

# Race and Sex Discrimination

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# Discrimination and the Equal Protection Clause

- What is discrimination?
- How may government justify it?
- What weight should courts give government justifications for discrimination?

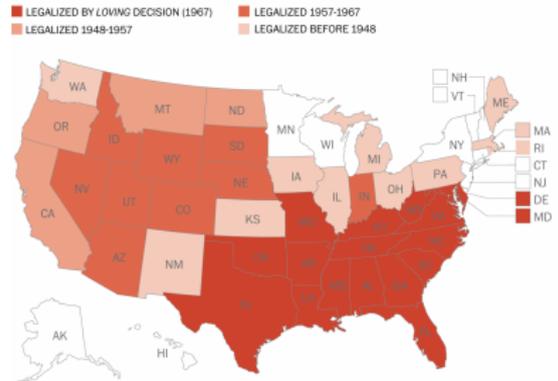
*Carolene Products*, fn #4 (1938):  
“[P]rejudice against *discrete and insular minorities* may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.”  
(emphasis added)

# Discrimination Jurisprudence: In Search of a Test

- *Shelley v. Kraemer* (1948)
- *Loving v. Virginia* (1967)
- *New York City Transit Authority v. Beazer* (1979)
- *Cleburne v. Cleburne Living Center* (1985)

## The end of laws banning interracial marriage

Shortly before the Supreme Court acted, a flurry of states overturned the laws on their own.



# The Equal Protection of the Laws in Public Education

- *Plessy v. Ferguson* (1896)
- *Missouri ex rel. Gaines v. Canada* (1938)
- *Sweatt v. Painter* (1950)
- *Brown v. Board of Education* (1954)
- *Brown v. Board of Education* (1955)



Thurgood Marshall (1908–1993)

# The *Brown* Legacy and Massive Resistance

- Southern Manifesto (1956)
- Massive Resistance
- Implementation Problems among Judges
- Civil Rights Act of 1964



Harry Byrd, Sr. (1887–1966)

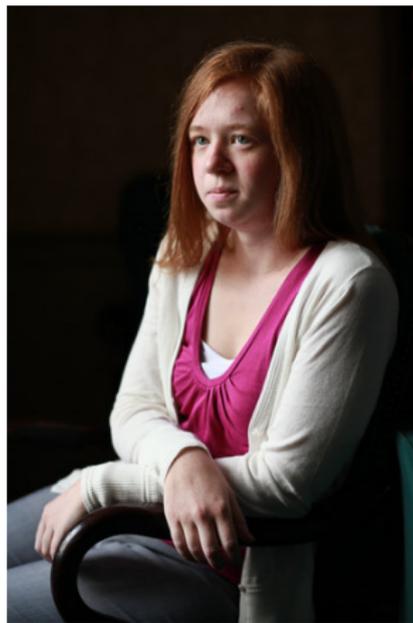
# Implementing *Brown* during and after the Warren Court

- *Browder v. Gale* (1956)
- *Swann v. Charlotte Mecklenburg BoE* (1971)
- *Milliken v. Bradley* (1974)



# Government Attempts to Correct Past Discrimination

- 2 types of programs: affirmative action and set-asides
- *Regents of University of California v. Bakke* (1978)
- *Adarand Constructors, Inc. v. Peña* (1995)
- *Grutter v. Bollinger* and *Gratz v. Bollinger* (2003)
- *PICS v. Seattle School District No. 1* (2007)
- *Fisher v. University of Texas II* (2016)



Abigail Fisher

# Equal Protection and Gender Discrimination

- *Bradwell v. Illinois* (1873)
- *Reed v. Reed* (1971)
- *Frontiero v. Richardson* (1973)
- *Craig v. Boren* (1976)
- *United States v. Virginia* (1996)
- *Rostker v. Goldberg* (1981)



The Notorious R.B.G.