

Presentation Pro

Magruder's American Government

CHAPTER 20

Civil Liberties: Protecting Individual Rights

Civil Liberties: Protecting Individual Rights

SECTION 1 Due Process of Law

SECTION 2 Freedom and Security of the Person

SECTION 3 Rights of the Accused

SECTION 4 Punishment

Due Process of Law

- How is the meaning of due process of law set out in the 5th and 14th amendments?
- What is police power and how does it relate to civil rights?
- What is the right of privacy and where are its origins in constitutional law?



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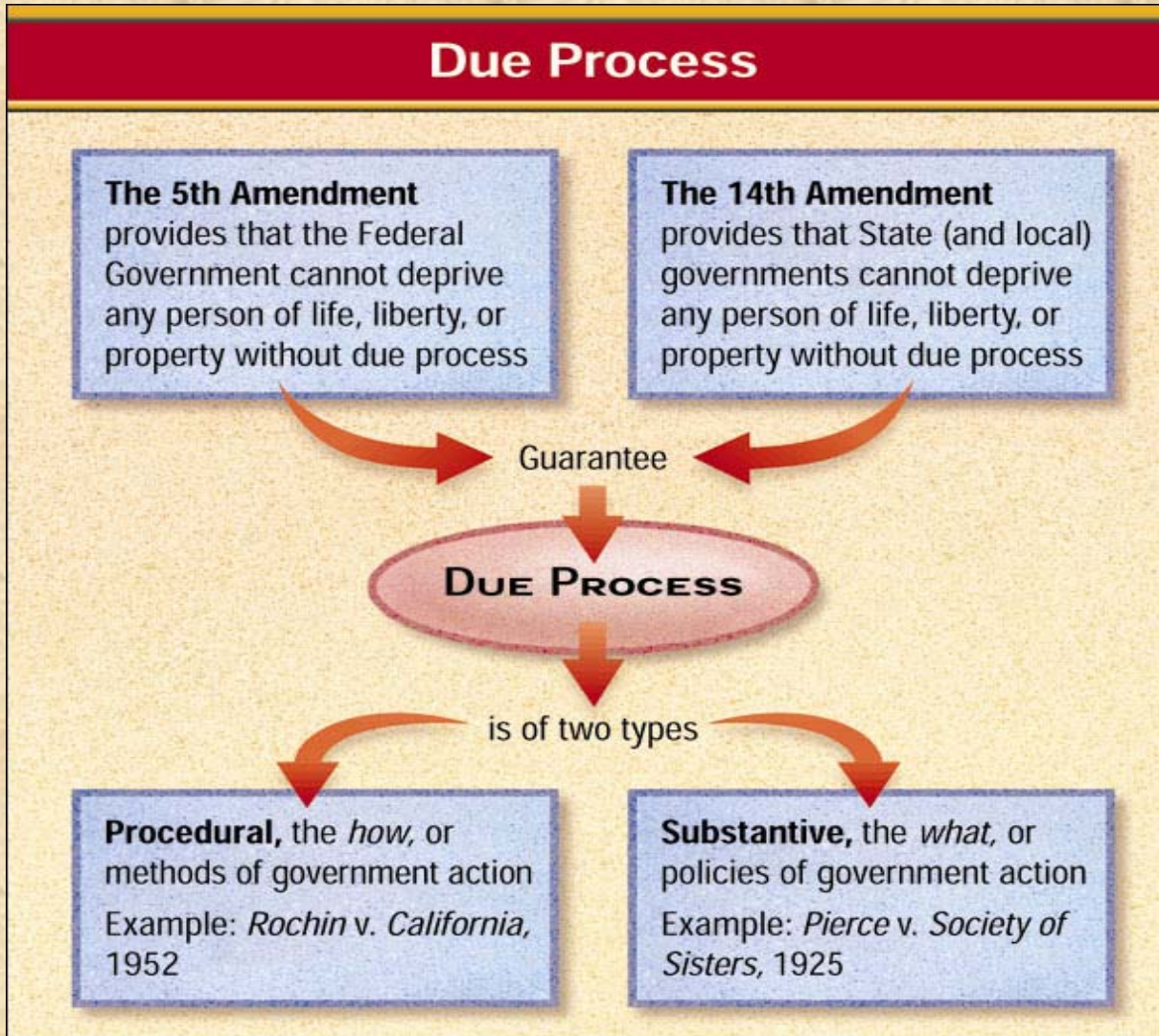
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The Meaning of Due Process



The 5th and 14th Amendments

- The 5th Amendment provides that “no person ... shall be deprived of life, liberty, or property without due process of law...”.
- The 14th Amendment extends that restriction to State and local governments.
- **Due process** means that the government must act fairly and in accord with established rules at all times.
- Due process is broken down into two branches:
 - **Substantive due process**—the fairness of the laws themselves
 - **Procedural due process**—the fairness of the procedures used to enforce the laws



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The Police Power

The police power is the authority of each State to act to safeguard the well-being of its people.

To promote health. States can limit the sale of alcohol and tobacco, make laws to combat pollution, and require vaccination of school children.

To promote safety. States can forbid concealed weapons, require the use of seat belts, and punish drunk drivers.

To promote morals. States can outlaw gambling, the sale of obscene materials, and prostitution.

To promote the general welfare. States can enact compulsory education laws, provide help to the needy, and limit profits of public utilities.



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The Right to Privacy

The constitutional guarantees of due process create a right of privacy.

- Established in *Griswold v. Connecticut*, 1965, which held that a law outlawing birth-control was unconstitutional.
- In *Stanley v. Georgia*, 1969, the right of privacy was defined as “the right to be free, except in very limited circumstances, from unwanted governmental intrusion into one’s privacy.”

The right of privacy provoked controversy when it was applied to a woman’s right to an abortion, beginning with *Roe v. Wade* in 1973.



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Section 1 Review

1. Due process is broken down into substantive due process and
 - (a) policing due process.
 - (b) private due process.
 - (c) State-regulated due process.
 - (d) procedural due process.

2. The police power is the authority of each State to
 - (a) arrest its citizens.
 - (b) hire a police force.
 - (c) protect and promote the public health and general welfare.
 - (d) restrictions on alcohol and tobacco.

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Freedom and Security of the Person

- Which Supreme Court cases have dealt with slavery and involuntary servitude?
- What is the intent of the 2nd Amendment's protection of the right to keep and bear arms, and how is it applied?
- What constitutional provisions are designed to guarantee the security of home and person?



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Slavery and Involuntary Servitude

- The 13th Amendment, ratified in 1865, ended slavery in this country. It also protects against involuntary servitude, or forced labor.
 - *Neither the draft nor imprisonment can be classified as involuntary servitude.*
- Unlike any other part of the Constitution, the 13th Amendment covers the actions of private individuals as well as that of the government.



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The 13th Amendment in Action

- For a long time after it was passed, both citizens and members of the Supreme Court thought that the 13th Amendment did not apply to acts of racial discrimination committed by private citizens. After all, the discriminatory acts were social choices and did not reinstitute slavery. According to this theory, Congress did not have the power to act against private parties who practiced discrimination.
- Starting in 1968, the Supreme Court breathed new life into the 13th Amendment by upholding provisions in the Civil Rights Act of 1866, a little-known law that had escaped repeal in the late 1800s. In a series of landmark cases, the Supreme Court found that private citizens could not practice racial discrimination to exclude people on the basis of their color. They also expanded the law to include any group subject to discrimination based on their ethnicity.



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The Right to Keep and Bear Arms

- The 2nd Amendment protects the right of each State to form and keep a militia.
- Many believe that the 2nd Amendment also sets out an individual right to keep and bear arms.
- The Supreme Court has only tried one important 2nd Amendment Case, *United States v. Miller*, 1939. The case involved a section of the National Firearms Act of 1934 that forbid shipping sawed-off shotguns, silencers, and machine guns across State lines without informing the Treasury Department and paying a tax. The Court upheld the provision.
- The 2nd Amendment has as yet not been extended to each State under the 14th Amendment. Therefore, the individual States have the right to regulate arms in their own ways.



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Security of Home and Person

The 3rd and 4th Amendments protect the security of home and person.

The 4th Amendment protects against **writs of assistance** (blanket search warrants) and “unreasonable searches and seizures.” It is extended to the States through the 14th Amendment.



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Aspects of the 4th Amendment

<p>Probable Cause—to search a premise, in most cases, a warrant must be obtained based on a reasonable suspicion of crime</p>	<p>Arrests—to arrest a person, a police officer needs only probable cause</p>
<p>Automobiles—police officers do not always need search warrants to search an automobile</p>	<p>The Exclusionary Rule—Evidence gained as a result of an illegal search cannot be used in court</p>
<p>Wiretapping—unless police officers have a warrant, tapping phone calls is not legal</p>	<p>Drug Testing—drug testing can be conducted without a warrant or probable cause</p>



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Section 2 Review

1. When did the 13th Amendment begin to be enforce laws against racial discrimination by private citizens?
 - (a) 1791
 - (b) 1865
 - (c) 1866
 - (d) 1968

2. The 3rd Amendment forbids
 - (a) new taxes.
 - (b) housing soldiers in private homes.
 - (c) new colonies in the Americas.
 - (d) all of the above.

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Rights of the Accused

- What are the writ of habeas corpus, bills of attainder, and ex post facto laws?
- What issues arise from the guarantee of a speedy and public trial?
- What constitutes a fair trial by jury?



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Article I, Sections 9 & 10

- **Writ of Habeas Corpus**—A court order which prevents unjust arrests and imprisonment
- **Bills of Attainder**—laws passed by Congress that inflict punishment without a court trial
- **Ex Post Facto Laws**—new laws cannot apply to things that happened in the past



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Grand Jury

A **grand jury** is the formal device by which a person can be accused of a serious crime.

- It is required for federal courts under the 5th Amendment.
- The grand jury deliberates on whether the prosecution's **indictment**, a formal complaint, presents enough evidence against the accused to justify a trial.
- Only the prosecution presents evidence.
- The right to a grand jury is not covered by the 14th Amendment's Due Process Clause. Most States have legislated to skip the grand jury stage.



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Speedy and Public Trial

The right to a speedy and public trial was extended as part of the 14th Amendment's Due Process Clause by *Klopfer v. North Carolina*, 1967.

The Speedy Trial Act of 1974 requires that the beginning of a person's federal criminal trial must take place no more than 100 days after the arrest.

A judge can limit who can watch a trial if the defendant's rights are in jeopardy.



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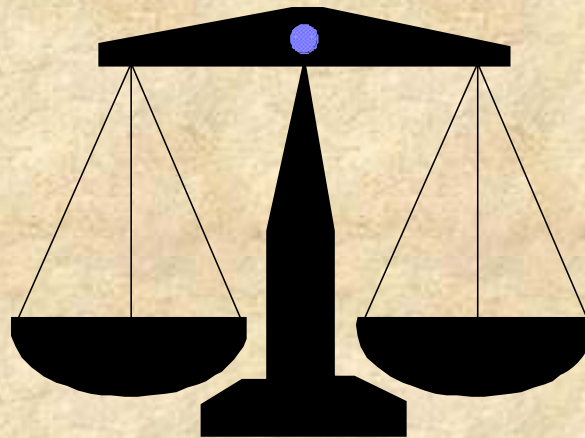
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Trial by Jury

- Americans in criminal trials are guaranteed an impartial jury chosen from the district where the crime was committed.
- If a defendant waives the right to a jury trial, a **bench trial** is held where the judge alone hears the case.
- Most juries have to be unanimous to convict.



Right to an Adequate Defense

Some rights of the accused:

1. to be informed of the content and form of the accusation	2. to be confronted with the witnesses against her/him
3. to be able to subpoena witnesses to testify on his/her behalf	4. to have a lawyer speak in his/her defense



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Self-Incrimination

The Fifth Amendment declares that no person can be “compelled in any criminal case to be a witness against himself.” This protection extends to the States, and sometimes to civil trials if the self-incrimination could lead to a criminal charge.

- A person cannot be forced to confess to a crime under extreme circumstances.
- A husband or wife cannot be forced to testify against their spouse, although they can testify voluntarily.

In *Miranda v. Arizona*, 1966, the Supreme Court set an historic precedent when it would no longer uphold convictions in cases in which the defendant had not been informed of his or her rights before questioning. This requirement is known as the **Miranda Rule.**



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Section 3 Review

1. The ban on bills of attainder exists because

- (a) Congress had abused this power.
- (b) colonial English government had abused this power.
- (c) Thomas Jefferson was the victim of such a bill.
- (d) all of the above.

2. A bench trial is held if

- (a) the publicity surrounding a case requires it.
- (b) the defendant waives the right to a trial by jury.
- (c) the defendant pleads guilty.
- (d) the prosecutor has little evidence of a crime.

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Punishment

- What is the purpose of bail and preventive detention?
- What is the Court's interpretation of cruel and unusual punishment?
- What is the history of the Court's decisions of capital punishment?
- What is treason?



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Bail and Preventative Detention

- **Bail** is a sum of money that the accused may be required to deposit with the court as a guarantee that he or she will appear in court.
- The Constitution does not guarantee that all accused persons are entitled to bail, just that the amount of the bail cannot be excessive.
- **Preventive detention** is a law that allows federal judges to order that accused felons be held without bail if there is a danger that the person will commit another crime if released.
- Critics think preventive detention amounts to presuming the accused guilty. The Court upheld the law in *United States v. Salerno*, 1987.



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Cruel and Unusual Punishment

The 8th Amendment also forbids “cruel and unusual punishment.” The Supreme Court extended the provision to the States in *Robinson v. California*, 1962.

- The 8th Amendment is intended to prevent, in the Court’s opinion, barbaric tortures such as drawing and quartering and other excessively cruel punishments.
- The Supreme Court held that defining narcotics addiction as a crime, rather than an illness, was cruel and unusual in *Robinson v. California*, 1962. In *Estelle v. Gamble*, 1976, it ruled that a prison inmate could not be denied medical care.
- However, generally the Court has not found many punishments to be cruel and unusual.



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Capital Punishment

Capital punishment, or the death penalty, is hotly debated under the 8th Amendment.

- The Supreme Court voided capital punishment laws in the early 1970s because it felt that the punishment was applied “capriciously” to only a few convicts, often African American or poor or both.
- However, in 1976, the Court held for the first time that a new law which instituted the death penalty was NOT unconstitutional. The new law provided for a two-stage trial process. One trial would determine guilt or innocence, and a second hearing would decide whether the death penalty was warranted. The Court later restricted the use of the death penalty to cases where the victim died.

Despite these decisions, debate still surrounds the issue.



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Treason

Treason is the only crime defined in the Constitution.

Treason is:

1. Levying war against the United States or
2. Giving aid and comfort to the enemies of the United States.

- A person can only commit treason in times of war, and it is punishable by the death penalty.
- Other related acts, such as sabotage or espionage, can be committed in peacetime.
- John Brown, who was hanged as a traitor to Virginia because of his raid on Harper's Ferry, is the only person ever to be executed for treason against a State.



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Section 4 Review

1. Bail is

- (a) a fine you have to pay if you are arrested.
- (b) a tax to support jails.
- (c) a deposit you put down to guarantee appearance in court.
- (d) a contract between the State and a prisoner.

2. Treason is

- (a) the only crime defined in the Constitution..
- (b) punishable by death.
- (c) committed only in wartime.
- (d) all of the above.

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