ECONOMIC DISCRIMINATION The Court has been almost invariably inhospitable to claims that a law regulating economic or business activity violates the EQUAL PROTECTION CLAUSE simply because it burdens one business or industry more than another. A New York City ordinance banned advertisements on vehicles, except for those advertising the vehicle owner's business. A truck rental company could not rent space on the back of its trucks to advertise beer, but a beer delivery truck could. In 1949 the Court upheld the ordinance, concluding that it was rational for the city to fear greater danger in unrelated advertising than in the smaller volume of related advertising.[1938] An Oklahoma law regulating eye care forbade opticians from placing old lenses in new frames without a prescription from an ophthalmologist or optometrist, but it exempted sellers of ready-to-wear glasses from this requirement. The Court in 1955 rejected a claim that this protectionist legislation unconstitutionally discriminated against opticians.[2551]

In 1961 the Court rejected a similar challenge to the Maryland SUNDAY CLOSING LAWS, which prohibited certain kinds of retail sales on Sundays but permitted many others. Chief Justice Earl Warren said that the states have wide discretion to enact laws that "affect some groups of citizens differently than others," even if the laws "result in some inequality." The Court declined to set aside any law as long as "any state of facts reasonably may be conceived to justify it."[1493] And in a 1976 case the Court sustained a New Orleans ordinance expelling pushcart vendors from the French Quarter, except for two companies that had continuously operated their carts from 1963 to 1972. The Court said that the provision "rationally furthers" the city's purpose in preserving the appearance and custom that attract tourists to the French Quarter.[1667] The Court has given no hint that it will alter its less-than-searching scrutiny of such legislation, although in 1989 it did strike down West Virginia's method of taxing property. The state constitution requires property to be taxed uniformly in proportion to its value. But in the mid-1970s state assessors began to tax recently sold property on the basis of inflated purchase prices without bothering to reassess property that had not been sold. As a result, the Allegheny Pittsburgh Coal Company was taxed at a rate up to thirty-five times that of comparable neighboring property. The justices unanimously held that "intentional systematic undervaluation" of the surrounding property was constitutionally irrational.[45]

ECONOMIC DUE PROCESS Economic due process is the now-discredited judicial doctrine espoused from the 1890s to the mid-1930s that the DUE PROCESS Clauses of the FIFTH and FOURTEENTH AMENDMENTs permit courts to strike down laws impinging on private property interests and contractual relations. During that period, the Supreme Court itself struck down some two hundred state and federal laws. The concept of economic due process had been soundly rejected in 1873 in the *Slaughter-House Cases,* with the Court denying that due process prevented New Orleans from creating a monopoly in the slaughtering business. And in the *Granger Cases* the Court rejected a due process challenge to an Illinois law regulating the rates of grain elevators. To the objection that a state's power over rates may be abused, Chief Justice Morrison R. Waite retorted, "[T]hat is no argument against its existence. For protection against

much a right against state government as against the federal government.[883] The Court also very occasionally engaged in a noneconomic form of substantive due process, in holding that the states could not infringe on the people's liberty in ways nowhere mentioned in the Constitution. For example, in 1923 the Court said that Nebraska violated a parent's right to liberty in banning the teaching of foreign languages in the schools.[1525] From this initial ruling on the fundamental right to PRIVACY, the Court forty years later would infer a constitutional right to ABORTION—all under the mantle of due process.

Yet another due process arena has been the procedural claims of civil litigants. For a century the Court has been developing a jurisprudence of HEARING rights, the situations in which the government must grant a claimant or civil defendant the right to be heard and the forms which the hearings must take. Beginning in 1970, a major issue has been whether legal ENTITLEMENTS to government benefits—welfare, unemployment, public jobs—are protected by due process, so that the government must hold a hearing before revoking a benefit, firing an employee, or otherwise injuring a citizen in some fundamental way.

Today economic due process is almost extinct; substantive due process in the social arena, mainly as a protection of privacy interests, is alive but under attack; and PROCEDURAL DUE PROCESS is a staple of the courts.

See also: APPOINTMENT AND REMOVAL POWER; DEATH PENALTY; FORFEITURE; FREEDOM OF CONTRACT; HABEAS CORPUS; INCORPORATION DOCTRINE; NATURAL LAW; PROCEDURAL RIGHTS OF CRIMINAL DEFENDANTS; PROCESS RIGHTS; PROCESS THAT IS DUE; PUNITIVE DAMAGES; REASONABLE DOUBT; SENTENCING; VAGUENESS.

DURATIONAL RESIDENCY REQUIREMENTS In 1969 the Supreme Court reaffirmed the fundamental right of all Americans to travel interstate. The laws prompting this declaration excluded newly arrived residents of Pennsylvania, Connecticut, and the District of Columbia from public welfare programs, which established one-year waiting periods to deter influxes of indigents seeking higher benefits. Applying the STRICT SCRUTINY test, the Court said that deterring migration from one state to another is a constitutionally impermissible purpose. The states sought to justify the distinction between new and old residents by pointing to the tax contribution that old residents had made. This reason was also illegitimate, since it would permit the state to deprive new residents of police and fire protection and deny them access to public parks, libraries, and the like. The states simply may not create classes of citizenship, Justice William Brennan said for the 6–3 majority.[2132] Since then the Court has struck down waiting periods, or durational residency requirements, in a number of cases. The states may not impose a one-year wait on the right to vote;[670] a fifty-day period is permissible, though, to permit the states to prepare "accurate voter lists."[1438] The Court has also struck one-year waiting periods for receiving free nonemergency medical care.[1513] However, not all waiting periods have fallen to the judicial axe. To avoid becoming a "divorce mill," Iowa law prohibits anyone newly arriving in the state from filing for divorce against an out-of-state spouse; the Court upheld the one-year waiting requirement.[2196] It also upheld a state law requiring one-year residence for a person to become eligible for state college tuition benefits.[2239]

See also: FUNDAMENTAL INTERESTS, RIGHTS, AND PRIVILEGES; TRAVEL, RIGHT TO.

DURING GOOD BEHAVIOR Federal judges hold lifetime appointments by virtue of Art. III-§1, which says that they "shall hold their offices during good behavior." This clause applies to judges of ARTICLE III COURTS only, and not to administrative law judges or others appointed to nonjudicial courts. Judges are subject to impeachment should they behave in some "bad" manner. Although the term is not defined, by long historical practice following the Senate's failure to convict Justice Samuel Chase in 1805, judges may be removed only for criminal or corrupt behavior, not for their judicial views.

See also: IMPEACHMENT OF GOVERNMENT OFFICIALS.

DUTY OF GOVERNMENT TO ACT, *see:* government, affirmative obligations of

DUTY OF TONNAGE, *see:* tonnage duties

abuses by legislatures the people must resort to the polls, not to the courts." But during the next twenty years the Court edged closer to a view of itself as the people's protection against abuses by legislatures, as the justices became imbued with laissez-faire economic notions. Although the Court sustained laws involving businesses AFFECTED WITH A PUBLIC INTEREST and laws aimed at known public dangers, such as intoxication,[1607] the justices increasingly took the view that they were entitled to second-guess the legislature's judgment about evils that needed correcting, if the evils affected private property and business enterprise.

Not every law purporting to promote "the public morals, the public health, or the public safety" is necessarily what the legislature makes it out to be, and the Court would be obliged "to look at the substance of things."[1607] In 1898 it sustained a Utah law regulating working conditions of miners[1073] because it knew that mining was hazardous, but in 1905 it struck down a New York law similarly regulating working conditions of bakers because it knew that baking was merely an "ordinary" occupation.[1353] Many of the Court's economic due process decisions, such as that of the bakers, rested on a FREEDOM OF CONTRACT theory, but economic due process was not confined to laws regulating hours, wages, and working conditions. The Court also struck out at "confiscatory" laws regulating railroad and other rates. The *Granger Cases* had said that the Court did not have the power to assess the reasonableness of rates, and as late as 1888 the Court adhered to that view.[657] But Chief Justice Waite had warned in 1886 that the power to regulate was not unlimited and that "under pretence of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward."[1935] Finally, in 1890 the Court did an about-face,[453] holding that it could review rates. In 1898 it said that rates must not only be reasonable but guarantee the business a "fair return" on its investment.[2185] For more than forty years the Court was entangled in rate cases, from which it managed to disengage itself only in 1944.[747] A number of other economic regulations were felled by the due process axe—laws curbing entry of entrepreneurs into an industry,[9, 1670] laws governing corporate ownership,[1339] and laws fixing prices of commodities not "affected with a public interest."[2543]

The era of economic due process finally began to wane in 1934, when a 5–4 majority upheld a New York law regulating the price of MILK.[1652] Justice Owen Roberts declared that the states are "free to adopt whatever economic policy may reasonably be deemed to promote public welfare." The courts "are without authority" to override the legislature's policy choices "[i]f the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory." In 1937 the Court, overruling prior decisions, sustained a minimum-wage law.[2506] The following year, Justice Harlan F. Stone announced the RATIONAL BASIS OR RELATIONSHIP TEST: a law is constitutional if there is any rational basis to suppose that it will accomplish permissible legislative goals.[405] Economic due process was dead.

See also: DUE PROCESS and cross-references listed there.

ECONOMIC LIBERTIES, *see:* economic due process

ECONOMIC REGULATION The states and the federal government have broad power to regulate economic affairs. Article I-§8 grants a cluster of related powers—to tax, borrow, control the currency, and regulate commerce—that together give Congress sweeping control over business and the economy, not merely directly but by creating agencies to administer public policies. To the extent that federal legislation and regulation do not preempt, the states retain independent power to create and govern corporations and to regulate in the interest of public health, safety, and well-being. Until the New Deal, the Court had discerned many constitutional impediments to one or another form of economic legislation. Today those impediments have practically vanished. The power is potent and pervasive. The place to remedy foolhardy economic legislation, as the Court observed long ago, is not the courtroom but the voting booth.[1612]

See also: COMMERCE CLAUSE; DUE PROCESS; and cross-references listed under each.

EDUCATION, BILINGUAL The Court has never found a constitutional right of students to be taught in their own language, but it did hold that under federal law a school district may not simply throw non-English-speaking students into regular classrooms, where they could not understand a word being said. Students must be

provided with foreign language instruction or be taught to speak English.[1295]

EDUCATION, COMPULSORY State compulsory education laws do not generally violate the Constitution. But the states may not force students to enroll in public schools. In *Pierce v. Society of Sisters,* the Court in 1925 struck down an Oregon law that required children between eight and sixteen years of age to attend public school. The Court held that DUE PROCESS bars the states from refusing to permit parents to enroll their children in parochial or other private schools. However, the states may require that to qualify as legal alternatives to public education, the private schools must meet certain standards and teach certain courses. In *Wisconsin v. Yoder* the Court held that FREEDOM OF RELIGION for Amish parents requires Pennsylvania to make an exception to its requirement that children attend school beyond the eighth grade. This exception to the general rule is narrow, since it is applicable only to long-established organized groups that can demonstrate commitment to an established and religiously rooted way of life requiring them to withdraw from secular society. An individual child, or an entire family, that announces a newfound conviction against secondary education is unlikely to prevail against the truant officer.

EDUCATION, FOREIGN LANGUAGES AND, ***see:*** **schools, foreign languages in**

EDUCATION, RIGHT TO Despite its signal importance, education is not a fundamental constitutional right. In BROWN V. BOARD OF EDUCATION the Supreme Court said that "education is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship. . . . [I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." But the Court did not hold that states *must* offer public education. Rather, the Court said that "[s]uch an opportunity, *where the state has undertaken to provide it,* is a right which must be made available to all on equal terms." By "equal" the Court meant free of officially imposed segregation. But a state is not required to spend equally on each student; the states may constitutionally finance the schools through local property taxes, even though that method of financing results in school districts with greater and lesser amounts to spend per pupil.[2065] But the states may not exclude certain groups of children from the classroom by requiring them to pay tuition, if others need not pay. The Court struck down a Texas law that barred the children of illegal aliens from attending free public schools unless they paid tuition.[1879] Once the states have created a system of compulsory public schooling, the right to attend school is of constitutional significance, the Court has ruled, and a school may not arbitrarily suspend a student. Before a school can suspend or expel any student, it must hold some kind of HEARING to determine whether the reasons for doing so are valid.[912]

See also: EDUCATION, BILINGUAL; SEGREGATION AND INTEGRATION; TUITION GRANTS AND VOUCHERS.

EFFECTIVE ASSISTANCE OF COUNSEL, ***see:*** **counsel, assistance of**

EFFECTS ON COMMERCE, ***see:*** **commerce, effects on**

EFFICIENCY In the *Legislative Veto Case,* Chief Justice Warren E. Burger noted that the "fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution. Convenience and efficiency are not the primary objectives—or the hallmarks—of democratic government." Likewise, in one of the early SEX DISCRIMINATION cases, the Court held that a law may not classify on the basis of sex merely to promote "administrative convenience"—for example, to save the time and expense in pension and allowance cases of determining whether a person was truly dependent on his or her spouse.[818] On the other hand, the Court declined to incorporate "jot for jot"[669] all federal guarantees of the BILL OF RIGHTS into the FOURTEENTH AMENDMENT; for reasons of "judicial economy" it approved a system of having nonlawyer clerks issue arrest warrants for violations of municipal ordinances to be tried in local courts, a system that would not be permitted in federal prosecutions.[2130] In various other cases the Court has paid particular heed to the balance between constitutional rights and the resulting drain on the state's resources. It upheld the trial of misdemeanors before nonlawyer judges in rural areas because of the limited resources available.[1718] For reasons of administrative efficiency it has also upheld