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## Shuttle Diplomacy in Social Revolution

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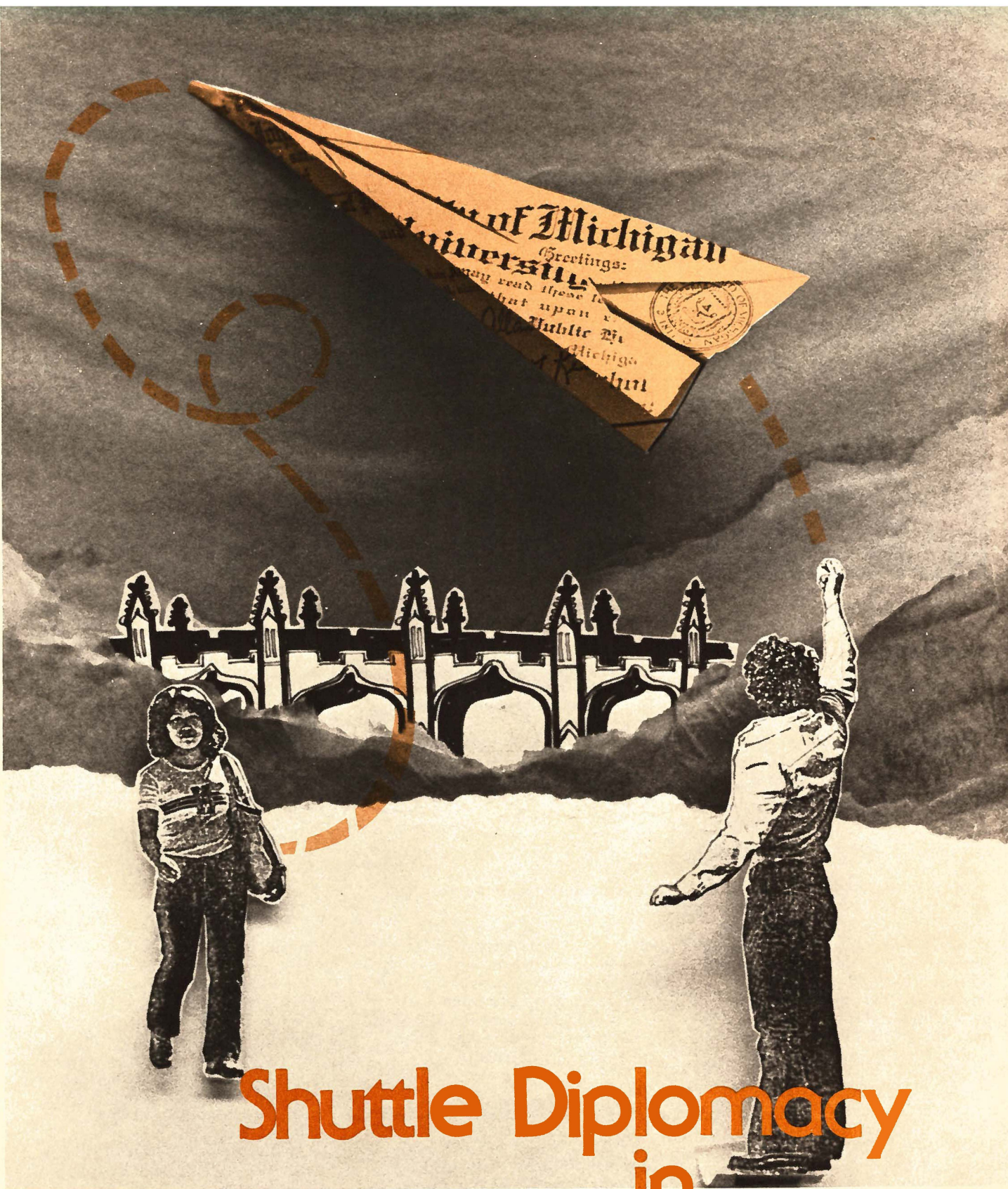
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# Shuttle Diplomacy in Social Revolution

by Judge Shirley M. Hufstедler  
U.S. Court of Appeals for the Ninth Circuit

[Based on an address at The University of Michigan spring commencement on April 28, 1979. As part of the ceremony, Judge Hufstедler received an honorary doctor of laws degree from the University.]

... I hoped that [the title for my remarks] would at least vaguely convey the impression that I am going to have something to say about social and cultural upheavals in our society because that is what I intend to do before we get to the more important business of the day.

The mild to explosive furors over the Equal Rights Amendment, which are part of the contemporary scene, are simply commas or exclamation points in a social revolution that began very quietly in 1776 when Abigail Adams urged her husband John to "remember the ladies."

Until about 1830, the dictates of custom and the dicta of St. Paul combined to exclude women from any public speaking. The sole exception was found in the Society of Friends. The peaceful Quakers can be charged with unleashing the fiery Grimke sisters on an unprepared world. These ladies broke the silence barrier to speak against slavery. From Quaker meetings, the ladies branched out to parlors, and finally into public halls. The public notoriety of their unseemly conduct detonated a storm of protest. The Grimkes broke the platform trail for a long list of famous women orators, white and black, including Lucy Stone, Lucretia Mott, Elizabeth Stanton, Sojourner Truth, and Susan Anthony.

The women's rights movement was formally initiated at the Seneca Falls Convention in 1848. The Declaration adopted at Seneca Falls was a vigorous indictment of the plight of American women in 1848. Among the charges was that man had "monopolized nearly all of the profitable employments, and from those she is permitted to follow she receives but a scanty remuneration. He closes against her all the avenues of wealth and distinction which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known. He has denied her the facilities for obtaining a thorough education, all colleges being closed against her."

The charges were accurate. The doors to opportunity were firmly closed against all women. But married women were legally worse off than their single sisters. Under the common law, the personalities of the husband and wife merged upon marriage, and the wife's disappeared.

Female education beyond grammar school was almost entirely confined to private seminaries, the curricula of which went little beyond china painting and elementary French. Any stronger intellectual fare was assumed to overtax the frail and simple minds of the sex. In 1833, Oberlin was established, and became the first college to admit women. The academic menu was pallid. Sturdier curricula for women were a rare commodity for another 30 years.

It would be wrong to assume that the bleak picture for women was primarily a by-product of enacted law. To be sure, the Colonists brought to the new land the common law, heavily barnacled with the remnants of feudalism. The foundation of the feudal edifice was land and the family. The family was the basic production unit, and women were the essential producers. Women were required to bear large numbers of children, for the surviving children became both the labor force and the armies. The subjugation of women had been popular with men for centuries for other reasons, but we should not forget that the whole system would have collapsed if women had not been bound to childbearing and women and children had not been tied to the land. Dependence upon unpaid hard

labor of women and children was a fact of economic life in the feudal system and in Colonial America, as was unpaid hard slave labor a fact of economic life on the plantations of the South.

The law did not create these conditions. The conditions created the law. The law was a reflection, and in most respects a laggard and pale reflection, of these conditions. Law was not then, and only sporadically since then, a catalyst for social change. Rather, the law has always been a brake upon rapid change; both for good and ill, the law has welded society together and to the past.

The upheaval of the Civil War forced women out of their homes and into the fields, factories, shops, and offices. They took over almost all the functions that had been exclusively masculine preserves. When the war ended, women dutifully yielded the "men's" jobs, and the majority trooped home, responding to the traditional social dictates, to exhaustion from the demands of running a home and a job, and to the demands of men for gainful employment after their soldiering. But the world would never be the same. Bella Mansfield, the first woman lawyer, was admitted to practice law in Iowa in 1869. Married women's property acts, sporadically passed in earlier years, swept the country, removing many of the most egregious disabilities of married women. The Fourteenth and Fifteenth Amendments were ratified in 1868 and 1870, respectively.

Ms. Mansfield's successful admission to the bar was almost aberrational. More typical was the experience of Myra Bradwell. Myra had all of the qualifications to practice law in Illinois, but she was denied admission to the bar because she was female. The Illinois Supreme Court upheld the statute limiting admission to men and rejected her constitutional arguments. The United States Supreme Court dispatched her for want of a federal question. Mr. Justice Bradley, a very able Justice, wrote a revealing and famous specially concurring opinion, in which he said: "It certainly cannot be affirmed, as a historical fact, that [the right of females to pursue any lawful occupation for a livelihood] has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself has always recognized a wide difference in the respective spheres and destinies of man and woman. . . . The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . ."

"... The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."

From our present perspective, Mr. Justice Bradley's comments appear amusing, if not downright absurd. Even in his own day, Mr. Justice Bradley knew that there were more than 325,000 women factory hands who were working under conditions anything but dainty. He knew that tens of thousands of women performed hard physical labor during the Civil War and that frontier women worked side by side with their husbands under grueling and often perilous circumstances.

He wrote that way because he genuinely believed that God, not man, had prescribed women's roles and that natural law dictated that women were born timid, delicate, and intellectually inferior to men. His views were widely shared by both men and women who were members of the upper classes. Acceptable manners, mores, and attitudes were set by the elite for the elite. He accurately described the expectations of these men toward their mothers, wives, and daughters. Those nice women were supposed to be pedestal ornaments. Millions of black and white women who did the grubby work for the well-to-do were not parties

to this social contract. Theirs was an essential, but invisible presence.

Mr. Justice Bradley and his social contemporaries confused the signs of a dominant culture with the signs of the Creator, and he mistook man's laws for the laws of nature. They were caught in the thrall of mythology, by which I mean a series of assumptions that are not objectively true, but which are treated as if they were.

Mankind has always clung to its myths with greater tenacity than it has to anything else. No myths have been more pervasive and enduring than those that assure the dominant members of a society that their positions are secure, and even just, and which tell servient members why it is not only their destiny, but their duty to remain where they are. Into this category fall the relatively mild myth of the divine right of kings and the powerful and persistent myths of sexual and racial superiorities and inferiorities.

Really enduring myths are always supported by elements of plausibility. No one would have believed that the earth was flat if it did not so appear to the earthbound. No one would have believed that women were innately men's intellectual inferiors if women had consistently excelled in the intellectual community.

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What Mr. Justice Bradley and his contemporaries actually saw was the result of the power of myths to generate their own kind of reality. If one believes that a human being is inferior and acting on that belief tells a child early enough and often enough about his or her inferiority, the belief will be fulfilled regardless of the treasures with which he or she was born. If a society implements the same belief by closing off all resources from which he or she could obtain intellectual nourishment, the person's intellectual yield will be as barren as society expected.

In the ensuing decades, despite the dominant social dictates, women continued to press for suffrage, for admission to colleges and universities, and for entrance into the learned professions. It is nevertheless doubtful that all that energy and zeal would have had any significant effect upon the status of women without the massive industrialization of the country and without the impetus of developing technology during the period from 1890 to 1920. For example, the inventions of the telephone and the typewriter had much more to do with women's entry into the white collar labor market than all of the picketing, pamphleteering, and marching combined.

The crowning glory for the suffragettes and for the men who supported that cause was the adoption of the Nineteenth Amendment in 1920. The suffragettes had hoped that women would vote as a bloc, and that the old walls of gender discrimination would tumble down when women exerted their new power. The anti-suffrage forces were terrified that the suffragettes were right. Both were wrong. Women voters, like men voters, were liberal, conservative, independent, and no-opinioned. Nevertheless, suffrage was a real achievement for the whole country. The nation could not indefinitely endure being half-franchised and half-disenfranchised, any more than we could have long endured being half-slave and half-free.

After suffrage was gained, the steam of the women's movement was largely dissipated. This was true not only because the dominant objective had been achieved, but also because the nation's attention was captured by the more dramatic events of the great depression and the second world war.

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Neither the 19th-century views of women's place nor the technicolor version of domesticity of the 50s could last when the conditions that had engendered them had radically changed. The country had long ceased being primarily agrarian. Frontier life was gone. The economic unit was no longer the family. The urbanized housewife was not primarily a producer, she was a consumer. Children were not economic assets; they, too, were consumers. The home was no longer the center of the family's activities: father left home to go to work. The children left home to go to school. Only the housewife lingered until economic need, separation, divorce, or desperation drove her out as well.

Science and technology had profoundly altered our lives. We moved out of our carriages and our flivvers and into supersonic aircraft and outerspace vehicles. We abandoned our crystal sets and acquired stereo and television. We junked our adding machines and plunged into computers of remarkable capability. Medical knowledge changed at an equally dizzying pace. Diseases that used to kill infants, children, and young adults were controlled and virtually eradicated. Women no longer had to bear a dozen children to see two or three live to maturity. The bearing and rearing of two or three children occupied only a brief period of women's long lifespan. In 1900, a woman's life expectancy was 47 years, 28 of which were childbearing years. In 1977, a woman's life expectancy was 77 years, with only 10 childbearing years. In 1906, the standard urban family was the father as breadwinner, the mother as the housewife with some children. In 1979, that earlier family standard represents only 13 percent of American families.

At least by 1955, it should have been clear that these changes and many others over the period of the prior 50 years had drastically transformed the nation and had also profoundly affected the roles that society had earlier assigned to women, to men, and to the family. Instead, the impact of all of these convulsive changes upon women and the family was scarcely noted. Rather, all kinds of social ills were frequently attributed to the failure of women properly to perform their traditional domestic roles. The targets of this criticism were middle-class women. Rich women were not rushing into the labor market. Poor women had never had any choice; motherhood notwithstanding, they had always worked, in the fields, factories, offices, and homes of others. Despite all of the prophecies about the dire effects on the family of paid employment of women, middle-class women continued to stream into the labor market. In 1950, a little over 18 million women were working outside their homes. By 1977, however, 40 million women were in the labor force; 60 percent of all new jobs since 1950 have gone to women.

In the late 50s, the somnolent women's movement began to stir. Dramatic events in the South revealed to the nation the festering and flagrant injustices that were being inflicted on black Americans. The discovery of injustice to blacks aroused some women to observe that invidious

discrimination was not confined to black Americans but extended to women of every color. The civil rights movement spilled over to college campuses. Young women joined the movement, marched in demonstrations, and came to know first-hand the indignities to which civil rights workers were subjected. Like their long-forgotten predecessors—the abolitionists and the suffragettes—these young women learned how to organize, petition, demonstrate, fight, and go to jail.

Women who had massively shunned law school as unfeminine began to apply for admission. By the 60s their numbers began burgeoning and by the 70s the freshet became a flood.

Entry of large numbers of women into the legal profession created a mild vocabulary crisis, long before “Madam Chairman” was overcome by the ungainly “Chairperson.” “Lawyer” was masculine. When females took their places at the bar, they became known as “women lawyers,” a designation with all the intrinsic charm of “male nurses.” “Lawyerette” connoted marching bands, or perhaps laundry emporia; “lawyeress” sounded silly and faintly indecent. “Bar maids” might have caught on if the term had not been earlier pre-empted. In the near future, we may at last see the day when “lawyer,” as “teacher,” becomes both masculine and feminine.

We were much too concerned with the Viet Nam war, assassinations, and riots in the 1960s to fret very much about the intractabilities of language. The turbulence of those years tended to obscure the quieter social revolution in the roles of men and women. Both men and women were becoming discontented with gender stereotypes. Many men, especially young men, discovered that not all men were or wanted to be fierce hunters bringing home the bison or even a steady paycheck to their timid wives and their hungry brood. Women could not ignore the reality that a trip to the altar was an inadequate plan for a lifetime.

Indeed, by the late 60s and early 70s, thousands of young people decided that altar trips were irrelevant. Parents, who found it difficult to accept the reality of coed dorms, were even more jolted to learn that their children's roommates were likely to be members of the opposite sex. Social introductions became perilous exercises in verbal circumlocution. The older generation had a hard time remembering that “Ms.” was not pronounced “Manuscript.” The word “friend” became an all-purpose term used to refer to persons who had known one another as casual acquaintances as well as a person who had been a live-in roommate for two years. “Fiancee” began to seem quaint, and meetings and conventions abounded with “meaningful associates” and “significant others.”

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We have not succeeded as yet in creating any new pronouns to avoid the awkwardness of calling women “he’s” or overcoming the tediousness of referring to any mixed group as “he or she.” The break-up of many meaningful associations, without benefit of divorce because the pair were without benefit of matrimony, has generated all kinds of social and legal confusions. It is hard enough for judges to apply traditional domestic relations law; now the courts are asked to award severance pay or palimony to disenchanting couples.

What happened to the exuberant undergraduates of the 60s is that they got older. The assumption that both mind and body atrophied at age 30 crumbled when 30th birthdays came and went with remarkable regularity. Undergraduates who could barely conceal their contempt for the money-grubbing of their parents discovered that their parents were relevant after all when the money from home stopped and the search for gainful employment in a tight job market struck them. Enthusiasm for back-to-the-land communes dimmed when communal members learned that farming was terribly hard work. Fervent resolves by young men and women to share the housework rapidly dissolved when both of them confronted the reality of the aphorism: The trouble with dishes is that they are so daily.

My purpose in reciting these few illustrations of disillusion with the tenets of the youth movement of the 60s and early 70s is not to sing along with the oldsters' chorus of “We told you so.” After all, older generations had as much to do with prolonging dependence and adolescence as our children ever did. The purpose, rather, is to remind us that maturation is a relatively slow process and it is never painless. There have always been gaps in understanding between generations, but the gaps are chasms when the pace of social change accelerates more rapidly than any of the generations can readily absorb.

We are a society in multiple transitions. Social revolutions are always marked by very high levels of anxiety because the members of the society do not know what to expect from others or of themselves. Our cultural codes, primarily learned in earliest childhood, cause us to respond automatically to cues that we are largely unaware we have ever had. Unfortunately, the response may be completely inappropriate to the changed conditions.

A simple illustration may clarify the point. When the parents in this audience were children, girls wore dresses and had long hair. Boys wore pants and had short hair. Boys and girls could identify each other and themselves by the simple cues of hairstyle and dress. When girls began wearing pants and boys let their hair grow, parental response ranged from bewilderment to outrage. The youngsters did not understand the mechanisms of the change in gender symbols, but were in no doubt about the discomfiture their styles caused their elders.

Neither our exasperations nor our amusement about changing styles, alterations in national mores, or the adoption of non-traditional relationships between young adults should blind us to the very real and dramatic alterations in the expectations of maturing men and women in this country. Young people, with few exceptions, cannot replicate their parents' experiences even if they wanted to because the world is a very different place from that in which their parents grew up. Rigidly assigned gender roles to members of the urbanized middle class cannot survive when two family paychecks have become necessary to keep pace with double digit inflation and when the legitimacy of the dictation of the rules of the social order by the elite for the elite has been destroyed.

These phenomena, particularly the assaults on gender roles, are not simply incidents of contemporary American life. With variations based upon different history, different religions, and different cultures, these transitions are going on all over the world.

Men and women of every race, creed, color, and age group are now seeking a place in the sun. All of these people are demanding that their basic human needs be fulfilled by the societies in which they live, that each shall be treated with dignity, that each shall have access to the material, intellectual, and spiritual riches of the world, and that each shall be treated justly. None of them believes that small is beautiful if that designation is to be applied to their very own aspirations.

The dramatic upheavals in the social order are not confined to the United States or to Western Europe. Extraordinary changes in manners and mores by the respective societies are also taking place in Asia, the Middle East, and Africa. These, in turn, have generated increasingly fierce competition for land, food, jobs, and energy. Political instabilities are endemic. We cannot doubt that the by-product of all of these changes will be a lot of human suffering. But the turmoil should not be the cause of either malaise or despair. Dramatic social change also can be the occasion for releasing creative thought.

It is easy to characterize the controversies between the developed and developing countries or between rich and poor persons and men and women in our own country as power struggles. Historically, power has generally meant the ability to advance oneself and, at the same time, to control, limit, and even destroy the power of others. However, there is a much brighter and more affirmative concept of power that is striving for recognition. In an increasingly interdependent world, power can be used cooperatively and creatively to help each individual develop personal resources without either limiting or destroying others.

The constructive concept of power is beginning to assert itself in the treaty negotiations being conducted in the age-old battle of the sexes. Men have begun to realize that they have missed a great deal of joy and emotional sustenance in leaving all of the nurturing of young children to their wives and insisting upon the rejection of their own vulnerabilities. Women have wearied of dependency and have increasingly rejected prescribed inferiority.

Opponents of the Equal Rights Amendment have charged that the Amendment is an evil device to destroy marriage and the family. The charge is preposterous, unless one is willing to assume that marriage and family life depends upon the relationship of dominance and subservience. Men and women, both here and abroad, have refused to sign up for either course. The assaults on marriage and the family are not the product of either weak men or uppity women, but rather the enormous pressures from both within and without the society caused by all of the demographic, industrial, economic, medical, and technological changes upon which I have earlier lightly touched.

We are moving toward concepts of true equality in the opportunities for men and women. We are not there yet. The inequities will not disappear either with or without the passage of the Equal Rights Amendment. Enactment of the Amendment is primarily symbolic; symbols, however, are important. A veil is more than a piece of cloth to a woman who had been commanded to wear it, the Star of David was more than a sign of religious adherence in Hitler's Germany, and the black armbands worn during the Cambodian invasion were more than protests against dress codes. Each of those symbols is a dramatic presentation of what the wearers thought about or of what others thought about them. The caps and gowns, the hoods and mortarboards are symbols, too, as is every word we speak to one another today.

Colleges and universities have a key part to play in times of social transition. They are both stabilizing and catalytic institutions. They are stabilizing because the faculty and the administration transmit to each generation of students the history and cultures of humankind and thus provide us with the vital links to our own heritage as they teach us from the pages of human experience.

Colleges and universities provide us with a community that can help us negotiate for peace and cooperation rather than combat during our multiple social revolutions. Although the term "shuttle diplomacy" was coined to describe the jet-age conduct of peace negotiations between the Israelis and the Egyptians, I have borrowed the term to illustrate the role of education in building the bridges

between the elements of our society affected by social resolution. The classroom and the playing fields, the libraries and the dormitories provide numerous opportunities for learning how to get along with one another. It is difficult, if not altogether impossible, to view other human beings as objects or as inferiors because they are different from ourselves when we study together, work together, and play together. Of course, it is not only the physical setting of a college or university campus that permits us to value human beings as individuals, it is also the knowledge conveyed by teachers and by books that assists us to see for ourselves the enduring qualities of life and thus permits us to separate the gold from the dross of human experience.

Finally, colleges and universities give us the opportunity to see into the future, albeit very dimly. From that breadth and scope of human learning, we can together try to weld power with justice, reason with faith, and hope with determination that we shall find the way to live together in harmony on our beautiful planet.



Shirley M. Hufstedler