Fromm Institute/Great Equal Protection Cases/Session Three
Education, Wealth, and Age


F/P: Texas financed its public schools from a combination of federal, state and
local funds. The local funds were raised by property taxation, i.e., taxes levied
on local real estate. Because the value of local property varied widely among
districts, wide disparities existed in per pupil expenditures. Edgewood, the
poorest of San Antonio’s seven school districts, and whose students were 90%
Mexican-American and six percent Black, spent $356 per pupil. By contrast,
Alamo Heights, the most affluent of the school districts, and whose students
were 18% Mexican American, one percent Black, and thus predominantly
white, spent $594 per pupil. Rodriguez and others brought a class action in
federal court on behalf of all children attending school in districts with low
property tax bases. The District Court held that this financing scheme violates
EP, and plaintiffs sought review by the USSC.

I: Whether this financing scheme is subject to strict scrutiny either because
wealth is a suspect classification or because education is a fundamental right,
i.e., whether a public school financing scheme violates EP where it spends 2/3
more per pupil in one district than another.

H: No; rational basis scrutiny applies, which this financing scheme passes.

R1: The scheme is subject to strict scrutiny if and only if it either disadvantages
a suspect class or burdens a fundamental right.

R2: Wealth is not a suspect classification for EP purposes. This scheme, in
other words, operates to the disadvantage of no suspect class.

The two distinguishing characteristics of a suspect class in earlier cases
were a complete inability to pay, and thus an absolute deprivation of the
desired benefit, neither of which obtains in this case.
R3: Education is not a fundamental right for EP purposes.

The Constitution neither explicitly nor implicitly guarantees the right to education.

While education may be related closely to fundamental rights like free speech and voting, rendering both less valuable without education, (the Court has) “never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice.”

“(T)he logical implications of limitations on appellees’ nexus theory are difficult to perceive. How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter?”

Justice Marshall, dissenting

R: “The Court … seeks to establish today that equal protection cases fall into one of two neat categories which dictate the appropriate standard of review – strict scrutiny or mere rationality. But this Court’s equal protection decisions defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of EP.”
Justice Marshall, dissenting, cont’d

R: “I would like to know where the Constitution guarantees the right to procreate, … or the right to vote in state elections, … or the right to an appeal from a criminal conviction…. The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly. Thus, it cannot be denied that interests such as procreation, the exercise of the state franchise, and access to criminal appellate processes are not fully guaranteed to the citizen by our Constitution. But these interests have nonetheless been afforded special judicial consideration in the face of discrimination because they are, to some extent, interrelated with constitutional guarantees. Procreation is now understood to be important because of its interaction with the established constitutional right of privacy. The exercise of the state franchise is closely tied to … the First Amendment. And access to criminal appellate processes enhances the integrity of the range of rights implicit in the 14th Amendment guarantee of due process of law.”


F/P: Murgia, a uniformed officer in the Massachusetts State Police, was forced to retire by law upon reaching his 50th birthday. Murgia, who was in excellent physical and mental health, argued that such compulsory retirement, based solely on age, violated EP. The District Court ruled in his favor, and the Retirement Board sought review from the USSC.

I: Whether a law requiring that police officers retire at fifty violates EP where an officer is in excellent physical and mental health.

H: No; neither trigger of strict scrutiny applies, and the law passes RB scrutiny.
R: Government employment is not a fundamental right for EP purposes.

R: Age is not a suspect classification for EP purposes.

"Rodriguez observed that a suspect class is one "saddled with such disabilities or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." While the treatment of the aged in this nation has not been wholly free of discrimination, such persons, unlike, say, those who have been discriminated against on the basis of race or national origin, have not experienced a history of purposeful unequal treatment or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities…"

(The statute) cannot be said to discriminate only against the elderly. Rather, it draws the line at a certain age in middle life. But even old age does not define a "discrete and insular" group in need of extraordinary protection from the majoritarian political process. Carolee Products. Instead, it marks a stage that each of us will reach if we live out our normal span."

R: "(T)he State’s classification rationally furthers the purpose identified by the State: Through mandatory retirement at age 50, the legislature seeks to protect the public by assuring physical preparedness of its uniformed police. Since physical ability generally declines with age, mandatory retirement at age 50 serves to remove from police service those whose fitness for uniformed work presumptively has diminished with age. This clearly is rationally related to the State’s objective. There is no indication that … (the law) has the effect of excluding from service so few officers who are in fact functionally unqualified as to render age 50 a criterion wholly unrelated to the objective of the statute."
Justice Marshall, dissenting

R: “If a statute is subject to strict scrutiny, the statute (is nearly always) struck down. It should be no surprise, then, that the Court is hesitant to expand the number of categories of rights and classes subject to strict scrutiny. ... There are classes, not now classified as “suspect,” that are unfairly burdened by invidious discrimination unrelated to the individual worth of their members.”

R: “The danger of the Court’s (use of) the rigid two-tier test is demonstrated by its efforts here. There is simply no reason why a statute that tells able-bodied police officers, ready and willing to work, that they no longer have the right to earn a living in their chosen profession merely because they are 50 years old should be judged by the same minimal standards of rationality that we use to test economic legislation that discriminates against business interests.”

R: “Even if the right to earn a living does not include the right to work for the government, it is settled that because of the importance of the interest involved, we have always carefully looked at the reasons asserted for depriving a governmental employee of his job. ... While depriving any governmental employee of his job is a significant deprivation, it is particularly burdensome when the person deprived is an older citizen. Once terminated, the elderly cannot readily find alternative employment. The lack of work is not only economically damaging, but emotionally and physically draining. Deprived of his status in the community and of the opportunity for meaningful activity, fearful of becoming dependent on others for his support, and lonely in his new-found isolation, the involuntarily retired person is susceptible to physical and emotional ailments as a direct consequence of his enforced idleness. Ample clinical evidence supports the conclusion that mandatory retirement poses a direct threat to the health and life expectancy of the retired person.”
R: "The elderly are not isolated in society, and discrimination against them is not pervasive but centered primarily in employment. The advantage of a flexible EP standard ... is that it can readily accommodate such variables."

R: "I agree that the purpose of the mandatory retirement law is legitimate, and indeed compelling. The Commonwealth has every reason to assure that its state police officers are of sufficient physical strength and health to perform their jobs. In my view, however, the means chosen, the forced retirement of officers at age 50, is so overinclusive that it must fail."