

*Symposium on Women and the Law*

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## TREATMENT OF WOMEN BY THE LAW: AWAKENING CONSCIOUSNESS IN THE LAW SCHOOLS†

RUTH BADER GINSBURG\*

### INTRODUCTION

The question of sex roles in contemporary society is rapidly gaining recognition as an appropriate focus of academic attention in university undergraduate and graduate programs.<sup>1</sup> For the law schools, Leo Kanowitz's pioneering study, *Women and the Law*,<sup>2</sup> indicated the need and potential for courses and seminars devoted to a fresh and concentrated examination of sex-based discrimination. Within the past two years, electives have appeared in the programs of a few law schools responding to increasing demands for advertence to the role of the law in delineating the status of women. These courses develop two themes: the part law has played in assisting society to "protect" women (and keep them in their place) and the stimulus law might provide in the evolution of society toward equality and independence for the still submissive sex.<sup>3</sup>

Law schools have not kept pace with developments in the university world generally. Although offerings relating to sex roles in our society have been instituted in dozens of universities and colleges, at the end of 1970 less than ten law schools offered electives in this field. But efforts now underway to publish teaching materials for use in Women and the Law survey courses<sup>4</sup> may result in a significant increase in the number of schools with offerings in this area.

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† This article is based on remarks made by the author as a participant in a panel discussion on treatment of women by the law presented at the annual meeting of the Association of American Law Schools on December 27, 1970.

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1. See S. TOBIAS, *FEMALE STUDIES I* (KNOW, Inc. 1970) (college syllabi and reading lists in social and behavioral sciences); F. HOWE, *FEMALE STUDIES II* (KNOW, Inc. 1970) (college syllabi and reading lists in literature and fine arts).

2. L. KANOWITZ, *WOMEN AND THE LAW* (1969).

3. Cf. Seidenberg, *The Submissive Majority: Modern Trends in the Law Concerning Women's Rights*, 55 CORNELL L. REV. 262 (1970). The eventual goal which law should serve has been aptly described as "the emancipation of man." See Address by Swedish Prime Minister Olof Palme, Women's National Democratic Club, June 8, 1970.

4. Faculty and students involved in Women and the Law programs at the law schools of Yale, Georgetown, George Washington and New York University are currently engaged in the development of survey course materials. Professor Leo Kanowitz of the University of New Mexico Law School and Professor Kenneth M. Davidson of the State University of New York at Buffalo teach and continue to develop materials for survey courses on sex-based discrimination. A Women's Rights Law Reporter, edited by Ann Marie Boylan, is scheduled for publication every other month commencing in February, 1971.

Inclusion of an elective course or seminar on Women and the Law (or sex-based discrimination), important as that development is, should not acquit the law school of academic responsibility; a sincere commitment to develop in law students sensitivity to the important social movement for the reexamination of traditional sex roles requires more extensive effort. Enrollment in elective Women and the Law courses will account for a relatively small percent of the student body, and, at least initially, female enrollees will no doubt comprise a majority. To raise consciousness in the law school community generally, the good will and effort of teachers of standard curricular offerings is required. Two jobs merit immediate attention: 1) the elimination from law school texts and classroom presentations of attempts at comic relief via stereotyped characterizations of women; 2) the infusion into standard curricular offerings of material on sex-based discrimination. The second is the major assignment; the first is already underway as a result of sensitivity training given to law school professors by the increasing number of female students attending their classes and reading their materials.<sup>5</sup>

#### ELIMINATION OF STEREOTYPES

Two examples should suffice to illustrate obsolescence of the kind of humor in vogue when legal education was a male preserve.<sup>6</sup> A well-known first year property casebook, published in 1968,<sup>7</sup> noting common law and modern solutions to the hiatus problem that can arise in connection with a life estate per autre vie, makes this parenthetical comment: "[F]or, after all, land, like woman, was meant to be possessed . . . ."<sup>8</sup> Indicative of the change that two years has wrought, a current collaborator of the author of that 1968 text reports this 1970 experience:

In preparing a casebook on Land Transfer and Finance soon to be published, I worked up a set of mimeographed materials to try out on a seminar. One of the topics treated was real estate brokerage and one of the questions there involved (which has puzzled many writers and lawyers) was, "How come there's so much litigation involving brokers?" After presenting some

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5. See preliminary statistical compilation of responses to a questionnaire sent to law school deans by the Association of American Law Schools Special Committee on Women in Legal Education, December 22, 1970 (indicating an overall increase in the percentage of women entering law schools during the period 1966-1970 from 4.30% to 7.82% and 25 of 76 responding schools with 10% or more female enrollment in 1970-71).

6. One member of the Association of American Law Schools, Washington and Lee University Law School, remains an all-male institution accepting no women students.

7. C. BERGER, *LAND OWNERSHIP AND USE* (1968).

8. *Id.* at 139.

miscellaneous material bearing on this question, I concluded the topic in my own words, thus, "In forming your own theory as to why there is so much litigation, it may be useful to note that 40% of all real estate brokers are women." When this material was distributed, it was suggested to me by several women students who used it that the conjecture indicated a certain bias on my part. (The author had not checked for correlations with religious affiliation, national origin, height or hair color.) Not wishing to wound, and deciding that the remark was pretty elephantine humor in any event, I deleted it.<sup>9</sup>

"Elephantine humor" of this nature is probably less frequent than inadvertent disregard of matters of important concern to women. For example, a colleague engaged several months ago in the preparation of an article concerning compensatory treatment for blacks made the comment that "few would bother to argue that special protective legislation for women workers not extended to males is unconstitutional."<sup>10</sup> At the time this comment was written, several women had already appealed to the courts to spare them from such "compensatory and preferential treatment,"<sup>11</sup> and Professor Kanowitz had persuasively challenged its constitutionality.<sup>12</sup> But change is in the wind, and perhaps before long we may even see a response to a comment made forty years ago concerning judicial discourse on that paragon, the reasonable man: "In all that mass of authorities which bears upon this branch of the law, there is no single mention of the reasonable woman."<sup>13</sup>

#### CURRICULUM CHANGES

Turning to the more serious problem of new infusions into existing offerings, a sideglance at developments in other areas of law school attention is useful. Poverty law courses are a relative newcomer on the

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9. See A. AXELROD, C. BERGER & Q. JOHNSTONE, *CASES ON LAND TRANSFER AND FINANCE* (1971). The report presented in the text was made by Professor Allan Axelrod of Rutgers (Newark) Law School who now possesses a keen sensitivity on questions of sex-based discrimination.

10. Askin, *The Case for Compensatory Treatment*, 24 *RUTGERS L. REV.* 65, 74 (1970). Prior to publication, this qualifying footnote remark was added: "Though it is questionable whether such legislation is in fact preferential, the courts have never had any difficulty justifying such 'preferences' under the 14th amendment." *Id.* n.32. *But cf.* *Mengelkoch v. Industrial Welfare Comm'n*, 437 F.2d 563 (9th Cir. 1971).

11. See Seidenberg, *supra* note 3, at 265-68.

12. KANOWITZ, *supra* note 2, at 179-82; *cf.* Remarks by Professor Leo Kanowitz on the Equal Rights Amendment, 116 *CONG. REC.* S15274 (daily ed. Sept. 14, 1970).

13. A. HERBERT, *MISLEADING CASES IN THE COMMON LAW* 16 (1930), quoted in W. PROSSER, *TORTS* 154 (3d ed. 1964) and C. GREGORY & H. KALVEN, *CASES AND MATERIALS ON TORTS* 101 (2d ed. 1969).

law school scene. Initially, elective survey courses began to appear in law school catalogues. Lately, the effort is not confined to improvement of survey courses but has expanded to the reshaping of materials in traditional offerings to encompass legal problems of particular concern to economically disadvantaged people.<sup>14</sup>

Also instructive is the attitude and approach of scholars concerned with the teaching of comparative law. Relatively few students are exposed to the special elective courses, but horizons have been broadened via references in basic course materials to practices and problem solutions abroad.<sup>15</sup>

A look at outlines, reading assignments and bibliographies in Women and the Law survey courses would suggest several possibilities to teachers of traditional offerings. Reflections of the dependent, submissive role envisioned for women by the dominant sex<sup>16</sup> can be found in such diverse areas as Constitutional Law, Criminal Law, Property, Labor Law, Family Law and Taxation. A few random illustrations will be noted here.

Constitutional Law is probably the most conspicuous area in which

14. See, e.g., H. SEMMEL, SOCIAL JUSTICE THROUGH LAW: NEW APPROACHES IN THE LAW OF CIVIL PROCEDURES (1970); M. BENFIELD, SOCIAL JUSTICE THROUGH LAW: NEW APPROACHES IN THE LAW OF CONTRACTS (1970); S. PLAGER, SOCIAL JUSTICE THROUGH LAW: NEW APPROACHES IN THE LAW OF PROPERTY (1970).

The status of women should figure importantly in presentations concerning problems of the economically disadvantaged, for almost two-thirds of the nation's adult poor are women. See PRESIDENT'S TASK FORCE ON WOMEN'S RIGHTS AND RESPONSIBILITIES, A MATTER OF SIMPLE JUSTICE 24 (1970). Cf. *id.* at 21:

Without any question, the growing number of families on Aid to Families with Dependent Children is related to the increase in unemployed young women. For many . . . the inability to find a job means . . . having a child to get on welfare. Potential husbands do not earn enough to support an unemployed wife.

The stability of the low-income family depends as much on training women for employment as it does on training men . . . .

The task force expects welfare rolls will continue to rise unless society takes more seriously the need of disadvantaged girls and young women.

Women are plaintiffs in many of the leading cases dealing with problems of the non-affluent. *E.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969) (right of new residents to welfare); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (wage garnishment).

15. See, e.g., M. ROSENBERG, J. WEINSTEIN & H. SMIT, ELEMENTS OF CIVIL PROCEDURE (2d ed. 1970).

16. Even in decisions responding affirmatively to women's claims for equal treatment, traditional attitudes concerning woman's ordinary function are apparent. See Montgomery v. Stephens, 359 Mich. 33, 101 N.W.2d 227 (1960).

[I]n today's society the wife's position is analogous to that of a partner . . . . Her duties and responsibilities in respect of the family unit complement those of the husband, extending only to another sphere. In the good times she lights the hearth with her own inimitable glow. But when tragedy strikes it is a part of her unique glory that, forsaking the shelter, the comfort and warmth of the home, she puts her arm and shoulder to the plow.

*Id.* at 48-49, 101 N.W.2d at 234.

treatment of women by the law has been overlooked in the law schools. Standard casebooks deal with problems of classification and discrimination relating principally to race, but also to alienage, condition of birth, and economic situation. Two cases involving women are generally reported or extracted in historical context but not from the perspective at which contemporary feminists view them. *Muller v. Oregon*,<sup>17</sup> upholding state legislation limiting working hours for women after the Supreme Court had rejected a state attempt at hours limitation applicable to both sexes,<sup>18</sup> is noted as one of a series marking the Supreme Court's retreat from substantive due process limitations on state economic regulation and as the occasion of the initiation of the Brandeis brief.<sup>19</sup> *Goesaert v. Cleary*,<sup>20</sup> upholding a statute which kept bar ownership a male monopoly, is noted in the context of traditional equal protection standards and state restrictions on a business entry.<sup>21</sup> Not even a note suggests the relationship of these decisions to the current controversy surrounding equal rights for women. Indeed, the proposed Equal Rights Amendment,<sup>22</sup> although it has been in the congressional hopper for decades, is not mentioned.

It would be unthinkable to omit *Brown v. Board of Education*<sup>23</sup> from a contemporary Constitutional Law course. Yet none of the texts, and probably few class discussions, treat related issues currently pressed before federal courts: May a state operated institution, consistent with the fourteenth amendment, deny women educational opportunities afforded to men; and further, is *Plessy v. Ferguson*<sup>24</sup> a viable doctrine with respect to sex segregation?<sup>25</sup>

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17. 208 U.S. 412 (1908).

18. *Lochner v. New York*, 198 U.S. 45 (1905).

19. E. BARRETT, P. BRUTON & J. HONNOLD, CONSTITUTIONAL LAW 670-71 (3d ed. 1968); P. FREUND, A. SUTHERLAND, M. HOWE & E. BROWN, CONSTITUTIONAL LAW 1621 (3d ed. 1967); G. GUNTHER & N. DOWLING, CONSTITUTIONAL LAW 963-64 (8th ed. 1970); W. LOCKHART, Y. KAMISAR & J. CHOPER, CONSTITUTIONAL LAW 494 (2d ed. 1967).

20. 335 U.S. 464 (1948). *But cf.* notes 43-48 *infra* and accompanying text.

21. P. FREUND, A. SUTHERLAND, M. HOWE & E. BROWN, *supra* note 19, at 1082; G. GUNTHER & N. DOWLING, *supra* note 19, at 995.

22. "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." See Remarks by Professor Leo Kanowitz on the Equal Rights Amendment, 116 CONG. REC. S15274 (daily ed. Sept. 14, 1970).

23. 374 U.S. 483 (1954).

24. 136 U.S. 537 (1896).

25. See *Kirstein v. University of Virginia*, 309 F. Supp. 184 (E.D. Va. 1970) (three-judge court) (exclusion of women from educational opportunities afforded to men by a state institution held inconsonant with equal protection clause of fourteenth amendment); Note, *The Constitutionality of Sex Separation in School Desegregation Plans*, 37 U. CHI. L. REV. 296 (1970). *But see* *Williams v. McNair*, 316 F. Supp. 134 (D.S.C. 1970) (three-judge court) (females-only admission policy for state supported college does not violate male students' right to equal protection where no showing was made of

In the area of taxation, law school faculties direct hiring committees to search for teachers interested in "policy" questions as well as analysis of the intricate chess game playable under the Internal Revenue Code. How many introductory courses, however, acquaint students with the deliberate and significant disincentive current tax law presents to the woman who contemplates combining a career with marriage and a family? If her earnings approach those of her husband, the Code counsels divorce, for the couple will retain more if they live together without benefit of a marriage license.<sup>26</sup> And if a father or mother goes off to work, as a divorcee he or she may be entitled to a child care deduction regardless of income. For a married pair, both working, however, the deduction is available only if joint adjusted gross income of the couple remains close to the subsistence level.<sup>27</sup>

The tax teacher interested in "policy" might well contrast in this area the approach taken by Sweden in its recent reform. The Swedish system resembled the system in effect in the United States; by relating a wife's income to her husband's, it discouraged wives from working. The new system introduces individual taxation; every person, married or not, is taxed on earned income separately and under a uniformly applicable graduated rate schedule.<sup>28</sup> And for those who see an impediment in this country because some of our states have a community property system, the Swedish answer is enlightening. That nation retains the institution of a community severed upon termination of a marriage,<sup>29</sup> but for income tax purposes, a concept basic in other areas of our own

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any feature rendering an all-female facility more advantageous educationally than state supported institutions to which males are admitted); Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 33 (1959) ("Does enforced separation of the sexes discriminate against females merely because it may be the females who resent it and it is imposed by judgments predominantly male?").

26. See Richards, *Single v. Married Income Tax Returns Under the Tax Reform Act of 1969*, 48 TAXES 301 (1970).

27. INT. REV. CODE OF 1954, § 214. See also PRESIDENT'S TASK FORCE ON WOMEN'S RIGHTS AND RESPONSIBILITIES, *supra* note 14.

Under present law a husband-wife family benefit from the deduction only if their income does not exceed \$6,600 with one dependent or \$6,900 with two or more dependents . . . . There is no income limitation on the single head of a household (single women, widow, widower, divorced person), and there seems to be no good reason for limiting the deduction to low-income husband-wife families.

*Id.* at 15.

28. An explanation of the purposes of the reform appears in the English language publication, SWEDEN NOW, April, 1970, at 5-6. To avoid harsh effects on families long accustomed to the former system, transition period provisions have been made. See Address by Palme, *supra* note 3.

29. See Sussman, *Spouses and Their Property Under Swedish Law*, 12 AM. J. COMP. L. 533 (1963).

tax law is applied—income is taxed to the one who earns it.<sup>30</sup>

In Conflict of Laws, issues relating to the status of women appear in diverse contexts; sometimes they appear saliently, as in the cases concerning married women's contracts. In other instances, they are less conspicuous. For example, casebooks currently in use report or note a 1967 decision of the Oregon Supreme Court<sup>31</sup> as illustrative of a "true conflicts" case. The court wrestled with the problem of whether to apply forum law, allowing a forum wife to collect for loss of consortium, or the law of the place of injury which allowed such recovery to a husband but not to a wife. Oregon took a "restrained," if not "enlightened," view and deferred to the law of the state where the accident occurred. The court barely considered the possibility of a "no conflict" solution; if the sister state law, recognizing a right in the husband but not in the wife, had been put to the rational classification test of the fourteenth amendment's equal protection clause, the higher authority of the Constitution should have resolved the conflict.<sup>32</sup> Sauce for the gander should serve for the goose as well.

Developing environmental courses inevitably must deal with the problem of population increase; in that context controversial questions surrounding birth control and abortion cannot be ignored.<sup>33</sup> Additionally, in the clinical enterprises now so much in the limelight, sex equality and women's rights cases could be added to the docket. A few examples of cases in which student assistance has been sought at Rutgers are illustrative. A bachelor, qualified in all other respects for the \$600 dependent care deduction provided by section 214(a) of the Internal Revenue Code, is disallowed that deduction solely on the ground of his status as a single man who has never married. Concededly, the deduction he sought for the care of his incapacitated dependent mother would have been available had the taxpayer been a single woman, or a widowed or divorced person of either sex.<sup>34</sup> A woman honorably discharged

30. *Lucas v. Earl*, 281 U.S. 111 (1930).

31. *Casey v. Manson Constr. & Eng'r Co.*, 247 Ore. 274, 428 P.2d 898 (1967).

32. Compare *Casey v. Manson Constr. & Eng'r Co.*, 247 Ore. 274, 289 n.7, 428 P.2d 898, 906 n.7 (1967), with *Owen v. Illinois Baking Corp.*, 260 F. Supp. 820 (W.D. Mich. 1966); *Millington v. Southeastern Elevator Co.*, 22 N.Y.2d 498, 508, 239 N.E.2d 897, 903, 293 N.Y.S.2d 305, 312 (1968). *Contra*, *Miskunas v. Union Carbide Corp.*, 399 F.2d 847 (7th Cir. 1968), *cert. denied*, 393 U.S. 1066 (1969).

33. See, e.g., *State v. Munson* (Cir. Ct. S.D., filed April 7, 1970), reported at 15 S.D.L. REV. 332 (1970), posing, rhetorically, these questions: "Are the interests of society being served by women bearing unwanted children, subject to the pressures of an emotionally and financially deprived existence? Are the interests of society being served by the population explosion we are now witnessing?" *Id.* at 333. See also *Defusing the Population Bomb*, TRIAL, Aug.-Sept., 1970, at 10-11, 13-16.

34. *Charles E. Moritz*, 55 T.C. No. 14 (Oct. 22, 1970).

from the army due to pregnancy seeks to reenlist. Although she is childless at the time of her reenlistment application, the army regulations tell her that her past pregnancy constitutes a "nonwaivable moral and administrative disqualification" to reentry.<sup>35</sup> No such disqualification exists for the man who bore equal responsibility for the pregnancy. A teacher wishes to challenge a school board requirement that she leave in the fifth month of pregnancy, although her doctor affirms that her physical and mental capacities to teach remain unaffected by her pregnancy.<sup>36</sup> Women seeking employment in fields for which they are qualified find that, despite Title VII,<sup>37</sup> employers continue to advertise in "help wanted-male" columns. If newspapers that maintain such columns are not subject to the law, as a federal district court has ruled,<sup>38</sup> are other enforcement possibilities "with clout" available?<sup>39</sup> Women seek admission to an all-male college operated by a state university; if turned down, they wish to seek relief in the courts.<sup>40</sup>

#### CONCLUSION

Law schools can contribute significantly to the awakening process essential to shorten the distance between women and equal opportunity. At this juncture, with increasing female enrollment and a start toward academic attention to sex-based discrimination, law schools are approaching a mid-passage state. Lawyers and judges whose sensitivity has been developed in the law schools should be incapable of the kind of reaction still prevalent in some judicial arenas. For example, in a 1970 decision,<sup>41</sup> a New York trial court rejected the challenge of a female plaintiff to a

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35. Army Reg. 601-280, Table 2-4, line AE, March 16, 1970. The Army ultimately waived the "nonwaivable" regulation for the particular case and, in common with other branches of the armed forces, is currently reviewing its positions relating to pregnancy, parenthood and dependents of women in the service.

36. See CITIZEN'S ADVISORY COUNCIL ON THE STATUS OF WOMEN, STATEMENT OF PRINCIPLES (Oct. 29, 1970) (job-related maternity benefits).

37. Civil Rights Act of 1964, §§ 702-16, 42 U.S.C. §§ 2000e et seq. (1964).

38. *Brush v. San Francisco Newspaper Printing Co.*, 315 F. Supp. 577 (N.D. Cal. 1970).

39. Notice might be given to the Commissioner of the Internal Revenue Service concerning employers and agencies who advertise in sex segregated columns when sex does not constitute a bona fide occupational qualification; it is highly questionable whether business expense deductions should be allowed for these illegal expenses. Cf. *Tank Truck Rentals, Inc. v. Commissioner*, 356 U.S. 30 (1958).

40. Cf. *Kirstein v. University of Virginia*, 309 F. Supp. 184 (E.D. Va. 1970) (three-judge court).

41. *De Kosenko v. Brandt*, 63 Misc. 2d 895, 313 N.Y.S.2d 827 (Sup. Ct. 1970). Cf. *Reed v. Reed*, 93 Idaho 511, 465 P.2d 635 (1970), *prob. juris. noted*, 91 S. Ct. 917 (1971) (statute requiring that males must be preferred to females related in the same degree for appointment as administrators of a decedent's estate held consonant with equal protection clause of fourteenth amendment).

jury system with automatic exemptions for women; as a result of these exemptions, women constituted less than 20% of the available jury pool. In his published opinion, the judge advised the complainant that she was "in the wrong forum." In his view, "her lament should be addressed to the 'Nineteenth Amendment State of Womanhood' which prefers cleaning and cooking, rearing of children and television soap operas, bridge and canasta, the beauty parlor and shopping, to becoming embroiled in plaintiff's problems . . . ."<sup>42</sup>

A more hopeful model for the future was set recently by the New Jersey Supreme Court.<sup>43</sup> Despite the contrary 1948 United States Supreme Court precedent,<sup>44</sup> a local ordinance denying women the right to tavern employment behind the bar was declared invalid. Significantly, the plaintiffs were a male tavern owner who wished the freedom to select a woman bartender and an association of tavern owners.<sup>45</sup> The New Jersey Supreme Court was not prepared to overrule the ultimate tribunal on constitutional questions<sup>46</sup> but did consider itself in full control of the exercise of police power within New Jersey. It ruled that in the light of current customs and mores, "the municipal restriction against female bartending may no longer fairly be viewed as a necessary and reasonable exercise of the police power."<sup>47</sup> In the 1970's, thought and energy directed toward the unfinished business of equality for women should yield general application of the New Jersey pronouncement concerning the issue before it: the law may not tolerate blanket exclusions grounded solely on sex.<sup>48</sup> So be it!

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42. 63 Misc. 2d at —, 313 N.Y.S.2d at 830. Compare *id.* at 829 ("What woman would want to expose herself to the peering eyes of women only?") with *Diaz v. Pan American World Airways*, 311 F. Supp. 559, 565-67 (S.D. Fla. 1970) ("women passengers might consider personal overtures by male attendants as intrusive and inappropriate, while at the same time welcoming the attentions and conversation of another woman.").

43. *Paterson Tavern & Grill Owners Ass'n, Inc. v. Borough of Hawthorne*, 57 N. J. 180, 270 A.2d 628 (1970).

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

45. Cf. *Caterpillar Tractor Co. v. Grabiec*, 317 F. Supp. 1304 (S.D. Ill. 1970) (hours restrictions imposed upon women by the Illinois Female Employment Act declared inconsistent with Title VII of the federal Civil Rights Act of 1964; plaintiffs were employers who contended that the state "protective" legislation prevented them from promoting or assigning female employees to jobs requiring overtime).

46. *But cf. Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593 (S.D.N.Y. 1970) (tavern's limitation of patronage to men violates equal protection clause of fourteenth amendment).

47. 57 N.J. at 186, 270 A.2d at 631.

48. *Id.* at 189, 270 A.2d at 633. Cf. *Mengelkoch v. Industrial Welfare Comm'n*, 437 F.2d 563 (9th Cir. 1971) (female employee's equal protection challenge to state law limiting hours women can work presents substantial constitutional question requiring decision by a three-judge federal court).