AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

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

Goesaert v. Cleary, 335 U.S. 464 (1948)

Valentine Goesaert owned a bar in Michigan and wished to employ her daughter Margaret as a bartender.[1] *She could not do so because Michigan law at the time forbade women from tending bar unless they were "the wife or daughter of the male owner." The Goesaerts believed this regulation unconstitutionally discriminated against women bar owners and bartenders. They asked a lower federal court to issue an injunction against Owen Cleary and other members of the Michigan Liquor Control Commission, forbidding them to enforce the Michigan ban on women tending bar. The lower federal court refused. The Goesaerts appealed to the Supreme Court of the United States.*

The Supreme Court by a 6-3 vote sustained the Michigan law. Justice Frankfurter's majority opinion indicated that discrimination against women had to meet the same relatively toothless rationality standard as laws that might have discriminated against opticians (see Williamson v. Lee Optical *[1955]). Consider why Frankfurter took this position. Did he favor the law at issue in* Goesaert*? Was he worried that if he established a stricter scrutiny in gender cases that precedent might someday be used to overturn the labor legislation Frankfurter favored, in particular labor legislation he thought protected women? Did he believe that justices should be more deferential to laws that discriminated against women than laws that discriminated against persons of color?*

JUSTICE FRANKFURTER delivered the opinion of the Court.

. . . To ask whether or not the Equal Protection of the Laws Clause of the Fourteenth Amendment barred Michigan from making the classification the State has made between wives and daughters of owners of liquor places and wives and daughters of non-owners, is one of those rare instances where to state the question is in effect to answer it.

We are, to be sure, dealing with a historic calling. We meet the alewife, sprightly and ribald, in Shakespeare, but centuries before him she played a role in the social life of England. . . . The Fourteenth Amendment did not tear history up by the roots, and the regulation of the liquor traffic is one of the oldest and most untrammeled of legislative powers. Michigan could, beyond question, forbid all women from working behind a bar. This is so despite the vast changes in the social and legal position of women. The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certainly, in such matters as the regulation of the liquor traffic. . . . The Constitution does not require legislatures to reflect sociological insight, or shifting social standards, any more than it requires them to keep abreast of the latest scientific standards.

. . . Since bartending by women may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures, the legislature need not go to the full length of prohibition if it believes that as to a defined group of females other factors are operating which either eliminate or reduce the moral and social problems otherwise calling for prohibition. Michigan evidently believes that the oversight assured through ownership of a bar by a barmaid's husband or

[1] The opinion, briefs and lower court opinion and various academic discussions of the case are not entirely clear on which Goesaert was the mother and daughter or offer conflicting accounts. The above is our best guess.

father minimizes hazards that may confront a barmaid without such protecting oversight. This Court is certainly not in a position to gainsay such belief by the Michigan legislature. . . . Since the line they have drawn is not without a basis in reason, we cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling.

. . .

JUSTICE RUTLEDGE, with whom JUSTICE DOUGLAS and JUSTICE MURPHY join, dissenting.

While the equal protection clause does not require a legislature to achieve 'abstract symmetry' or to classify with 'mathematical nicety,' that clause does require lawmakers to refrain from invidious distinctions of the sort drawn by the statute challenged in this case.

The statute arbitrarily discriminates between male and female owners of liquor establishments. A male owner, although he himself is always absent from his bar, may employ his wife and daughter as barmaids. A female owner may neither work as a barmaid herself nor employ her daughter in that position, even if a man is always present in the establishment to keep order. This inevitable result of the classification belies the assumption that the statute was motivated by a legislative solicitude for the moral and physical well-being of women who, but for the law, would be employed as barmaids. Since there could be no other conceivable justification for such discrimination against women owners of liquor establishments, the statute should be held invalid as a denial of equal protection.