions in becoming an official party to CEDAW), this fallacy is minor in comparison to the major flaws in reasoning contained in the minority’s statement and conclusion as a whole.

In truth, an entire book could be devoted to exposing the flaws of the minority’s position through the application of critical thinking processes. In applying Perry Weddle’s Argument: A Guide to Critical Thinking to the views offered by the minority, for example, one finds flaws which are discussed in essentially every chapter of this book. These flaws range from the fallacies of oversimplification or diversion (in the form of improper questions, false dilemmas, straw man arguments, stereotyping, half-truths, black/white thinking, and appeals to ignorance) and “tu quoque” arguments appealing to authority, through errors of generality, comparison (e.g. through the improper use of analogical reasoning), and cause. (Weddle 1978, 17-188)

In sum, what is presented by the minority is not an argument at all. Rather, what is offered are unsubstantiated assertions which rely upon numerous fallacies to provide the appearance of an argument. Nothing is offered in evidence, for example, that a treaty must be “necessarily restrictive” in scope in order to be effective. Neither is it shown that
the alleged “apparent” inability to temper broad conditions made by parties to CEDAW is an actual inability.

Lastly, and most disturbing of all, the minority criticizes the conditions of other nations as if the exceptions cited by one nation were common to all. In turn, this is utilized to represent a general concern that CEDAW is inherently flawed such that it cannot bridge cultural, political, and religious differences. Acknowledging the delicate balance necessary to incorporate the ideals of CEDAW internationally, the attachments offered by other nations can be more readily understood as reflecting idiosyncratic issues of different countries and, accordingly, differing views regarding how to best protect and address these domestic concerns.

As a nation, however, we should not fall prey to attempts to obfuscate the issues raised by CEDAW through the unsubstantiated (and unrealistic) assumption of a “common thread” of objections between nations. Rather, we must recognize and counter, through reason, attempts to raise the importance of the parts to the extent that they become more significant than the whole. Nor should we blindly accept the unfounded assertion that the United States must either present extensive conditions in order to ratify or reject CEDAW on the basis of what other nations have done.

The Question of Conditions and Consent of the Senate

As Chairman Pell had acknowledged four years earlier, “Obviously, without administration support, a treaty stands almost no chance of being approved by the Senate.” (US Congress, Senate Hearing 1990, 1) Given that this is a reasonable assessment, the Senate would appear to have little choice but to accept the conditions for
ratification proposed by the Department of State and approved by the President. In turn, one would have to question, however, whether or not it would be possible for the President to obtain the advice and consent of two-thirds of the Senate for the ratification of CEDAW without approving the conditions proposed in 1994.

Of note, Robert Drinan’s prepared testimony for the 1994 hearing before the Senate Foreign Relations Committee included both a brief summation of the history of CEDAW and mentioned action taken by members of the Senate the previous year. The relevant aspect of this testimony provides the following overview:

The United States played a major role in drafting the Convention, as adopted by the United Nations on December 18, 1979. President Carter signed the document on July 17, 1980, and submitted it to the Senate on November 12, 1980. Although ten years later, in the summer of 1990, the Senate Foreign Relations Committee held hearings on the Convention, the Senate took no further action until the spring of 1993, when 68 members of the Senate signed a letter asking President Clinton to take the necessary steps to ratify the treaty. Last summer, at the United Nations Conference on Human Rights in Vienna, Austria, Secretary of State Warren Christopher stated that the Administration was prepared to move on the Women’s Convention, as well as other human rights treaties. (US Congress, Senate Hearing 1994, 21)

While the support of sixty-eight Senators would meet the requisite two-thirds majority vote in order to ratify CEDAW, the margin for success would rest upon only two votes. In sum, if only two of the Senators who signed the 1993 letter to the President reversed their supportive views and no other Senators were to vote affirmatively, CEDAW would be defeated and returned to the Senate Foreign Relations Committee.

Despite the fact that CEDAW was favorably voted out of the Foreign Relations Committee, the treaty was never voted upon by the full Senate. CEDAW was simply not placed on the agenda in 1994 prior to the close of the 103rd Congress. Thus, although
CEDAW was not defeated by failing to obtain an affirmative vote for ratification by two-thirds of the Senate, the end result was the same. Without media attention or broad public debate, CEDAW was quietly and indefinitely returned to the Senate Foreign Relations Committee.

Many may wonder how this could possibly happen. The answer is as simplistic as it is unfortunate. In accordance with Rule XXX, section (2), such an event is automatic.

The relevant section states:

Treaties transmitted by the President to the Senate for ratification shall be resumed at the second or any subsequent session of the same Congress at the stage in which they were left at the final adjournment of the session at which they were transmitted; but all proceedings on treaties shall terminate with the Congress, and they shall be resumed at the commencement of the next Congress as if no proceedings had previously been had thereon [emphasis added]. (US Congress, Senate 1993, 57)

The Congressional Quarterly confirmed the Foreign Relations Committee triumph and, of the unceremonious “defeat” of CEDAW, remarked, “However, the Senate did not take up the treaty before adjourning.” (Congressional Quarterly Almanac 1994, 471)

It is certainly possible that CEDAW was never placed on the agenda to be voted upon because it would not have passed. It is equally possible that potential votes supporting the ratification of CEDAW were “traded off” to carry the vote of the Senate on other issues. It is common that favors are owed between Senators and, unfortunately, votes become the bargaining chips.

In the case of CEDAW, it is unlikely that the public will ever definitively know what happened or why. What is known is that the process of ratifying CEDAW must begin all over again. Further, it can be asserted that this process will require a concerted
effort to protect this human rights treaty from being lost or buried, particularly by inattention on the part of the Senate Foreign Relations Committee. Indeed, deciding the issue of the ratification of CEDAW now appears to rest upon the actions of concerned citizens to insure that this human rights treaty will be reconsidered by both the government of the United States and the American public as a whole.

CEDAW and the Generation of Public Interest

As has been shown throughout the preceding pages, CEDAW has not been made readily accessible for consideration by the general public. In one respect, this thesis is an attempt to fill a portion of this void. In another, it attempts to reveal the need for the public to approach ill-defined and vaguely understood issues, such as viewing women's rights as human rights, from a critical thinking perspective.

One important factor regarding the apparent inaccessibility of CEDAW was identified as resulting from the failure of the mass media to inform the public. Another was the failure of the government to initiate action which would allow for the serious consideration of this treaty. These conditions may, however, be gradually changing.

As recently as April 7, 1997, Newsweek carried an article which indicated a renewed interest in CEDAW. In discussing the First Lady's tour of Africa with a focus on the international plight of women, Matthew Cooper noted a shift in America's foreign policy directed toward the advancement of women. (Cooper 7 April 1997, 58-60) Cooper also noted that, "The shift in policy has become only more pronounced under new Secretary of State Madeleine Albright." (ibid., 58) The report continued with the following statement.
Just last week Albright traveled to North Carolina, the home state of Senate Foreign Relations Committee chairman Jesse Helms, to argue for approval of the United Nations' convention on women's rights. The international treaty, which compels signatories to battle sex discrimination, is languishing in the Senate. (ibid.)

This may indicate a renewed interest in ratifying CEDAW on the part of the Administration. Additionally, despite the fact that this treaty was still not clearly identified or named, the reference made to CEDAW may indicate a growing public awareness. In sum, while much progress still needs to be made in bringing CEDAW to the attention of the public, such references, however indirect, represent a beginning.

In turn, the American public must respond when issues of such significance are opened for public consideration. For example, this thesis (while by no means exhaustive) is a product of pursuing numerous avenues for both gathering information and expressing opinions formulated over time. Among the most productive avenues for both purposes proved to be writing letters to various individuals, and writing again if the letters went unanswered.

As individual citizens, it is our civic duty to question and to make our opinions known to those who represent us if, indeed, we are to maintain the ideals of a well-informed democracy. As a nation, we should not stand idly by when issues such as human rights are left undisclosed and undecided. As one public official noted, for example, when looking for the Charter of the United Nations in the law library of the Department of State:

We went to get the books off the shelves, and they were literally covered with dust. (Curtius 27 January 1992, 4)
One can only hope that after over a decade and a half, CEDAW will be among the books removed from these very shelves and opened for thorough public inspection and fair-minded debate in accordance with the standards of critical thinking.
The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation and among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign
occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women.

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Having agreed on the following:

PART I

ARTICLE 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.

ARTICLE 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

ARTICLE 3

States Parties shall take in all fields, in particular in the political, social, economic, and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

ARTICLE 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

ARTICLE 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.
ARTICLE 6

States Parties shall take all appropriate measure, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

ARTICLE 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ARTICLE 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

ARTICLE 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.
ARTICLE 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

ARTICLE 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect to work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

ARTICLE 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period granting, free services where necessary, as well as adequate nutrition during pregnancy and lactation.

ARTICLE 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;
(c) The right to participate in recreational activities, sports and all aspects of cultural life.

ARTICLE 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monitized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
   (a) To participate in the elaboration and implementation of development planning at all levels;
   (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
   (c) To benefit directly from social security programmes;
   (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
   (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
   (f) To participate in all community activities;
   (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
   (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

ARTICLE 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

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3. States Parties shall agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

ARTICLE 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status in matters relating to their children, in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation, in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

ARTICLE 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of
Discrimination Against Women (herein after referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee’s responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

ARTICLE 18

1. States Parties undertake to submit to the Secretary-General of United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
   (a) Within one year after the entry into force for the State concerned;
   (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

ARTICLE 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

ARTICLE 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

ARTICLE 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

ARTICLE 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

ARTICLE 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party, or
(b) In any other international convention, treaty or agreement in force for that State.

ARTICLE 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

ARTICLE 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
ARTICLE 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

ARTICLE 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.
APPENDIX B

CEDAW:
PROPOSED RESERVATIONS, UNDERSTANDINGS AND DECLARATIONS OF
THE UNITED STATES
(US Congress, Senate Report 1994)

Private Conduct
Reservation (1): The Constitution and laws of the United States establish extensive
protections against discrimination, reaching all forms of governmental activity as well as
significant areas of non-governmental activity. However, individual privacy and freedom
from governmental interference in private conduct are also recognized as among the
fundamental values of our free and democratic society. The United States understands
that by its terms the Convention requires broad regulation of private conduct, in particular
under Articles 2, 3 and 5. The United States does not accept any obligation under the
Convention to enact legislation or to take any other action with respect to private conduct
except as mandated by the Constitution and laws of the United States. (ibid., 10, 51)

Combat Assignments
Reservation (2): Under current US law and practice, women are permitted to volunteer
for military service without restriction, and women in fact serve in all US armed services,
including combat positions. However, the United States does not accept an obligation
under the Convention to assign women to all military units and positions which may
require engagement in direct combat. (ibid.)

Comparable Worth
Reservation (3): US law provides strong protections against gender discrimination in the
area of remuneration, including the right to equal pay for equal work in jobs that are
substantially similar. However, the United States does not accept any obligation under
this Convention to enact legislation establishing the doctrine of comparable worth as that
term is understood in US practice. (ibid.)

Paid Maternity Leave
Reservation (4): Current US law contains substantial provisions for maternity leave in
many employment situations but does not require paid maternity leave. Therefore, the
United States does not accept an obligation under Article 11(2)(b) to introduce maternity
leave with pay or with comparable social benefits without loss of former employment,
seniority or social allowances. (ibid.)
Federal-State Implementation

Understanding (1): The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention. (ibid.)

Freedom of Speech, Expression and Association

Understanding (2): The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 5, 7, 8 and 13, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States. (ibid., 11, 51-52)

Free Health Care Services

Understanding (3): The United States understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with family planning, pregnancy, confinement and the post-natal period, as well as when the provision of free services is necessary, and does not mandate the provision of particular services on a cost-free basis. (ibid., 11, 52)

The Helms Understanding

Understanding (4): That nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning. (ibid., 52)

Non-Self-Executing

Declaration (1): The United States declares that, for purposes of its domestic law, the provisions of the Convention are non-self-executing. (ibid., 11, 52)

Dispute Settlement

Declaration (2): With reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis. (ibid.)

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APPENDIX C
CEDAW: SENATE RECORDS OF SUPPORT AND OPPOSITION

Senate Committee on Foreign Relations Hearing:
27 September 1994

Convention on the Elimination of All Forms of Discrimination Against Women

Statements of Executive Support
Department of State
Department of Justice

Statements of Public Support
B’nai B’rith
American Bar Association
International Human Rights Law Group
American Jewish Committee
International Women’s Rights Action Watch
Council of Presidents:
National Committee on Pay Equity
Clearinghouse on Women’s Issues
YWCA of the USA
Center for the Advancement of Public Policy
Medical Women’s Association
National Council of Women of the United States, Inc.
National Hook-up of Black Women, Inc.
Business and Professional Women / USA
National Women Conference Center
Women’s Legal Defense Fund
The Women Activist Fund, Inc.
National Abortion & Reproductive Rights Action League
American Association of University Women
MANA: A National Latina Organization
Church Women United
General Federation of Women’s Clubs
National Association of Women Lawyers
Meiklejohn Civil Liberties Institute
National Women’s Conference Committee
Minority Rights Group
Federally Employed Women, Inc.
Human Rights Watch
Statements of Public Support (continued)
Women's Zionist Organization of America, Inc.
Soroptimist International of the Americas
Amnesty International USA
Georgia Coalition of Black Women, Inc.
United Nations Association of the United States of America
Women's Environment & Development Organization
Presbyterian Church (U.S.A.)
United Church of Christ

Letters of Public Support
Lawyers Committee for Human Rights
Yale Law School

Statement of Qualified Public Support
Ethics and Public Policy Center (abortion not a human right)

Statement of Public Opposition
National Institute of Womenhood

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Senate Committee on Foreign Relations Hearing:
2 August 1990

Convention on the Elimination of All Forms of Discrimination Against Women

Statements of Congressional Support
Hon. Claiborne Pell, US Senate
Hon. Paul Simon (with enclosures), US Senate
Hon. Barbara Mikulski, US Senate
Hon. Mary Rose Oakar, US House of Representatives
Hon. Nancy Pelosi, US House of Representatives
Hon. Rudy Boschwitz, US Senate
Hon. Paul Sarbanes, US Senate
Hon. John Kerry, US Senate
Hon Daniel K. Akaka, US Senate
Hon. John Edward Porter, US House of Representatives
Hon. Claudine Schneider, US House of Representatives
Hon. Patricia Saiki, US House of Representatives
Letter of Congressional Support June 11, 1990
Hon. Claudine Schneider, US House of Representatives
Hon. Patricia Saiki, US House of Representatives
Hon. Marge Roukema, US House of Representatives
Hon. Helen Delich Bentley, US House of Representatives
Hon. Constance A. Morella, US House of Representatives
Hon. Susan Molinari, US House of Representatives
Hon. Virginia Smith, US House of Representatives
Hon. Lynn Martin, US House of Representatives
Hon. Rudy Boschwitz, US Senate
Hon. Nancy L. Johnson, US House of Representatives
Hon. Barbara F. Vucanovich, US House of Representatives
Hon. Jan Meyers, US House of Representatives
Hon. Ileana Ros-Lehtinen, US House of Representatives

Letter Retracting Congressional Support August 1, 1990
Hon. Barbara Vucanovich, US House of Representatives
Hon. Helen Delich Bentley, US House of Representatives
Hon. Ileana Ros-Lehtinen, US House of Representatives

Statements of Public Support
B’nai B’rith Women
American Bar Association
Avonnie S. Fraser, Humphrey Institute of Public Affairs
International Women’s Rights Action Watch
Amnesty International USA
American Association of University Women
Religious Network for the Equality of Women

Public Support Listed by the American Bar Association
American Society of International Law
Federal Bar Association
Women’s Bar Association of the District of Columbia

Public Support Listed by B’nai B’rith Women
American Association of Retired Persons
American Association of University Women
American Bar Association
Americans for Democratic Action
American Federation of Teachers
American Jewish Committee
American Jewish Congress
American Nurses Association
American Psychiatric Association
Amit Women
Public Support Listed by B’nai B’rith Women (continued)

- Amnesty International
- Anti-Defamation League of B’nai B’rith
- Association for Women in Psychology
- Association for Women in Science
- Black Women’s Agenda
- B’nai B’rith Women
- B’nai B’rith International
- Church Women United
- Episcopal Church, USA
- Evangelical Lutheran Church
- Emunah Women
- Grey Panthers
- Hadassah
- League of Women Voters
- Na’amat USA
- National Assembly of Religious Women
- National Association of Commissions for Women
- National Association of Women Judges
- National Association of Women Lawyers
- National Coalition of 100 Black Women
- National Conference of Christians and Jews, Inc.
- National Council of Jewish Women
- National Education Association
- National Federation of Business and Professional Women’s Clubs
- National Federation of Temple Sisterhoods
- National Ladies Auxiliary
- Jewish War Veterans
- National Jewish Relations Advisory Council
- National Organization of Women (NOW)
- National Spiritual Assembly of Bahai of the U.S.A.
- National Women’s Conference Committee
- National Women’s Political Caucus
- National Women’s Studies Association
- Planned Parenthood Federation of America
- Presbyterian Church, USA
- Soroptimist International
- St. Joan’s Alliance
- United Presbyterian Church
- Unitarian Universalist Service Committee
- Unitarian Universalist Association of Congregations
- United Methodist Church
- United Nations Association of the United States
- United States Conference of Mayors
- Women for International Peace and Arbitration
Public Support Listed by B'nai B'rith Women (continued)
Women's American ORT
Women's Branch, Union of Orthodox Jewish Congregations of America
Women's League for Conservative Judaism
World Federalist Association
Young Women's Christian Association
Zonta International

Statements of Public Support
B'nai B'rith Women
Massachusetts Department of Public Health
Stone Center, Wellesley College
Massachusetts Department of Social Services
Lesley College
Massachusetts Women's Bar Association
Boston's Women's Health Book Collective
Massachusetts Supreme Judicial Court
Massachusetts Department of the Attorney General
Greater Boston Lesbian and Gay Alliance
Parents United for Child Care
J. Stephen DuPlessie
Boston YWCA
Catherine E. Whynot, R.N., B.S.
League of Women Voters of Massachusetts
Howard / Stein-Hudson Associates
Hon. Marilyn Travinsky, Massachusetts House of Representatives

Statements of Public Opposition
Bruce Fein
Concerned Women for America
Phyllis Schlafly
Hon. Barbara Vucanovich, US House of Representatives

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Subcommittee of the Senate Committee on Foreign Relations Field Hearing:
5 December 1988
Boston, Massachusetts

Statements of Public Support (continued)
Hon. Mary Jane Gibson, Massachusetts House of Representatives

Letters of Public Support
Helen B. Holmes, Ph.D. (with enclosure)
Jennifer Breitenstein

Statements of Indirect or Qualified Public Support
Massachusetts Citizens for Life, Inc. (abortion is discrimination)
The Project on Women and Disability
Juliet F. Brudney "Living with Work" (article)

Statement of Public Opposition
Concerned Women for America


________. “As Their Decade Ends, Women Take Stock.” New York Times, 10 July 1985: 10 (C).


