

Due Process:

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PROCEDURAL DUE PROCESS: (Law Affects All)

The Due Process Clause of the 5th-applies to the Federal Government

The 14th Amendment-applies to the States

Both provide that the govt shall not take a person's life, liberty, or property w/o due process of law.

-Due Process contemplates fair process/procedure, which requires at least an opportunity to present objections to the proposed action.

-Fair Process is required for intentional acts of the government or its employees.

-Though mere negligence doesn't prompt violation of the Due Process Clause.

Notice & Hearing Trigger:

1) Is there a

a) Property Interest [legitimate claim of entitlement] OR

b) Liberty Interest [free from physical restraint or "stigma plus"

, damages to reputation plus some additional harm, such as unable to obtain further employment b/c of the stigma]

***If Liberty or Property Interest is violated then:

2) What Process is Due? {Mathews v. Eldridge balancing test:

Private

interest affected & risk of erroneous deprivation versus Government's interest.}

Property:

-Property includes more than personal belongings & realty, chattels, or money, but an abstract need or desire for (or unilateral expectation of) the benefit is not enough. There must be a legitimate claim or entitlement to the benefit under state or federal law. [Board of Regents

v. Roth; Leis v. Flynt] Examples of Property Interest include:

1) Public Education: There is a property interest in public education when school attendance is required. Thus, a significant suspension (ie. 10 days) requires procedural due process. [Goss v. Lopez].

2) Welfare Benefits: One has a property interest in welfare benefits if she has previously been determined to meet the statutory criteria. [Goldberg v. Kelly]

3) Continued Public Employment: If there is a state statute or ordinance that creates a public employment K, or there is some clear practice or mutual understanding that an employee can be terminated only for "cause", then there is a property interest. [Arnett v. Kennedy]

-But if the employee holds his position only at the "will" of the employer, there is no property interest in continued employment. [Bishop v. Wood]

Notice of Adversary Proceedings:

-When the government seeks to use a judicial or administrative process to take or terminate property interests, it MUST GIVE NOTICE to those persons whose property interests may be taken by that process. The form of notice must be reasonably designed to insure that those persons will in fact be notified of the proceedings.

Civil Forfeitures:

-Procedural due process limits the government's ability to seize property allegedly subject to forfeiture (which most often occurs when the government claims that the property was connected to, or was the product of, criminal activity). Absent exceptional circumstances, the government must provide the owner of Real Property notice and an opportunity for some type of hearing PRIOR to seizing real property.

SUSTANTIVE DUE PROCESS: (Law Affects All)

Scope:

1) Determination that the substance of a law [the restrictions that the regulation seeks to impose] affecting ALL people is VALID under the Constitution.

2) Generally, most substantive issues are reviewed under Equal Protection grounds.

Rational Basis Test:

1) All laws must be non-arbitrary, ie reasonable
a) Government act doesn't violate due process if it rationally relates to a legitimate governmental interest.

i) Closing estate loophole retroactively is valid. {US v. Carlton}

b) Presumption of Validity unless legislature has acted in an arbitrary & irrational manner.

i) Burden on challenger to prove invalid.

2) Historically applied to Economic legislation.

3) Applied to Social Welfare legislation as long as fundamental rights aren't impinged.

STRICT SCRUTINY:

1) Applied where Fundamental Rights are infringed by law. {Griswold v. CT}

a) Fundamental rights for the purpose of substantive due process include Sex, Marriage, and Children Issues.

2) Right to Privacy:

a) Marriage {Loving v. VA}

b) Contraception {Eisenstadt v. Baird}

c) Abortion {Roe v. Wade}

- i.) Woman's decision
 - ii) State doesn't have to finance nor provide
 - iii) "Undue Burden" test {Planned Parenthood v. Casey}
- d) Doesn't include consensual homosexual sodomy
- e) Raising children
- f) Living w/close relative-limited
 - i) Zoning ordinance which impaired liberty interest of extended families from living together is invalid. {Moore v. East Cleveland}
 - ii) State may reduce property interest of welfare by counting all children in a household as a single group. {Anderson v. Edwards}

EQUAL PROTECTION (Law Affects Some)

Scope: Review is always Substantive:

- 1) Regulates ability of government to Classify individuals for purpose of receiving benefits or punishment.
 - a) Classification must relate to proper governmental purpose and must NOT be ARBITRARY.
 - i) Treating similar persons in similar settings
 - ii) Improper purpose of selecting wrong class while excluding right class
 - iii) Under-Inclusive including small number of people fitting purpose of regulation but excluding others similarly situated.
 - iv) Over-Inclusive including additional people who don't fit in distinguishing classification.

INTERMEDIATE SCRUTINY:

Test:

- 1) Classification must be substantially related to an important governmental objective.
- 2) Requirements are satisfied where no better available alternative exists.
 - a) Concern is not to cause needless disadvantage.

Legitimacy: Almost Suspect

- 1) Struck down when arbitrary due to stereotype

Gender

- 1) Almost suspect
 - a) All female state-supported nursing school unconstitutional {MS U for Women v. Hogan}
 - b) Peremptory challenge to exclude prospective jurors based on gender is unconstitutional. {JEB v. AL}
- 2) Statutory Rape:
 - a) Valid to punish males only b/c of important state interest in preventing pregnancy {Michael M.}
- 3) Male-Only Draft:
 - a) Important governmental interest in preparing combat troops {Rostker v. Goldberg}

STRICT SCRUTINY:

Test:

1) Whether classification is Necessary to promote a Compelling governmental interest.

Fundamental Rights:

1) Where fundamental rights infringed, law generally struck down.

2) Right To Privacy

a) Random Drug Testing of student athletes is Permissible b/c the State, as schoolmaster, exercises temporary custody thereby imposing Lesser Privacy Expectation {Vernonia v. Acton}

3) Interstate Travel:

a) Limited reasonable residency requirements permissible

4) Implied fundamental Right To Vote

a) Bizarre race-based redistricting is impermissible {Miller v. Johnson}

Suspect Class:

1) Modern trend toward "Color-Blind" Constitution

a) Classification based on race will be invalid unless narrowly tailored to achieve a compelling state interest.

2) Race And National Origin-13th Amend addresses Private acts.

3) Affirmative Action: Reverse Discrimination:

a) Upheld: corrects past identifiable discrimination (past societal discrimination not enough, Blake at least for quota, but race can be a factor I admissions.

i) Ct may not order suburban white students to attend interdistrict school which no longer harbors effects of past discrimination. {MO v. Jenkins}

[a] Freeman Test: Whether

(1) Compliance w/decreed where federal supervision is to be w/drawn; (2) Judicial control necessary to achieve compliance; AND:

(3) District has demonstrated good-faith commitment.

b) Upheld: Minority business set aside program adopted by Congress.

c) Affirmative action plan for promoting black firefighter unlawfully

discriminated against whites.

d) Courts must review affirmative-action programs initiated by Federal Govt that take race into consideration under Strict Scrutiny

4) Classification that Burdens Minority is unconstitutional most of the time

a) Must show discriminatory purpose

b) Separate but equal doctrine has no place in public education {Brown v. Board of Education}

i) Later decisions expanded invalidation of doctrine.

c) Regulation which denied group home for mentally retarded persons is invalid under rational basis standard {City of Cleburne v. Cleburne Living Center}

5) Alienage:

a) Requirement of US citizenship

- i) No requirement for private employment or government benefits.
- b) Reasonable regulation upheld only if enacted by Congress & political function.
- c) Mere rationality for participation in government
 - i) Permissible government refusal to hire police, teachers, positions w/direct effect on functioning of government.

Equal Protection:

Where a law treats certain classes of people differently than others, it is an equal protection question.

Substantive Due Process:

Generally where the law limits the liberty of all persons to engage in some activity, it is a due process question.