

Due Process of Law Is for All of Us - or for None of Us

Due process of law is essential to a moral society. To quote John Adams:¹

It is more important that innocence be protected than it is that guilt be punished, for guilt and crimes are so frequent in this world that they cannot all be punished.

But if innocence itself is brought to the bar and condemned, perhaps to die, then the citizen will say, 'Whether I do good or whether I do evil is immaterial, for innocence itself is no protection'; and if such an idea as that were to take hold in the mind of the citizen, that would be the end of security whatsoever.

What is Due Process?

Our Constitution's guarantee of due process is fundamental to our system of government, civil society, and the rule of law. It ensures that our life, liberty and property are secure from arbitrary takings. And it applies to everyone -- whoever we are and wherever we come from.

The Bill of Rights guarantees each of us due process. The Fifth Amendment guarantees, "*No person shall be [...] deprived of life, liberty, or property, without due process of law.*" The Constitution also provides specific protections against unreasonable searches and seizures (Fourth Amendment), as well as against double jeopardy and self-incrimination (Fifth Amendment). The Sixth Amendment provides several important rights in criminal cases, including the rights to a jury and a lawyer.

Fundamentally, the right of due process is the right to defend yourself and your property. The government can't just commandeer your house or confiscate your bank account; and no one may be fined, arrested, or deported arbitrarily. At a minimum you must be told why you have been targeted and charged -- and also have the opportunity to test those reasons and their factual basis at a hearing before a neutral third party.

Who gets Due Process?

Everyone -- no exceptions. The Fifth Amendment guarantees due process to *every person*, citizen or non-citizen, no matter where we were born or where we are from.

Why? Because as a practical matter, none of us are assured of due process unless each of us is entitled to it. If the government has the power to deny due process to anyone, it can deny due process to you or me, too.

What does Due Process look like in practice?

The contours of the process due to you depend on the circumstances, including the potential consequences, should the charges against you be sustained. If you get a parking ticket, due process might be the chance to contest the facts in traffic court. If you are arrested at a protest, you must be told why you were arrested. You also have the right to challenge, with a lawyer's assistance, the authorities' version of the "facts" and otherwise defend yourself at a hearing before a neutral decisionmaker.

If you are charged with a crime, you are entitled -- at a trial by a jury of your peers -- to make the government prove that you are guilty beyond a reasonable doubt.

¹ 3-4 December 1770, <https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016>

If you are an immigrant detained by ICE and facing deportation, you too have the right to due process. You must be told the factual circumstances which ICE (a) alleges exist and (b) argues would justify your deportation. Unless your circumstances fall within certain limited exceptions, you have the right to present to an immigration judge - with the help of a lawyer, if you hire one - your case for why you should not be deported. For example, you might have a green card, a student visa, or a reasonable fear for your safety in your home country. Should the immigration judge rule against you, you have the right to appeal that decision.

Common Concerns

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Q. Where in the Constitution does it say that someone in the country illegally has due process rights?

A. The 5th Amendment states that *no person* -- no exceptions -- shall be deprived of life, liberty, or property without due process of law. The 14th Amendment extends these due process requirements to the individual states, providing that no state may deprive *any person* of life, liberty, or property, without due process of law. Courts have consistently held that these amendments protect everyone in the United States, not just citizens.

Q. Why should someone in the country illegally have due process rights?

A. Due process assures that nobody suffers dire consequences they do not deserve by mistake, which is essential to fundamental fairness for everyone. Due process for everyone is essential to a moral society. If the government mistakenly suspects or believes that you are in the country illegally, you might suffer serious consequences -- unless, that is, you are given a fair opportunity to prove the government wrong.

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