

inequality.<sup>1529</sup> A special highway assessment against railroads based on real property, rolling stock, and other personal property is unjustly discriminatory when other assessments for the same improvement are based on real property alone.<sup>1530</sup> A law requiring the franchise of a railroad to be considered in valuing its property for apportionment of a special assessment is not invalid where the franchises were not added as a separate personal property value to the assessment of the real property.<sup>1531</sup> In taxing railroads within a levee district on a mileage basis, it is not necessarily arbitrary to fix a lower rate per mile for those having fewer than 25 miles of main line within the district than for those having more.<sup>1532</sup>

### Police Power Regulation

**Classification.**—Justice Holmes’ characterization of the Equal Protection Clause as the “usual last refuge of constitutional arguments”<sup>1533</sup> was no doubt made with the practice in mind of contestants tacking on an equal protection argument to a due process challenge of state economic regulation. Few police regulations have been held unconstitutional on this ground.

“[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State’s objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.”<sup>1534</sup> The Court has made it clear that only the totally irrational classification in the economic field will be struck down,<sup>1535</sup> and it has held that legislative classifications that im-

<sup>1529</sup> *Kansas City So. Ry. v. Road Improv. Dist. No. 6*, 256 U.S. 658 (1921); *Thomas v. Kansas City So. Ry.*, 261 U.S. 481 (1923).

<sup>1530</sup> *Road Improv. Dist. v. Missouri Pacific R.R.*, 274 U.S. 188 (1927).

<sup>1531</sup> *Branson v. Bush*, 251 U.S. 182 (1919).

<sup>1532</sup> *Columbus & Greenville Ry. v. Miller*, 283 U.S. 96 (1931).

<sup>1533</sup> *Buck v. Bell*, 274 U.S. 200, 208 (1927).

<sup>1534</sup> *McGowan v. Maryland*, 366 U.S. 420, 425–26 (1961).

<sup>1535</sup> *City of New Orleans v. Dukes*, 427 U.S. 297 (1976). Upholding an ordinance that banned all pushcart vendors from the French Quarter, except those in continuous operation for more than eight years, the Court summarized its method of decision here. “When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. . . . Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude