

states' role in defining marriage, instead focusing on state approval of same-sex marriages as conferring a "dignity and status of immense import."²⁰¹⁹

The Court in *Windsor* found that section 3 of DOMA was motivated by improper animus or purpose, concluding that "no legitimate purpose overcomes the purpose and effect to disparage and injure those whom the State, by its marriage laws, sought to protect in personhood and dignity."²⁰²⁰ "When the State used its historic and essential authority to define the marital relation in this way, its role and its power in making the decision enhanced the recognition, dignity, and protection of the class in their own community." DOMA, on the other hand "[sought] to injure the very class [the state] seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government."²⁰²¹ The opinion, however, failed to address whether future decisions regarding differential treatment based on sexual orientation would continue to be resolved under traditional rational basis scrutiny, or whether a more probing standard would be utilized.

Poverty and Fundamental Interests: The Intersection of Due Process and Equal Protection

Generally.—Whatever may be the status of wealth distinctions *per se* as a suspect classification,²⁰²² there is no doubt that when the classification affects some area characterized as or considered to be fundamental in nature in the structure of our polity—the ability of criminal defendants to obtain fair treatment throughout the system, the right to vote, to name two examples—then the classifying body bears a substantial burden in justifying what it has done. The cases begin with *Griffin v. Illinois*,²⁰²³ surely one of the most seminal cases in modern constitutional law. There, the state

²⁰¹⁹ 570 U.S. ___, No. 12–307, slip op. at 18.

²⁰²⁰ 570 U.S. ___, No. 12–307, slip op. at 25–26.

²⁰²¹ 570 U.S. ___, No. 12–307, slip op. at 18. Because the case was decided under the due process clause of the Fifth Amendment, which comprehends both substantive due process and equal protection principles (as incorporated through the Fourteenth Amendment), this statement leaves unclear precisely how each of these doctrines bears on the presented issue. Justice Scalia, in dissent, points to the majority's assertion that although the "equal protection guarantee of the Fourteenth Amendment makes [the] Fifth Amendment [due process] right all the more specific and all the better understood and preserved . . . the Fifth Amendment itself withdraws from Government the power to degrade or demean in the way this law does." *Id.* at 25. (ellipses added). According to Justice Scalia, this would indicate that the Equal Protection Clause as incorporated in the Due Process Clause is not the basis for the majority's holding. *Id.* at 16 (Scalia, J., dissenting).

²⁰²² *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

²⁰²³ 351 U.S. 12 (1956).