

Constitutional & Historical Context

Precedent is a previous legal decision or ruling that serves as an example and helps guide future cases with similar facts or circumstances. A key part of precedent is “*stare decisis*” which emphasizes that courts should follow established precedent to create consistency in the legal system.



Portrait of Myra Bradwell, courtesy of the Supreme Court of the United States

SLAUGHTER-HOUSE CASES (1873)

In 1873, Louisiana passed a law restricting slaughterhouse operations in New Orleans to a single business. A group of butchers came together and argued that their Thirteenth and Fourteenth Amendment rights were being violated because they would lose their jobs. The Supreme Court held that the butchers’ rights were not violated, arguing that the Thirteenth and the Fourteenth Amendment did not guarantee general economic freedoms for all citizens. This very narrow interpretation of the Fourteenth Amendment limited the scope of the Equal Protection Clause.

One hundred years later, in *Frontiero v. Richardson* (1973), The Court interpreted the Equal Protection Clause differently and overturned a federal law that discriminated based on gender. This holding signified a shift away from the restrictive approach used in the *Slaughter-House* cases and expanded constitutional protections to include sex-based discrimination.

BRADWELL V. ILLINOIS (1873)

“**The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother...**”

- Myra Bradwell sued for her right to practice law in the state of Illinois after her application for an Illinois law license was denied.
- The Supreme Court held that the Fourteenth Amendment’s Privileges and Immunities Clause could not be interpreted to include the right to practice law, citing the *Slaughter-House Cases* (1873).
 - In concurring opinions, members of the Court described their contemporary views on the social roles of women.
- The decision of *Bradwell v. Illinois* (1873) reflects the historical perceptions about women’s roles in society, which remained unchallenged until the twentieth century.

WOMEN’S RIGHTS IN THE 1970S

Under law, the concept of **coverture** deemed a married woman’s legal status as “covered” under her husband’s legal identity. Although women’s rights evolved over time, women’s legal rights during the 1970s, the historical period of *Frontiero v. Richardson*, were still limited. Women could not have their own credit cards or be admitted into military academies. Married women serving in the military could not provide their spouses housing and insurance benefits without proof that they paid for at least 50% of their living expenses. Married military men were under no such obligation and their wives received the benefit whether they needed it or not.

REED V. REED (1971)

The 1971 case of *Reed v. Reed* is a historical and influential decision regarding discrimination between men and women. The case involved a divorced couple who both sought to be named the administrator of their late son’s estate. According to Idaho probate law, the father were named automatically. Mrs. Reed challenged by the law. The Supreme Court struck down the Idaho law that gave preference to males over females. This case was the first time the Supreme Court ruled a law discriminating on the basis of sex is unconstitutional. The Court justified this decision by explaining that this law violated the Equal Protection Clause of the Fourteenth Amendment. *Reed v. Reed* is a significant guide that helped lead the way to more protection against gender discrimination. It served as key precedent for *Frontiero v. Richardson*, which also pushed for more gender equality.

THE CONSTITUTION

5th Amendment

“...nor be deprived of life, liberty, or property, without due process of law. ”

14th Amendment

“...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

RATIONAL BASIS & STRICT SCRUTINY:

- Rational Basis and Strict Scrutiny are tests used by the Supreme Court to determine if a case of discrimination is JUSTIFIED under the constitution.
- **Rational Basis Scrutiny** requires the government to provide a valid reason for discrimination in specific cases.
 - For instance, age restriction for drivers’ licenses, voting, and purchasing and consuming alcohol are all acceptable due to legitimate to safety concerns for citizens.
- **Strict Scrutiny** requires the government needs to prove a compelling interest (strong evidence) that discrimination is necessary or “least inhibitive,” especially when “**suspect classes**” like race, religion, and nationality are involved.

SELECTIVE INCORPORATION:

- The **Equal Protection Clause** of the Fourteenth Amendment (above) was originally interpreted as applying exclusively to formerly enslaved people, but in the late nineteenth and early twentieth centuries the Supreme Court began to interpret it more expansively, **including equal protections based on sex**.
- **Doctrine of Selective Incorporation:** the case-by-case application of the Bill of Rights to the states through the Fourteenth Amendment, including the Fifth Amendment’s Due Process Clause and the Fourteenth Amendment’s Equal Protection Clause.



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