

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 7: The Republican Era – Equality/Gender/Jury Service

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**People v. Barltz, 212 Mich. 580 (1920)**

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*Harold Barltz was tried for larceny by a jury that included C.M. Gitzen, a woman. The trial court overruled his objection to seating Ms. Gitzen. Barltz was subsequently convicted. He appealed to the Supreme Court of Michigan.*

*The Supreme Court of Michigan ruled that Barltz was constitutionally convicted. Justice Stone's unanimous opinion asserted that women automatically became eligible for jury service in Michigan when the state constitution gave women the right to vote. Why did he reach that conclusion? Stone notes that a provision in the Michigan Constitution refers specifically to "men" when discussing juries. How does he explain away such provisions? Is his argument persuasive? Compare People v. Barltz to People ex rel. Fyfe v. Barnett (IL 1925), a case in which a state supreme court rejected claims that a state law enfranchising women also gave women the right to sit on juries. Were their important legal distinctions that explain the different outcomes in these cases or did the justices simply have different values? What might explain those different values?*

JUSTICE STONE

...

Counsel for defendant first call attention to section 19, art. 2, of our present Constitution, which provides that:

In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve men in all courts not of record.

...

... It is well here that we call attention to article 3, §1, of the present Constitution, as amended at the November election of 1918:

"In all elections every inhabitant of this state being a citizen of the United States . . . shall be an elector and entitled to vote. . . . And provided further, there shall be no denial of elective franchise at any election on account of sex."

Counsel refer to our general statute relating to jurors . . . and add that in this state only those persons being citizens having the qualifications of electors are eligible for jury service who are "in possession of their natural faculties, and not infirm or decrepit, of good character, of approved integrity, of sound judgment, and well informed and conversant with the English language, and free from all legal exceptions."

...

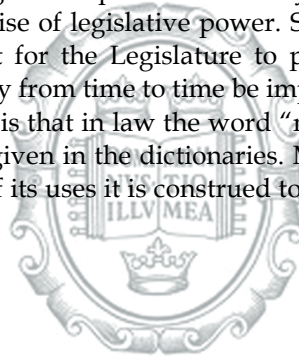
What was the purpose and object of the people in adopting the constitutional amendment striking out the word "male" from the Constitution? Was it not to do away with all distinction between men and women as to the right to vote, or as to being electors? We think there can be but one answer to

this question, and that is that the purpose was to put women upon the same footing as men with reference to the elective franchise. What then was the result? Women became thereby electors. The moment a woman became an elector under the constitutional amendment she was entitled to perform jury duty, if she was possessed of the same qualifications that men possessed for that duty. In other words, she was placed in a class of citizens and electors, from which class jurors were, under the statute, to be selected. . . .

It seems clear to us that by making a woman an elector she is thereby placed in a class which makes her eligible for jury duty. . . .

Petitioner claims that the word "men" should be inserted, by proper construction, in the Constitution, so that the Constitution would, in effect read: "The right of trial by a jury of twelve men shall be secured to all," etc. This contention is based upon the proposition that when the Constitution provides for a trial by a jury it, by necessary inference, provides for the jury as known at the common law and that, as jurors of men were provided for by the common law, the Constitution must be thus construed. Two questions seem to be thoroughly settled by the unbroken line of decisions in all the states: First, that constitutional provisions guaranteeing the right to a trial by jury established the right to a trial by a jury as known at common law; second, that the qualifications of the jury is a matter subject to legislative control, and that, even though such qualifications may differ from those at common law, such legislation is nevertheless a valid exercise of legislative power. So long as the essential requisites of trial by jury are preserved, it is competent for the Legislature to prescribe the necessary qualifications of jurors, and additional qualifications may from time to time be imposed by the Legislature.

Another aspect of the question is that in law the word "men" frequently has a broader and more comprehensive meaning than usually given in the dictionaries. Much depends upon the context and the object sought to be obtained. In some of its uses it is construed to mean "all human beings, or any human being, whether male or female."



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