

Understanding Due Process

Did you know that DNA evidence has led to the reversal of more than 200 wrongful convictions in recent years? That the use of evidence drawn from the scientific study of body tissues has proved that all those persons were convicted, and served time in prison, for crimes they did *not* commit? Did you know that there is a strong likelihood that an untold number of innocent persons remain in prison today? As you will soon see, this point alone illustrates the importance of due process of law.



>> The use of scientific tests, such as DNA analysis, can help ensure due process for those accused of crime by evaluating evidence more accurately.

The Constitution contains two due process clauses. The 5th Amendment declares that the Federal Government cannot deprive any person of “life, liberty, or property, without due process of law.” The 14th Amendment places that same restriction on every one of the States—and, very importantly, on their local governments, as well. A thorough grasp of the meaning of these provisions is absolutely essential to an understanding of the American concept of civil rights and liberties.

It is impossible to define the two due process guarantees in exact and complete terms. The Supreme Court has consistently and purposely refused to do so. Instead, it has relied on finding the meaning of due process on a case-by-case basis. The Court first described that approach in *Davidson v. New Orleans*, 1878, as the “gradual process of inclusion and exclusion, as the cases presented for decision shall require.”

Fundamentally, however, the Constitution’s guarantee of **due process** means this: In whatever it does, government must act fairly and in accord with established rules. It may not act unfairly, arbitrarily, or unreasonably. The government can take private property for public use, for example, but it must fairly compensate the individual who loses the property—which means giving that person money equal to the fair market value of the land. Due process is a component of the concept of the rule of law, which holds that government is never above the law. In the words of patriot Thomas Paine, "In America THE LAW IS KING."

The concept of due process began and developed in English and then in American law as a procedural concept. That is, it first developed as a requirement that government act fairly and use fair procedures to enforce law.

Fair procedures are of little value, however, if they are used to administer unfair laws. The Supreme Court recognized this fact toward the end of the nineteenth century. It began to hold that due process requires that both the ways in which government acts *and* the laws under which it acts must be fair. Thus, the Court added the idea of substantive due process to the original notion of procedural due process.

★ DUE PROCESS ★

“Government cannot deprive any person of life, liberty, or property without due process of law.”



This limit is placed on the Federal Government in the 5th Amendment.



This limit is placed on State and local governments in the 14th Amendment.

Due process relates to both the **procedures** and the **laws** of government.

PROCEDURAL

Due Process

The procedures, the methods, the **how** of governmental action must be fair.

SUBSTANTIVE

Due Process

The substance, the meaning, the **what** of a law or action of government must be fair.

>> Both the procedures and the laws of government must be in accord with due process. **Analyze Charts** Why are procedural and substantive due process both necessary?



Interactive

In short, **procedural due process** has to do with the *how* (the procedures, the methods) of governmental action. **Substantive due process** involves the *what* (the substance, the policies) of governmental action.

Classic Due Process Cases Any number of cases may be used to illustrate these two elements of due process. Take a classic case, *Rochin v. California*, 1952, to exemplify procedural due process.



"What's so great about due process? Due process got me ten years."

>> As long as due process has been followed, a convicted criminal can be deprived of his or her liberty. Analyze Cartoons Is it possible that the prisoner's complaint is justified? Explain.

Rochin was a suspected narcotics dealer. Acting on a tip, three Los Angeles County deputy sheriffs went to his rooming house. They forced their way into Rochin's room, found him sitting on a bed, and spotted two capsules on a nightstand. When one of the deputies asked, "Whose stuff is this?" Rochin popped the capsules into his mouth. Although all three officers jumped him, Rochin managed to swallow the pills.

The deputies took Rochin to a hospital, where his stomach was pumped. The capsules were recovered and found to contain morphine. The State then prosecuted and convicted Rochin for violating the State's narcotics laws.

The Supreme Court unanimously held that the deputies had violated the 14th Amendment's guarantee of procedural due process. Said the Court:

This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is

bound to offend even hardened sensibilities. They are methods too close to the rack and the screw. . . .

— Justice Felix Frankfurter

The case *Pierce v. Society of Sisters*, 1925, illustrates substantive due process. In 1922, Oregon's voters had adopted a new compulsory school-attendance law that required all persons between the ages of 8 and 16 to attend *public* schools. The law was purposely written to destroy private, especially parochial, schools in the State.



>> A nun reads to children at a parochial school. **Generate Explanations** Why is the Supreme Court ruling in *Pierce v. Society of Sisters* called the "Magna Carta of the parochial school system"?

A Roman Catholic order challenged the law's constitutionality, and the Supreme Court held that its provisions violated the 14th Amendment's Due Process Clause. The Court did not find that the State had enforced the law unfairly. Rather, it held that the law itself, in its contents, "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."

The 14th Amendment and the Bill of Rights Recall these crucial points: The

provisions of the Bill of Rights apply against the National Government *only*. However, the Supreme Court has held that the 14th Amendment's Due Process Clause includes within its meaning most of the protections set out in the Bill of Rights.

In a long series of decisions dating from 1925, the Court extended the protections of the Bill of Rights against the States through the 14th Amendment's Due Process Clause. Provisions of the Bill of Rights *incorporated* into the 14th Amendment's Due Process Clause include the 1st, 2nd, 4th, 5th, 6th, and 8th amendments. Provisions of the Bill of Rights *not incorporated* into the 14th Amendment's Due Process Clause include the 3rd, 5th, and 7th amendments.

? APPLY CONCEPTS Think of an example of a violation of the 5th Amendment right to substantive due process. Explain how the right is being violated.