

Module 7: Civil Rights and Civil Liberties

Topic 2 Content: Reasonable Distinction

Introduction



Glover Mint: Welcome to another episode of WUSG News. Many of the advancements made against discrimination in America have been achieved in the federal courts. Judges have used a specific part of the Fourteenth Amendment, known as the equal protection clause, to expand equal protection of the law. Here to tell us more is constitutional lawyer, Jeanne Marcel.

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The Judgment Zone

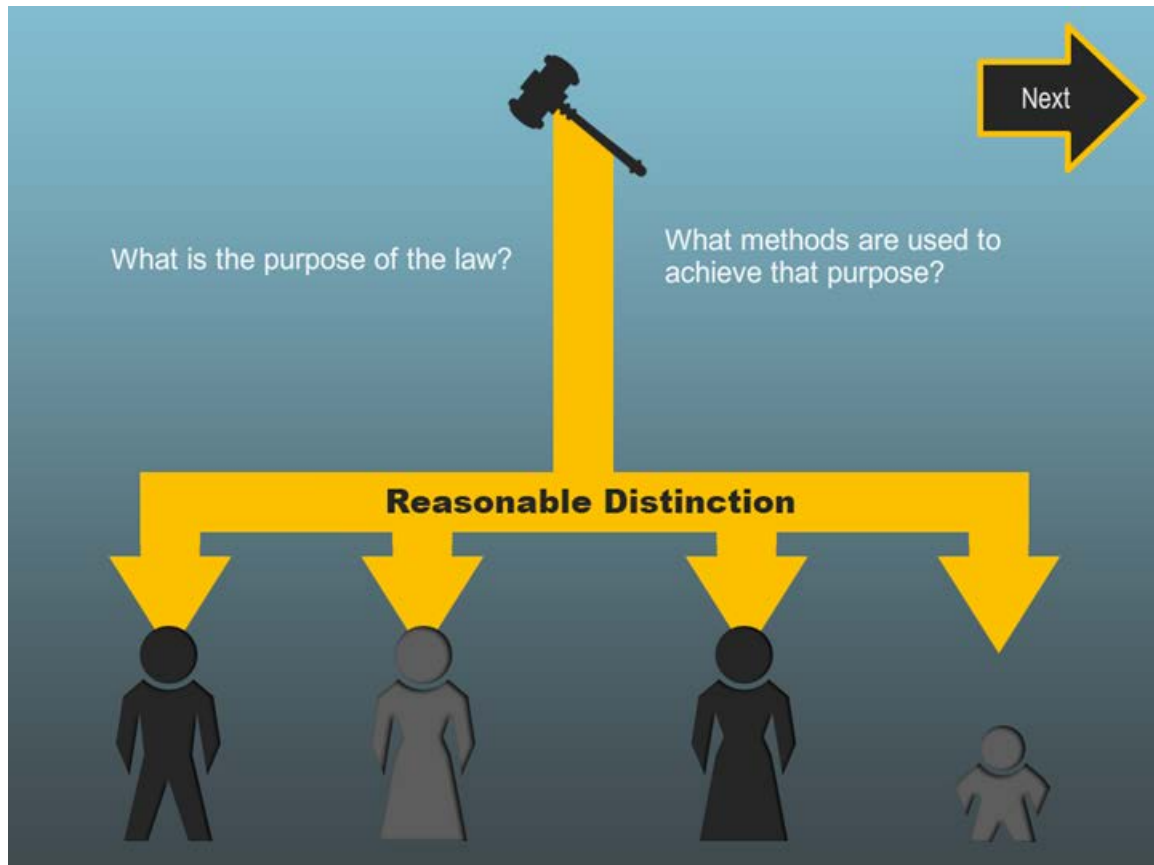


Jeanne Marcel: Hello and welcome to *The Judgment Zone*. The equal protection clause refers to a portion of the Fourteenth Amendment, which says that “No State shall...deny to any person within its jurisdiction the equal protection of the laws.” This clause specifically references the states because it was written after the Civil War to protect former slaves from discrimination by state governments. The equal protection clause requires states to apply the law equally to every citizen. From the ratification of the Fourteenth Amendment in 1868 through the present day, the equal protection clause has become a major tool for defending civil rights; however, the promise of equal protection under the law does not guarantee that everyone will be treated exactly the same.

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Reasonable Distinction



Jeanne Marcel: When I say that there is no guarantee that everyone will be treated the same, I am referring to the idea of reasonable distinction. Reasonable distinction means that there are cases where it is completely legal and reasonable to distinguish between groups of people, and to apply the law in a different manner depending on the group. In order to determine if reasonable distinction in a law is justified, the courts use one of three different tests. Each one of these tests considers two factors: what is the purpose of the law and what methods are used to achieve that purpose. The main difference between the tests is the degree of scrutiny applied to these questions. To clarify what this means, let's take a look at the three tests.

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Rational Basis Test



Jeanne Marcel: The first test used to determine if laws violate the equal protection clause is the rational basis test. This is the easiest test to apply to a law in order to see if the distinctions made between groups are fair. As we said, there are two factors that courts weigh in each of these tests: what is the purpose of the law and what methods are used to achieve that purpose. For the rational basis test, courts ask if there is a legitimate purpose for the law and if the methods used to achieve that purpose are rational.

As an example, states have laws that establish a minimum age for purchasing and consuming alcohol. These laws make a clear distinction between people under the age of twenty-one and people who are twenty-one or older. Under the rational basis test, courts ask if there is a legitimate purpose for the law, and if the methods used to achieve it are rational. Courts agree the people below a certain age should not be able to purchase or consume alcohol, to ensure their safety and the safety of the public; therefore, it is constitutional in this case to treat people below twenty-one differently than others.

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Intermediate Scrutiny Test



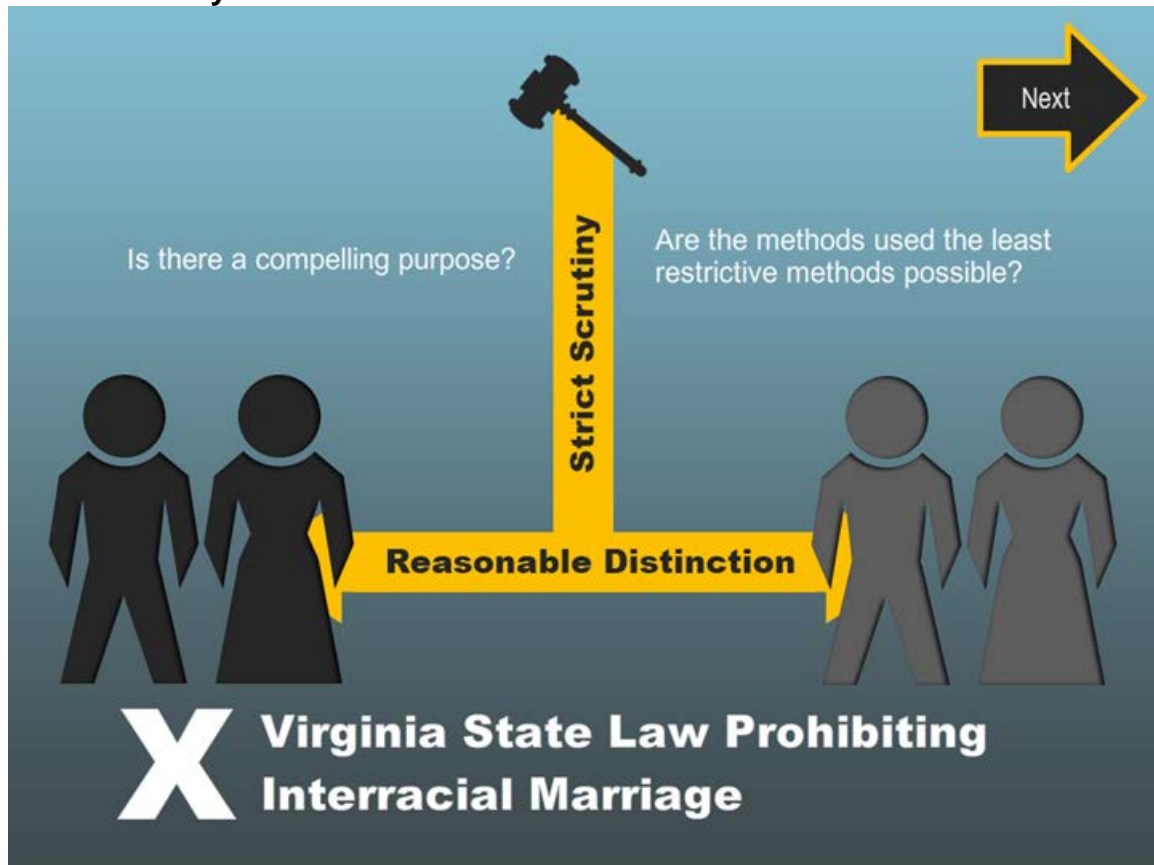
Jeanne Marcel: The intermediate scrutiny test is the second test used to determine if laws violate the equal protection clause. This test has a higher standard than the rational basis test and is usually applied in cases involving gender. Using the intermediate scrutiny test, the court asks if there is an important purpose for the law. Next, it asks if the methods used under the law are substantially related to the important purpose.

For an example of the intermediate scrutiny test in action, we will look at the case of *United States v. Virginia* (1996). The Virginia Military Institute (VMI) was a public university that had an official admission policy of only accepting male applicants. At the time, it was the last all male public university in the United States. VMI could not show an important purpose for the exclusion of women from its admissions, so the Supreme Court struck down the policy. VMI was left with the choice to either admit women or become a private institution that did not receive public funding. After some consideration, the Board of Visitors at VMI voted to admit women.

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Strict Scrutiny



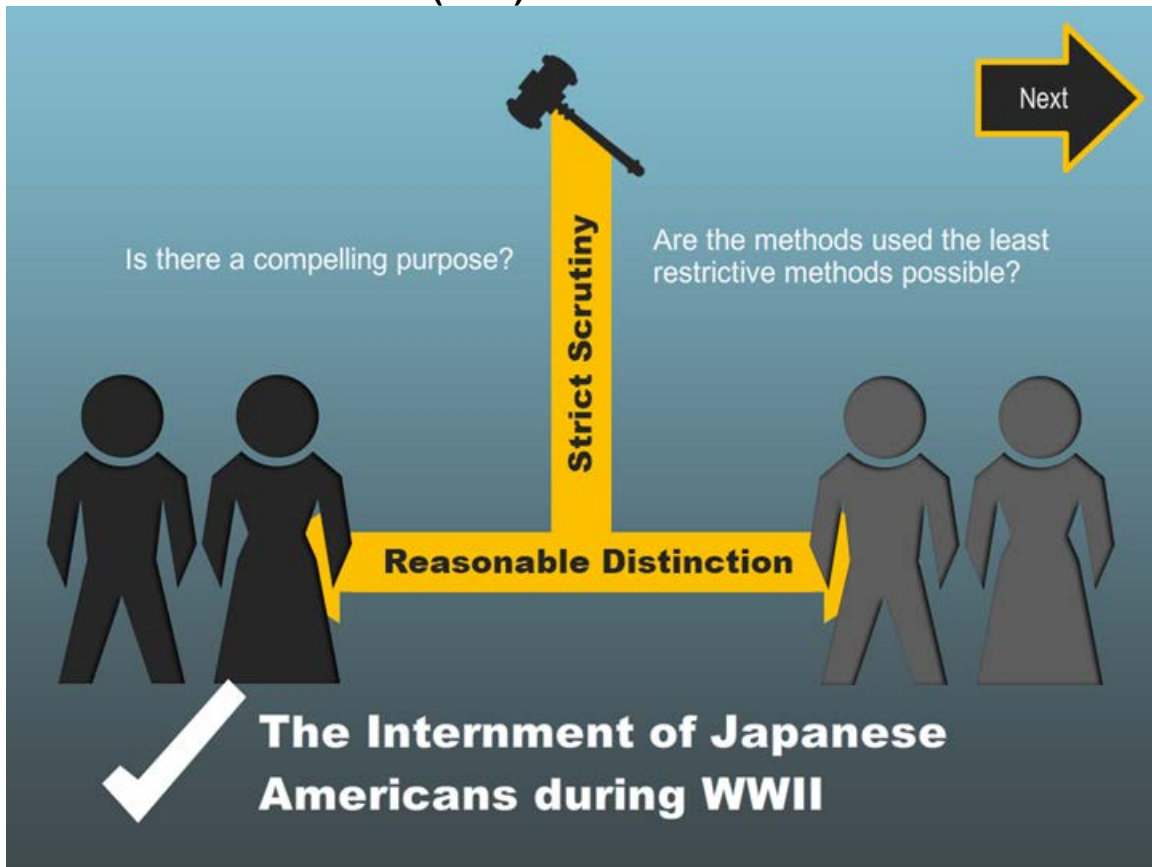
Jeanne Marcel: The strict scrutiny test is the highest standard applied to laws that legally distinguish between two groups of people. This test is applied when a fundamental right is being restricted or when there is a classification being made based on race or national origin. This is known as a suspect classification because the courts are naturally suspicious that these types of classifications are violations of the equal protection clause. Under the strict scrutiny test, the courts ask if there is a compelling purpose for the law and if the law uses the least restrictive methods possible.

Loving v. Virginia (1967) is an example of the Supreme Court applying the strict scrutiny test to a law and ruling that it did not meet the standards. Mildred Loving was African American and her husband Richard Loving was white. Under Virginia law interracial marriage was prohibited, and Mildred and Richard were sentenced to a year in prison. The case was brought before the Supreme Court, which unanimously ruled that the Virginia government had no compelling interest in preventing the marriage of an interracial couple.

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Korematsu v. United States (1944)



Jeanne Marcel: There have been times when the Supreme Court has applied the strict scrutiny test and decided that the law met the narrow criteria. In *Korematsu v. United States* (1944), the Supreme Court ruled on the constitutionality of Executive Order 9066, which ordered Japanese Americans into internment camps. Fred Korematsu refused and brought the case to court, under the argument that the internment of Japanese Americans was racial discrimination and violated the Fifth Amendment. The Supreme Court disagreed in a 6-3 decision, ruling that the government had a compelling interest to protect itself against sabotage and the methods used to do so were appropriate.

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Ending of Episode



Glover Mint: Thank you for that informative segment, Jeanne. That's all for this episode of WUSG News. Have a nice day.