tion, so that all persons similarly circumstanced shall be treated alike." [1389] Use of the latter standard did in fact result in some invalidations.[1390]

But then, coincident with the demise of substantive due process in the area of economic regulation,[1391] the Court reverted to the former standard, deferring to the legislative judgment on questions of economics and related matters; even when an impermissible purpose could have been attributed to the classifiers it was usually possible to conceive of a reason that would justify the classification.[1392] Strengthening the deference was the recognition of discretion in the legislature not to try to deal with an evil or a class of evils all within the scope of one enactment but to approach the problem piecemeal, to learn from experience, and to ameliorate the harmful results of two evils differently, resulting in permissible over- and under-inclusive classifications.[1393]

In recent years, the Court has been remarkably inconsistent in setting forth the standard which it is using, and the results have

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[1389] 253 U.S. at 415. *See also* Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573 (1910).

[1390] *E.g.*, F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) (striking down a tax on the out-of-state income of domestic corporations that did business in the state, when domestic corporations that engaged only in out-of-state business were exempted); Stewart Dry Goods Co. v. Lewis, 294 U.S. 550 (1935) (striking down a graduated tax on gross receipts as arbitrary because it was insufficiently related to net profits); Mayflower Farms v. Ten Eyck, 297 U.S. 266 (1936) (striking down a milk-price-control regulation that distinguished between certain milk producers based on their dates of entry into the market).

[1391] In Nebbia v. New York, 291 U.S. 502, 537 (1934), speaking of the limits of the Due Process Clause, the Court observed that "in the absence of other constitutional restrictions, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare."

[1392] *E.g.*, Tigner v. Texas, 310 U.S. 141 (1940) (exclusion of agriculture and livestock from price-fixing statute justified by heightened concerns surrounding concentrations of power in other industries); Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947) (where apprenticeship was a requirement to obtain a river pilot license, allowing river pilots to apprentice mostly friends and relatives justified upon desire to create a cohesive piloting community); Goesaert v. Cleary, 335 U.S. 464 (1948) (court will not question legislature's determination that allowing women to bartend gives rise to moral and social problems, but that such problems are relieved when a barmaid's husband or father is the owner of the bar); Railway Express Agency v. New York, 336 U.S. 106 (1949) (upholding ban on advertising on the side of delivery trucks except by the business employing the truck, as legislature could determine that the nature and extent of the distraction presented by the latter advertising did not present the same threat to traffic); McGowan v. Maryland, 366 U.S. 420 (1961) (allowing the sale of certain products on Sunday, while prohibiting the sale of others, does not exceed a state's wide discretion to affect some groups of citizens differently than others).

[1393] Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955); McDonald v. Board of Election Comm'rs, 394 U.S. 802, 809 (1969); Schilb v. Kuebel, 404 U.S. 357, 364–65 (1971); City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 466 (1981).