

Clause on several grounds. On the basis of the right infringed by the limitation, the Court saw no rational basis for the state to distinguish between married and unmarried persons. Similarly, the exemption from the prohibition for purposes of disease prevention nullified the argument that the rational basis for the law was the deterrence of fornication, the rationality of which the Court doubted in any case.¹⁵⁷⁵ Also denying equal protection was a law affording married parents, divorced parents, and unmarried mothers an opportunity to be heard with regard to the issue of their fitness to continue or to take custody of their children, an opportunity the Court decided was mandated by due process, but presuming the unfitness of the unmarried father and giving him no hearing.¹⁵⁷⁶

Punishment of Crime.—Equality of protection under the law implies that in the administration of criminal justice no person shall be subject to any greater or different punishment than another in similar circumstances.¹⁵⁷⁷ Comparative gravity of criminal offenses is, however, largely a matter of state discretion, and the fact that some offenses are punished with less severity than others does not deny equal protection.¹⁵⁷⁸ Heavier penalties may be imposed upon habitual criminals for like offenses,¹⁵⁷⁹ even after a pardon for an earlier offense,¹⁵⁸⁰ and such persons may be made ineligible for parole.¹⁵⁸¹ A state law doubling the sentence on prisoners attempting to escape does not deny equal protection by subjecting prisoners who attempt to escape together to different sentences depending on their original sentences.¹⁵⁸²

A statute denying state prisoners good-time credit for pre-sentence incarceration, but permitting those prisoners who obtain bail or other release immediately to receive good-time credit for the entire period that they ultimately spend in custody, good time count-

¹⁵⁷⁵ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

¹⁵⁷⁶ *Stanley v. Illinois*, 405 U.S. 645, 658 (1972).

¹⁵⁷⁷ *Pace v. Alabama*, 106 U.S. 583 (1883). See *Salzburg v. Maryland*, 346 U.S. 545 (1954), sustaining law rendering illegally seized evidence inadmissible in prosecutions in state courts for misdemeanors but permitting use of such evidence in one county in prosecutions for certain gambling misdemeanors. Distinctions based on county areas were deemed reasonable. In *North v. Russell*, 427 U.S. 328 (1976), the Court sustained the provision of law-trained judges for some police courts and lay judges for others, depending upon the state constitutional classification of cities according to population, since as long as all people within each classified area are treated equally, the different classifications within the court system are justifiable.

¹⁵⁷⁸ *Collins v. Johnston*, 237 U.S. 502, 510 (1915); *Pennsylvania v. Ashe*, 302 U.S. 51 (1937).

¹⁵⁷⁹ *McDonald v. Massachusetts*, 180 U.S. 311 (1901); *Moore v. Missouri*, 159 U.S. 673 (1895); *Graham v. West Virginia*, 224 U.S. 616 (1912).

¹⁵⁸⁰ *Carlesi v. New York*, 233 U.S. 51 (1914).

¹⁵⁸¹ *Ughbanks v. Armstrong*, 208 U.S. 481 (1908).

¹⁵⁸² *Pennsylvania v. Ashe*, 302 U.S. 51 (1937).