Chapter 14 Sec 3-4 Notes

* We see the term “equal protection” in the 5th and 14th amendments, but what does this term really mean? The general meaning of the equal protection clause is that state and local governments cannot draw *unreasonable* distinctions among different groups. If a citizen challenges a law, the issue is not whether a classification is being made, but whether it is an unreasonable classification.
* The Supreme Court has developed 3 basic guidelines for considering whether a law or action violates the equal protection clause:

1. *The rational basis test* asks if the classification is reasonably related to an acceptable government goal. For example, a law stating that people with red hair cannot drive a car legally would fail this test because no relationship exists between red hair and safe driving. In *Wisconsin v. Mitchell*, 1993, however, the Supreme Court upheld a state law that imposed longer prison sentences on people who commit hate crimes (crimes motivated by prejudice). Unless special circumstances exist, the Court said that people challenging a law must prove that it is unreasonable.
2. The second test used by the Court takes place when special circumstances are involved. Special circumstances exist when the Court decides that a state law involves *“suspect classification*”, which is a classification made on the basis of race or national origin. An example would be segregation (i.e. A law requiring only African Americans to ride in the back of buses. The Court is very strict on cases involving suspect classification.
3. *Fundamental rights* are rights that go to the heart of the American system or are indispensable to a just system. The Court closely scrutinizes any law dealing with fundamental rights. The Court has decided that fundamental rights include the right to travel freely between states, the right to vote, and all First Amendment rights—freedom of speech, religion and assembly, the right to petition and for a free press. Laws that violate these fundamental rights are unconstitutional.

* Laws that classify people unreasonably are laws that *discriminate*. *Discrimination* exists when individuals are treated unfairly solely because of their race, gender, ethnic group, age, physical disability, or religion. Such discrimination is illegal, but can be hard to prove.
  + In *Washington v. Davis*, 1976, the Supreme Court ruled *that to prove discrimination in a state law, one must prove that the state was motivated by intent to discriminate*. The case arose when 2 African Americans challenged the DC police department’s requirement that all recruits pass a verbal ability test. They said that the requirement was unconstitutional because more African Americans than whites failed the test. The Court said that this impact on African Americans did not automatically make the test unconstitutional. The crucial issue was the test was not designed to discriminate. The Court said, “The Fourteenth Amendment guarantees equal laws, not equal results.”
  + Since the *Washington* case, the Court has applied “intent to discriminate” in other areas. For example, in an Illinois town, a zoning law permitted only single-family homes. This inadvertently banned low-cost housing projects. The Court ruled the ordinance constitutional even though it kept minorities from moving into the city. The Court reasoned that there was no intent to discriminate against minorities.
* The Fourteenth Amendment was ratified in 1868 and it guaranteed equal protections, which we just defined as meaning it protected from discrimination. However, for almost a century the courts made no decisions prohibiting segregation and discrimination of African Americans. In fact, we see a ruling in *Plessy v. Ferguson* (1869) that established segregation (“separate but equal”) and said that discrimination was constitutional.
* In the 1950s, the schools of Topeka, Kansas were racially segregated. Linda Carol Brown was an eight-year-old African American who was denied admission to an all-white school near her home and was forced to attend a distant all black school. With the help of the National Association for the Advancement of Colored People (NAACP), Brown’s family sued the Topeka Board of Education. Thurgood Marshall successfully argued that segregated schools could never be equal and were, therefore, unconstitutional. In *Brown v. Board of Education of Topeka* (1954), the Court unanimously overruled the “separate but equal” doctrine. This decision marked the beginning of a long struggle to desegregate public schools and successfully spring boarded the Civil Rights Movement. (Note: it would not be until 1964 that segregation in public places would be declared illegal and the last public school would not integrate until the mid-1970s.)

\**Washington v. Davis*

\*Intent to Discriminate situations-p 399 of my book

*\*Brown v. Board of Education of Topeka*

\*Watch *I Have A Dream* speech and fill out listening guide.

\*Can a Judge Determine What Is a Hate Crime? P 403

Section 4

* *Affirmative Action* is a set of policies developed in the 1960s to remedy past discrimination. The policies are carried out by federal, state and local governments, as well as private employers with government contracts. The policies mostly involve the targeted recruitment of women and minorities. The hope is that the number of these groups in jobs and higher education will increase. Most affirmative action is required by the federal government but many businesses use it voluntarily.
* Affirmative action has had a major impact on college admissions. In *Regents of the University of California v. Bakke*, 1978, a white male student named Allan Bakke sued because he was twice denied admission to medical school. He argued that the university practiced reverse discrimination because a certain number of slots were guaranteed to minorities. The Court ruled that while affirmative action systems are constitutional, a quota system based on race is unconstitutional. The university’s decision essentially declined an applicant on the basis of race.
* Some states have individually battled affirmative action. The state of California amended their constitution barring the state from favoring applicants on the basis of race, gender, ethnicity or national origin. Their goal was to eliminate any use of race or gender by public institutions.
* In Michigan, *Grutter v. Bollinger*, 2003, the Court upheld a University of Michigan admissions policy that gave preference to minorities who applied to its law school. The Court said universities could treat race as a “plus factor” in admitting students. It added that universities served a special role because they made it possible for people of all backgrounds to compete at all levels of society.
* In another Michigan case, *Gratz v. Bollinger*, 2003, the Court said that it was unconstitutional to use a system that automatically gave extra points to minority applicants for admission.
* In 2006, Michigan voted for a ballot initiative similar to California’s that makes preferential treatment in admissions and hiring illegal. This new law has stood through several appeals.
* Outside of education, feelings over affirmative action have also been mixed. In *Adarand Constructors v. Pena*, 1995, the Court overturned earlier decisions by saying that federal agencies could not automatically favor minority-based companies for federal contracts.
* Supporters of affirmative action argue that minorities and women have been so disadvantaged in the past that they may be viewed as inferior candidates compared to white men. They also argue that affirmative action should continue because it is an important social goal to increase the number of minorities and women in desirable jobs.
* Opponents of affirmative action say that any discrimination is wrong, even if it is practiced to correct past injustices. They want merit to be the only basis for hiring. They say to favor a minority over a white candidate is reverse discrimination.
* Women did not achieve the right to vote until the 19th amendment in 1920. In the 1960s and 70s women fought against discrimination in employment and other areas. Before the 1970s, the Supreme Court usually said that laws discriminating against women did not violate the 14th amendment because these laws protected the “weaker sex” from night work, heavy lifting and “bad elements” of society.
* A historic change came in *Reed v. Reed*, 1971, the Court said that a law automatically preferred a father over a mother as executor of a son’s estate, which violated the 14th amendment. The Court ruled that any law that classified people on the basis of gender “must be reasonable…and must rest on some ground of difference.” If a real ground of difference exists, then the court must make 2 other determinations:
  1. That recognizing the difference serves “important governmental objectives”
  2. That the law or practice is substantially related to those objectives
* The *Reed* decision created a new standard of reasonableness for sex discrimination cases.
* Since the *Reed* decision, federal courts have decided that some distinctions are not substantially related to important government goals, but here are some examples of distinction that are prohibited:
  1. States cannot set different ages at which men and women become legal adults
  2. States cannot set different ages for when men and women can buy alcohol
  3. States cannot exclude women from juries
  4. Girls cannot be kept off Little League baseball teams
  5. Community service groups cannot exclude women from membership
  6. Employers must pay women the same retirement benefits as men
* Sometimes the courts have decided that gender distinctions are allowable because they are substantially related to public policy goals. For example, the following are legal:
  1. All-male or all-female schools
  2. Having only male staff in all-male prisons
  3. Barring fathers from the delivery room during C-sections
* The Constitution does not mention a citizen’s right to privacy. In *Griswold v. Connecticut*, 1965, the Court interpreted the First, Third and Fourth Amendments recognize an area of privacy. The Court ruled that Connecticut could not outlaw contraception because it would violate the privacy of married couples.
* Since the *Griswold* case, the Court has upheld the right to privacy in a number of cases involving personal matters.
* In *Roe v. Wade*, 1973, the Court established a woman’s right to have an abortion in the first 6 months of her pregnancy, but individual states could prohibit abortion in the last 3 months. Before 1973, most states outlawed abortion unless the mother’s life was at stake. In *Roe* the Court noted that it was necessary to balance a *woman’s right to privacy* of her body with the rights of an unborn child. They also ruled that there was no clear evidence among medical and philosophical experts on exactly when life begins.
  + - In more recent years we have seen some limitations placed on abortion, such as the state of Pennsylvania requires a women wishing to have an abortion to first attend counseling and in 2003 Congress passed a federal law banning a particular method of late-term abortion.