# Gender

## Facial Classifications

*Bradwell v. Illinois* (1873) (cb985) (nt12) -- **overruled**

- Woman denied right to practice law by Illinois Bar who was otherwise qualified.
- **Holding**: Upheld. "Separate spheres".

*Reed v. Reed* (1971) (cb988) (nt12)

- Challenge to Idaho law choosing man over woman when both equally qualified to be administrator of an estate.
- **Holding**: Unconstitutional under "minimal rationality" 14th Amendment Equal Protection.

*Frontiero v. Richardson* (1973) (cb988) (nt12, 13)

- Military gives benefits, assumes wife of armed forces member is dependent without proof, husband must prove dependency.
- Sex classifications should be subject to **close judicial scrutiny**.
- **Administrative convenience** does not outweigh **due process**.
- Invalid under 5th amendment due process clause.

*Craig v. Boren* (1976) (cb1011) (nt12, 13)

- State law prohibiting sale of beer to males under 21 and females under 18.
- **Intermediate Scrutiny**: classifications must be **substantially related to important objectives**.
- Cannot rely on **archaic and overbroad generalizations**.

*United States v. Virginia* (1996) (cb1025) (nt12, 13)

- VMI admits only men, women's school not comparable.
- Gender classifications must demonstrate **exceedingly persuasive justification**, serve **important governmental interest** and be **substantially related** to achievement of that interest.
- State has **burden to prove justification**.
- Doesn't answer "separate but equal" question (Rehnquist's concurrence) since VWIL facility was not remotely "equal". (see also *Newberg v. Board of Public Education* (1983) (cb1049) (nt13), Philadelphia single-sex schools not "equal").

## Pregnancy

*Geduldig v. Aiello* (1974) (cb1065) (nt13)

- California statute excluded disabilities incident to normal pregnancies from insurance scheme.
- Court upheld statute under **rational basis standard**: does not divide world into **men and women** but **pregnant women** and **non-pregnant people**.

## Disparate Impact

*Personnel Administrator of Massachusetts v. Feeney* (1979) (cb1053) (nt13)

- Veteran preference in Civil Service, disparate impact on women since most veterans are men.
- Not **facially discriminatory.** As under *Washington v. Davis* and *Arlington Heights v. Metropolitan Housing Dev. Corp.*, **disparate impact** must be traced to **discriminatory purpose**.
- Does not violate **equal protection:** passed **in spite of** rather than **because of** disparate impact.
- If it would not have passed **but for** discrimination, then it is unconstitutional **invidious intent.**

## Discrimination Against Men

*Michael M. v. Superior Court of Sonoma County* (1981) (cb1089) (nt14)

- California Statutory Rape act only applies to males who have intercourse with underage females.
- Court applies **rational basis with a sharper focus** -- looks for **fair and substantial relationship** to an **important governmental objective** but does not look for **record** of **intent**.
- Although statute classifies by **gender**, it is linked to **pregnancy**, thus state does not violate **equal protection**.
- Distinctions involving **family** and **sex** are treated with some deference.

*Tuan Anh Nguyen v. Ins* (2001) (sp103) (nt14)

- Statutory requirements for citizenship more stringent if father is citizen than if mother is citizen.
- Statute is upheld under **intermediate scrutiny;** again distinction is linked to **pregnancy**, thus legitimate differential treatment.

## Affirmative Action

*Kahn v. Shevin* (1974) (cb1114) (nt14)

- Tax exemption for widows but not widowers.
- Statue upheld because of women's traditional economic dependency on men and economic discrimination against women (decided **before** court settled on **intermediate scrutiny** standard).

*Schlesinger v. Ballard* (1975) (cb1114) (nt14)

- Navy practice allowed women to stay in service without promotion longer than men.
- Practice upheld because it is directly related to disadvantages women have in Navy (can't participate in battle).

*Mississippi University for Women v. Hogan* (1982) (cb1044) (nt13)

- Mississippi state school for nursing limited to women.
- Does not meet 14th amendment test of **substantial relation to important governmental objectives.**
- No evidence of **past discrimination** to justify **affirmative action;** could be justified if it remedied past **group discrimination**, and need not be past **unconstitutional discrimination** (unlike **race**, where remedy must go to **individuals** who suffered **unconstitutional discrimination**).

# State Action

*Shelley v. Kraemer* (1948) (mat31) (nt9)

- Challenge of **racially restrictive covenant** on privately-held land.
- **Judicial enforcement** and **legislative action** both constitute **State Action**.
- When Court **intervenes** to **enforce covenant**, it violates **Equal Protection Clause**, thus private discriminatory covenants cannot be enforced under Constitution.

*Rendell-Baker v. Kohn* (1982) (mat35) (nt9)

- Counselor fired from school funded mainly by state; public school committee votes to send students.
- Court finds **no state action:**
    - Education has not been **exclusively public function**
    - Decisions not **compelled** or **influenced** by **state regulation**.
    - **Significant** or **total** funding from state is not sufficient to become **state actor.**

*Brentwood Academcy v. Tennessee Secondary School Athletic Association* (2001) (mat39) (nt9)

- Question of whether non-profit membership organization that regulates interscholastic sports is **state actor**.
- **Winks and nods**--can't make a public entity private simply by formalism.
- **Entwinement doctrine**: coercive power of state, significant overt or covert encouragement, willful participant in joint activity with State, controlled by agency of State, delegated public function by State, entwined with governmental policies, or government entwined in management or control.

# Fundamental Rights

### Substantive Due Process/Equal Protection

**Fundamental rights** in **Equal Protection context** different from **Substantive Due Process context:** in **substantive due process**, fundamental rights generally related to **privacy**. In **equal protection**, **fundamental rights** relate to other interests protected by the Constitution, but generally not privacy.

## Birth Control

*Griswold v. Connecticut* (1965) (cb1134) (nt15)

- Statute imposed fine for aiding in distributing birth control.
- Not decided on equal protection, although statute had disparate impact on women, the poor, and teenagers, instead struck down under **substantive due process**, but distinguished from *Lochner*.
- "Specific guarantees in Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."
- **Right to privacy** found in 1st, 3rd, 4th, 5th, 9th amendments, general sense of Constitution, and historical privacy of marriage.

*Eisenstadt v. Baird* (1972) (cb1145) (nt15)

- Issue of distribution of birth control to **unmarried couples**.
- Decided on **rational basis test** under **equal protection** (see *Romer v. Evans*), can't provide **fundamental right** (birth control/privacy) to one group (**married people**) and not to another.
- **Right to privacy** applies to **individual**, not to **marital couple.**

## Family/Living Arrangements

*Village of Belle Terre v. Boraas* (1974) (cb1155) (nt15)

- Zoning prevents six unrelated college students from living in one-family dwelling.
- No **fundamental right** to live in this arrangement, state can safeguard "family values."

*Moore v. City of East Cleveland* (1977) (cb1156) (nt15)

- Extended family prevented from living together in public housing.
- Court finds **fundamental right** to live with family, City cannot "slice deeply into the family itself" by defining family narrowly.

*Michael H. v. Gerald D.* (1989) (cb1157) (nt15)

- Biological father challenging statute which denies visitation rights when child is from extra-marital affair, unless paternity is established within two years of birth.
- Court finds no **fundamental right** for **adulterous fathers** to have relationship with daughter.
- Adopts **narrowest reading** of **fundamental rights** from **tradition and history** of United States.

## Abortion

*Roe v. Wade* (1973) (cb1172) (nt16)

- Finds **fundamental right** to **abortion** as part of 14th amendment **due process** (following Harlan in *Poe*, **implicit in the concept of ordered liberty**, rather than Douglas' "penumbras and emanations").
- No **tradition** of **prohibiting abortion,** no **history** of fetuses being **people** under 14th amendment.

- States' **interest** to protect **maternal health** becomes **compelling** in second trimester, **interest** to protect **potentiality of life** becomes **compelling** in third trimester.

*Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) (cb1202) (nt16)

- Statute imposes waiting period, spousal consent, parental consent, counseling to dissuade abortion.
- **Fundamental right** is "woman's ability to chose her destiny" (not doctor-patient relationship), arises out of **due process clause** of 14th amendment.
- **Stare decisis**, **reliance**, **legitimacy of court** suggest *Roe* should not be overturned.
- Upholds the **core** of Roe: right to chose abortion prior to viability.
- State cannot place **undue burden** on decision to have abortion; no longer relies on **trimester framework:** unconstitutional if it "has the purpose or effect of placing a ***substantial obstacle*** in the path of a woman" seeking a pre-viability abortion.
- **Waiting period** is not **undue burden** (ignoring potential **class discrimination**), but **spousal consent** is **undue burden** (focusing on potential **gender discrimination**).

*Stenberg v. Carhart* (2000) (sp132) (nt16)

- Statute prohibits "partial birth abortion" with no "health exception".
- Unconstitutional **undue burden** under *Casey*: statute is **vague**, and mother must be able to chose abortion not only to protect her **health**, but must be able to chose **safer** form of abortion when available.

*Maher v. Roe* (1977) (cb1526) (nt18)

- State limits Medicaid to medically necessary first trimester abortion, must be authorized by DSS.
- No **equal protection** violation, because State doesn't "erect barriers that aren't there already."
- Court holds that woman's **inability to pay** does not constitute **state action**.
- Draws formalistic line between **action** and **inaction**.

*Rust v. Sullivan* (1991) (cb1457) (nt19)

- Program that receives family planning services public funds cannot mention abortion to women.
- Court finds no **undue burden**: fundamental right is not **to be given abortion**, rather not to be **prevented from making choice** by state.
- Court also finds no **First Amendment** violation; government can specify what its funds are used for.

## Sodomy

*Bowers v. Hardwick* (1986) (cb1243) (nt16)

- Challenge of state sodomy prohibition, facially neutral with respect to sexual orientation.
- Court narrows issue to **homosexual sodomy**, finds there is no **fundamental right** to **homosexual sodomy**, no "deeply rooted tradition," thus statute is subject to **rational basis** test.
- **Dissent**: this is not about **fundamental right** to **sodomy**, rather about **right to be let alone**.

*Boy Scouts of America v. Dale* (2000) (sp145) (nt17)

- Statute prohibits discrimination by sexual orientation in public accommodations.
- **First Amendment Right to Associate** includes **Right to Exclude**, Boy Scouts have expressive interest in saying that homosexuality is immoral.

*Baker v. State* (2000) (sp139) (nt17)

- Challenge under Vermont Constitution of denial of "common benefits" to same sex couples (more of an **equal protection** claim).

- People do not have **fundamental right** to **marry**, but finds it unconstitutional that certain civil and political rights are denied to some individuals.
- Allows legislature to remedy situation: expand marriage definition, give benefits to same-sex couples, or get rid of all benefits of marriage.

*Romer v. Evans* (1996) (cb1259) (nt15)

- **Equal protection** claim (not really **substantive due process**).
- State Constitutional Amendment prevents sexual orientation from being basis of state anti-discrimination laws.
- Court uses **rational basis test** to invalidate Amendment, finds **animus** in Amendment.
- Possible bases for decision: **discrimination on the basis of sexual orientation** (but no suspect class), **amendment to Constitution** (makes change much harder, democratic process issues), **animus** (is statute motivated by **hatred** inherently **irrational**?).

## Right to Die

*Cruzan v. Director, Missouri Department of Health* (1990) (cb1326) (nt17)

- Family wanted to remove feeding tube for comatose person.
- Court holds there needs to **clear and convincing evidence** of women's intention.
- State has **countervailing interest** to **protect and preserve human life**, can also **protect deeply personal decision** of individual, thus can protect others making decision for individual.

*Washington v. Glucksberg* (1997) (cb1340) (nt17)

- Statute prohibiting aiding and abetting of suicide, challenged under **14th amendment due process clause**.
- No **fundamental right** to **commit suicide** or to have **third-party assistance in committing suicide**.
- Possible bases: **no historical basis** for legal suicide (*Bowers, Michael H.*), **rational basis** to protect life, prevent improper suicide, **slippery slope**, **balancing test** favors state (Harlan in *Poe*).

*Vacco v. Quill* (1997) (cb1354) (nt17)

- **Equal protection** companion to *Glucksberg*: people who want lethal medication are not being treated equally to people who want to terminate treatment.
- No **suspect classification** (e.g., race), nor any **fundamental right** (e.g., contraception/privacy) thus applies **rational basis** test.
- Since there is no **substantive due process** protection (*Glucksberg*), there is no **heightened scrutiny** for **equal protection**.

## Voting

*Harper v. Virginia Board of Elections* (1966) (cb1373) (nt17)

- Although there is **no fundamental right** to **vote**, if voting is present, **distribution** will be subject to **strict scrutiny**.
- Poll tax held to be **unconstitutional**, although **wealth** is not **suspect classification**.

## Travel/Welfare

*Shapiro v. Thompson* (1969) (cb1505) (nt17)

- Statute prohibits welfare to people who have not lived in state for one year.

- Unconstitutional because state denies a **vital government benefit** and thus impairs **fundamental right of interstate movement**, although there is no **fundamental right** to **welfare**.
- Equal protection seems to protect "fundamental right" (**important thing** combined with **travel**) combined with somewhat suspect classification (**poverty**).

*Saenz v. Roe* (1999) (cb1518) (nt17)

- Statute provides unequal benefits to newcomers.
- Reconceptualizes *Shapiro* on the basis of **privileges and immunities** clause of the **fourteenth amendment**.
- Finds **right to travel** implicit in **Federalism**, **Article 4, 14th amendment**. Three rights:
  - Right to cross state boards en route (*Edwards v. California*)
  - Right to be treated equally when temporarily present in State (Article 4, Section 2, *Piper*)
  - Right to be treated equally with previous residents of State (**14th amendment**)
- Unclear when something is **important** enough to constitute **barrier to travel** (in state tuition for higher education seems not to be so important as to constitute violation of right to travel).

*DeShaney v. Winnebago County Department of Social Services* (1989) (cb1384) (nt18)

- Child abused by father, caseworker failed to protect him, claim that **substantive due process** right to **liberty** (right to live as healthy, intact person) was violated.
- **Due process** is about **limiting government**, not **compelling government to act**.
- Thus, no **fundamental right** to have government intervene.
- Dissent: state created laws which gave father dominion over child, established State as sole protector, thus took positive causal action.

## Education

*San Antonio School Independent School District v. Rodriguez* (1973) (cb1543) (nt18)

- Local education funded by property tax, extreme disparity challenge under **equal protection clause**.
- No **suspect class** (wealth--court also claims this is not a wealth classification anyway), no **fundamental right** (education), thus no **strict scrutiny**.
- Case ends era of 'new' **fundamental rights** under **equal protection**. **Fundamental rights** must be established under **substantive due process** clause, i.e., be **rooted in history and traditions**.

*Plyler v. Doe* (1982) (cb1560) (nt18)

- Statute denying education to illegal aliens.
- Illegal aliens are not **suspect class**, education is not **fundamental right**, but court finds statute fails **rational basis test**.
- **Complete deprivation of education** seems to be worse than **unequal education** (as in *Rodriguez*). May resemble **animus** irrationality in *Romer*.

# Commerce Clause/Congressional Power

## Foundations

*McCulloch v. Maryland* (1819) (cb17) (nt1)

- Maryland attempts to tax Second Bank of the United States, claims Federal Government can only do what is "absolutely necessary".
- Marshall: "In considering this question, then, we must never forget, it is a Constitution we are expounding." Read the document **so it works**.
- Although Article I, Section 8 doesn't talk about "banks", Congress still has power: "Let the ends be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional."

*National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937) (cb464) (nt4)

- After "switch in nine", Court allows Congress to regulate labor conditions under **commerce power**, finds that manufacturing is part of integrate unit that goes across country; **commerce** is not just "buying and selling across state lines."

*United States v. Darby* (1941) (cb465) (nt4)

- Prohibits goods from being shipped across state lines that are not made in accordance with Fair Labor Standards Act, also prohibits goods from being manufactured not in accordance with Standards.
- Shipping prohibition is constitutional because it is interstate, manufacturing prohibition is also constitutional because it **substantially affects** interstate commerce even if sale is intrastate.

*Wickard v. Filburn* (1942) (cb468) (nt5)

- Upholds Congressional wheat price control act even when defendant grew wheat for his own family's consumption; even wheat grown for your own consumption affects interstate commerce.

## Civil Rights

*Katzenbach v. McClung, Heart of Atlanta Motel*

- Congress passes Civil Rights Act of 1964 under Commerce Clause Power.
- Court upholds Congress' ability to outlaw discrimination in restaurant (*McClung*) and Motel (*Heart of Atlanta Motel*) because both affect/are engaged in interstate commerce.
- Congress essentially has plenary power when it acts under commerce clause; its motivation is irrelevant to judicial review.

## Taxing/Spending

*Steward Machine Company v. Davis* (1937) (cb477) (nt5)

- Tax on employers, could be avoided if employer contributed to state unemployment fund.
- Deference to Congress with respect to taxing power, no need for tight nexus between taxing and spending.

*South Dakota v. Dole* (1987) (cb533) (nt5)

- Congress conditions highway funding on 21-year-old drinking age.
- Objectives not within Article I's "enumerated legislative fields" may be attained through use of spending power, thus condition is upheld as constitutional.

## Limitations to Commerce Clause (to affect people)

*United States v. Lopez* (1995) (cb512) (nt5)

- Challenge of Gun-Free School Zones Act.
- Link between **guns in schools** and **interstate commerce** is too tenuous: the activity is not **commercial**, nor does it have a **substantial effect** on **interstate commerce.**
- Commerce power can regulate: **channels of interstate commerce, instrumentalities of interstate commerce,** or things which **substantially affect interstate commerce.**

*United States v. Morrison* (2000) (sp1) (nt6)

- Challenge of Violence Against Women Act, which provided Federal cause of action for gender-based violence. Congressional record included lots of details about economic effects.
- Act concerns **family law** or **crime**, neither of which is **commerce**. Thus, not within Congress' power under commerce clause.

## Limitations On Commerce Clause (to regulate states)

*National League of Cities v. Usery* (1976) (cb552) (nt6) **OVERRULED**

- Challenge to **Fair Labor Standards Act** as applied to **State** as employer.
- Although law is within Commerce Power, violates **Tenth Amendment**, leaves States without separate existence, control over **essential functions**. Overruled by *Garcia*.

*Garcia v. San Antonio Metropolitan Transit Authority* (1985) (cb555) (nt6)

- Laws of general application apply to the States as well.
- **Structure of federal government** protects States; **political process** will devolve decisions to people if they want it.

*New York v. United States* (1992) (cb576) (nt6)

- Statute requiring States to dispose of radioactive waste in certain ways.
- Federal Government cannot **commandeer** state legislature; tax/spend provisions are legitimate, but not provisions **compelling state to enact and enforce federal regulatory program**, reading **Commerce Clause** with **Tenth Amendment** interpretation.

*Printz v. United States* (1997) (cb595) (nt6)

- Challenge of federal handgun control bill, requires background checks by local law enforcement.
- Similar to *New York*, Federal Government cannot **commandeer** State's **executive branch**.
- (Government can still control **State Judiciary** under **Supremacy Clause**).

*Reno v. Condon* (2000) (sp64) (nt6)

- Driver's Privacy Protection Act restricts state's ability to disclose personal information without consent, challenged as "commandeering" state officials under *Printz* and *New York v. United States*.
- Distinguished from *Printz* because it commands **inaction**; also **regulates state activities** rather than **controlling state regulation of private parties**. Upheld as **constitutional**.

## Power Under Civil Rights Amendments

*South Carolina v. Katzenbach* (1966) (cb484) (nt6)

- Upholds Voting Rights Act as exercise of Congress' **broad remedial powers** under **15th amendment**, history of voting rights violations in South Carolina leads it to reasonably believe prohibited actions would lead to violations of amendment.

*Katzenbach v. Morgan* (1966) (cb488) (nt6)

- Upholds Voting Rights Act as applied to New York's English Language Requirement, even

though there was no demonstrated prior history of unconstitutional discrimination in New York on the basis of language, and Court had previously upheld language requirements as constitutional.

- Bases for decision: Congress might have rational basis to think that Puerto Ricans might not be able to elect people to represent their interests based on language requirements, thus representatives might take unconstitutional actions towards them; alternatively, Congress might have co-equal interpretive power of 14th amendment with Court, and believe that language requirement violates Equal Protection Clause, can *expand* on equal protection rights (this basis rejected in *City of Boerne v. Flores*).

*City of Boerne v. Flores* (1997) (cb536) (nt7)

- Zoning denied church permit, challenged under Federal Religious Freedom Restoration Act, which sets strict standard for Government in limiting religious practices (even facially neutral statutes that do not intend to discriminate are prohibited).
- Court holds that RFRA goes beyond remedial power, is not **congruent** or **proportional** to ends.

*Kimel v. Florida Board of Regents* (2000) (sp44) (nt7)

- Congress cannot abrogate states' Eleventh Amendment Immunity in Age Discrimination cases; age discrimination would only be subject to rational basis test.
- ADEA cannot abrogate sovereign immunity because it does not prevent what the Court would find to be unconstitutional discrimination. Law is not **congruent** and **proportional** to the supposed problem.

*Board of Trustees of the University of Alabama v. Garrett* (2000) (sp45) (nt14)

- Similarly, discrimination against disabled people is not unconstitutional under 14th amendment, thus ADA cannot abrogate Eleventh Amendment sovereign immunity by States for claims that State fails to comply with Act.

## Pre-Emption

*Gade v. National State Wastes Management Association* (1992) (mat7) (nt7)

- Federal Government sets standards for hazardous waste disposal (OSHA), question of whether State can impose its own standard.
- Statute specifically doesn't pre-empt worker's compensation law or prevent State from regulating occupational safety or health issue where there is no federal standard. Also, permits State to promulgate its own plan for approval by federal government.
- **Conflict Pre-emption**: when it is impossible to comply with state and federal regulations simultaneously (or conflicting **objectives** exist).
- **Field Pre-emption**: Congress establishes comprehensive scheme, totally cover an area.
- Court holds that OSHA was meant to pre-empt state law; concurrence suggest this is 'implied expressed conflict pre-emption'.
- **Pre-emption** generally dealt with on a "statute by statute" basis, looks at **Congressional intent** in passing statute.

# Dormant Commerce Clause/Horizontal Federalism

*City of Philadelphia v. New Jersey* (1978) (mat15) (nt8)

- New Jersey prohibits importing waste into state.
- Court finds **waste** is clearly **commerce**.
- **Facial discrimination** is **per se** unconstitutional. **Burden** falls on State to explain absolute necessity of discrimination.
- Violates **commerce clause**, even if purpose was environment/health/safety, the state may not accomplish these objectives by sorting world into 'in state' and 'out of state'.

*C & A Carbone, Inc. v. Town of Clarkstown* (1994) (mat21) (nt8)

- Local 'flow control ordinance' requires all trash passing through town to be processed at waste processing center to finance landfill.
- Not **facially discriminatory**, but creates a **local preference**. Close enough to **facial discrimination** that should be considered **per se** violation.

*Pike v. Bruce Church, Inc.* (1970) (cb615)

- "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed in such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and whether it could be promoted as well with a lesser impact on interstate activities."

**Market Participant Exception**: State can prefer local interests when it is acted as a **market participant**, i.e., choosing what to buy or sell itself.

*New Hampshire v. Piper* (1985) (cb620) (nt8)

- Vermont resident not admitted to New Hampshire bar on basis of residence.
- Article IV **privileges and immunities** protects rights which are **fundamental to interstate harmony**.
- State bears **burden** of showing **substantial reason for difference**, **substantial relationship** between means and ends, and **no less restrictive way** to do it.

# Procedural Due Process

Questions to ask:

1. Has the individual's **life**, **liberty**, or **property** been **taken**?
2. If so, what **process** was **due** prior to the **taking**?

Procedural Due Process applies **one case at a time**.

## Liberty for Procedural Due Process Purposes

- Physical Liberty--violated when you are **imprisoned** or **denied freedom of movement.**
- **Intangible Liberty**--e.g., right to drive, right to practice one's profession, right to raise one's family.

## Property for Procedural Due Process Purposes

- Physical Property/Debt Collection/"Takings"
- **Benefits** you are already receiving (**welfare**)
- **Government Job** when there is **legitimate claim of entitlement**.

*Goldberg v. Kelly* (1970) (cb1400) (nt18)

- State terminates welfare benefits to recipients without evidentiary hearing prior to termination, challenged under **Due Process Clause** of **Fourteenth Amendment**.
- Welfare **entitlements** may be more like **property** than a **gratuity**.
- When person is deprived of **property**, there must be **prior notice**, opportunity to be heard, witnesses, counsel, some sort of **process**.

*Matthews v. Eldridge* (1976) (cb1406) (nt18)

- Question of what **process** is **due** for termination of **disability benefits**.
- Balance: **private interest's weight**, **risk of erroneous deprivation**, **government's interest in limiting costs**.
- In this case, Court finds benefit not as important, risk lower, so no prior hearing is necessary before cut off.

*Board of Regents v. Roth* (1972) (cb1409) (nt18)

- Roth had on year contract with public university, was not renewed after one year, claimed he was due explanation of reasons for non-renewal and opportunity for hearing.
- "Terms of appointment secured absolutely no interest in re-employment for the next year," thus no protected **property interest** that would warrant **procedural due process**.

*Cleveland Board of Education v. Loudermill* (cb1412) (nt19)

- City employed dismissed from job, statute required he must be dismissed "for cause" and was entitled to "post-termination administrative review", plaintiff claimed right to pre-termination hearing.
- Court will give deference to legislative determinations of **entitlement**, but not legislative determinations of **process**, otherwise there is no role for **judicial review of process**. State cannot **define property right** in such a way as to preclude **due process**.

# Race

## Early Cases--Overruled

*Civil Rights Cases* (1883) (cb285) (nt2)

- Congress cannot regulate "private discrimination"--in this case, public accommodations are beyond the reach of 14th amendment. Only **13th amendment** deals with private interactions.

*Plessy v. Ferguson* (1896) (cb272) (nt2)

- Segregated railroad doesn't violate **equal protection**, because it is applied equally to all races.

## Segregation

*Brown v. Board of Education of Topeka, Kansas* (1954) (cb742) (nt4)

- Separate can never be equal. Segregated schools violate **equal protection clause**.

*Bolling v. Sharpe* (1954) (cb759) (nt4)

- Desegregates DC schools, **reverse incorporation**: **equal protection** is now part of **Fifth Amendment Due Process.**

## Discrimination

*Korematsu v. United States* (1944) (cb810) (nt10)

- Appeal from criminal conviction, for avoiding Japanese internment camp during World War II.
- **Curtailing civil rights** of a **racial group** are **immediately suspect**.
- Court finds State passes strict scrutiny, because of military danger.

*Loving v. Virginia* (1967) (cb801) (nt11)

- Challenge of Virginia miscegenation statute.
- **Racial attitudes** can never constitute **legitimate state ends**, no other possible **justification** for statute, thus unconstitutional.
- **Fourteenth Amendment** is supposed to eliminate **individious racial discrimination.**

*Washington v. Davis* (1976) (cb851) (nt11)

- Police test leads to disparate impact, claim that it violates **equal protection**.
- If statute is **facially neutral**, must be a **discriminatory purpose** to trigger strict scrutiny**.**
- **Every law** has **disparate impact;** test is **uphleld** as constitutional.

*Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977) (cb867) (nt11)

- Challenge to zoning which had racial disparate impact.
- Look for 'red flags' made in changes by governing body: **legislative history, official statements, substantial departure from normal procedure, contemporary events, impact.**

*United States v. Clary* (1994) (cb873) (nt11)

- Challenge of sentencing guidelines which have disparate impact because crack is penalized so much more than cocaine.
- Court applies **rational basis** test, upholds sentence, no **strict scrutiny** because no **racial intent**.

*McCleskey v. Kemp* (1987) (cb884) (nt11)

- Challenge of disparate impact in **death penalty** application.
- Uses statistics to show correlation, but unable to show **causation** or **intent**, thus no **equal protection claim**. Hard to find "intent" with decision-making (police, prosecutors, juries, etc..)

## Affirmative Action

*City of Richmond v. J.A. Croson, Co.* (1989) (cb927) (nt11)

- City plan, modeled after Federal Statute upheld in *Fullilove v. Klutznick*, which set aside subcontracting business for minority businesses.
- No evidence of past constitutional violation, thus statute does not survive **strict scrutiny**.
- Possibility of **race neutral** alternatives.
- Remedy for **past discrimination: state** needs to have been past actor; contractors (or perhaps specific contractors in question) need to have been victims.

*Metro Broadcasting v. FCC* (1990) (cb951) (nt12)

- Challenge to federal diversity regulations for radio, distinguished from *Croson* because it is Federal Government (not restricted by Fourteenth Amendment).
- "Benign race-conscious measures mandated by Congress--even if those measures are not 'remedial' in the sense of being designed to compensate victims of past governmental or societal discrimination--are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives."
- **Diversity** in **broadcasting** was found to be **important governmental objective**, thus regulations are upheld.

*Adarand Constructors v. Pena* (1995) (cb953) (nt12)

- Challenge of federal subcontracting provision giving additional payment to prime contractors who use minority business enterprises for subcontracts.
- Adopts 'jot-for-jot' **incorporation** of **Fourteenth Amendment** into **Fifth Amendment.**
- **Congruence**: equal protection must be the same under **Fourteenth Amendment** and **Fifth Amendment.**
- **Skepticism**: **race** is **always suspect**.
- **Consistency**: all use of race is equally impermissible, regardless of whether it is "benign".

*Hopwood v. State of Texas* (1996) (cb973) (nt12)

- Challenge to University of Texas Law School's affirmative action program which made it easier for African-Americans and Mexican-Americans to gain admission.
- School claims program is for **diversity** rather than **remediation**.
- Program does not **help** those who were **discriminated against**.
- 5th Circuit holds that **diversity** is not a **compelling state interest**; other circuits may allow **diversity--***Bakke* held that diversity was compelling state interest, but only author of opinion agreed with that.

# Conditioning Rights

*Regan v. Taxation With Representation of Washington* (1983) (cb1450) (nt19)

- Challenge of 501(c)(3) status requirement to not lobby; claimed to violate **First Amendment** right to free speech and **Equal Protection Clause** that some organizations can lobby and some cannot (e.g., Veterans organization).
- No protected class, no content regulations on lobbying, thus no **Equal Protection** violation.
- No **right** to be **tax exempt**, condition is not that **onerous**, thus no **First Amendment** violation.

*FCC v. League of Women Voters of California* (1984) (cb1452) (nt19)

- Statute withholding public broadcasting funds if Pacifica editorializes, again claiming **First Amendment** violation.
- Radio is near "core of speech", statute cuts of **all funding** if Pacifica **editoralizes at all**, thus court applies intermediate scrutiny and finds statute **irrational**.
- "Buys a lot more silence" than the money given.

*Rust v. Sullivan* (1991) (cb1457) (nt19)

- Program that receives family planning services public funds cannot mention abortion to women.
- Court finds no **undue burden**: fundamental right is not **to be given abortion**, rather not to be **prevented from making choice** by state.
- Court also finds no **First Amendment** violation; government can specify what its funds are used for.

*Legal Services Corporation v. Velazquez* (2001) (sp151) (nt19)

- Statute prohibits legal services funded by Government from bringing Constitutional Challenges on behalf of clients.
- Right to counsel is **fundamental negative right**: government cannot **prevent you** from getting counsel.
- Speech in question is **speech of client**, restriction is **unconstitutional** under **First Amendment**.
- Raises possible **balance of powers** issue and may skew information counsel can give to court, maybe raising **Article III** problem.