EQUAL PROTECTION OF THE LAWS:

Suspect Class, Strict Scrutiny and the Court

When laws are challenged under the equal protection clause, the Supreme Court scrutinizes their purpose and operation by different tests, according to the type of classification laid out in the law. The Court pays the closest attention and subjects the law to the most searching scrutiny when it encounters what it has termed a suspect class. A class is suspect if the legislature or administrative agency has fastened on an innate or immutable characteristic that a person has no power to change, such as race or ethnic origin. The concept of suspect class was first enunciated in 1944 in the Japanese Exclusion and Relocation case. In Hugo Black’s words, “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect.” Since the 1950s the Court has held that legal classifications based on race, national or ethnic origin, or alienage are suspect and are subject to strict scrutiny. With rare exceptions (mostly Affirmative Action cases) no classification based on race or national origins has been upheld in nearly half a century.

As interpreted today, the equal protection clause measures governmental policies using a three-part scale. 1) At the high-end are laws based on a suspect class---laws that classify by race and national origin. Subjecting them to strict scrutiny means that the Court will strike them down unless they serve a “legitimate and substantial or compelling interest and are necessary to achieve the legislature’s purpose.” Other types of laws that must meet strict scrutiny are those that affect a fundamental interest, such as the right to vote. 2) The Court has refused to view sex as a suspect class, somewhat surprisingly since sex is no less immutable than race. Instead, since the early 1970s it has seen sex-based classifications as quasi-suspect and tested their constitutional validity by a heightened scrutiny standard. Under this test, a law will fail unless it serves “important governmental objectives and is substantially related to achievements of those objectives” Another class accepted as quasi-suspect is illegitimacy but the Court has refused to find mental retardation, age, or poverty classifications to be quasi-suspect. 3) At the low end of judicial scrutiny are all other laws. If a law does not classify on some forbidden basis, it will be upheld unless it is “wholly irrational or its means are not reasonably related to its ends.”

Perhaps the best way to understand this variable interpretation of the meaning of equality and equal protections is to acknowledge that there probably cannot be a rigid rule of absolute equality in laws since by definition almost all laws classify and draw lines.

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