

Chapter 2

The Concept of Due Process

TEACHING POINTS

- The concept of due process is difficult to understand, but its understanding is essential to understanding constitutional law's impact on criminal justice.
- There are two due process clauses in the U.S. Constitution.
- Generally, the due process clause in the Fifth Amendment is considered as a restraint on the federal government and the due process clause in the Fourteenth Amendment applies to states and local governments.
- In the criminal justice area, due process is classified as either procedural due process or substantive due process.
- Procedural due process refers to the means or methods by which an individual exercises his or her due process rights.
- Substantive due process refers to the actual rights themselves such as the right to a fair hearing, right to notice, etc.
- The Supreme Court has held that the protections contained in the U.S. Constitution's Bill of Rights were restraints on the federal government and not on the states.
- The due process clause of the Fourteenth Amendment has, however, been construed to provide most of those Bill of Rights' protections to individuals involved in a state justice system.
- What constitutes "due process" is not an easy question to answer.

- "The essential elements of due process of law are notice, an opportunity to be heard, and the right to defend in an orderly proceeding."
- "Due Process of law implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights, and in a competent tribunal possessing jurisdiction of the cause and proceeding upon justice.
- It is founded upon the basic principle that every man shall have his day in court, and the benefit of the general law which proceeds only upon notice and which hears and considers before judgment is rendered."
- "Aside from all else, 'due process' means fundamental fairness and substantial justice."
- The concept of due process can be traced back to English common law.
- The Magna Carta was signed in 1215 at Runnymede by King John.
- The Carta's Article 32 provided, in part, that "no freeman shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or any wise destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."
- The first case in which the Supreme Court considered the relationship between the Fourteenth Amendment and the Bill of Rights was in the case of *Hurtado v. California*.
- In *Hurtado*, the Supreme Court stated that the words "due process of law" in the Fourteenth Amendment do not necessarily require an indictment by a grand jury in a prosecution by a State for murder. The *Hurtado* case pointed out that the Court was not going to accept all the individual protections in the Bill of Rights as necessary requirements to constitute due process.

- The first case to apply one of the guarantees of the Bill of Rights to the states was *Chicago, Burlington, & Quincy R.R. v. Chicago* (1897).
- The guarantees of freedom of speech and press were applied against a state in *Gitlow v. New York* (1925).
- From the date the *Hurtado* case, the Supreme Court has struggled with the concept of due process and determining which Bill of Rights protections are necessary to constitute due process in state criminal courts.
- Procedural due process refers to the means or methods by which an individual exercises his or her due process rights.
- Substantive due process refers to the actual rights themselves such as the right to a fair hearing, right to notice, etc.
- The police power of a state or a political subdivision of a state refers to the power of the state or subdivision to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals.
- Another definition of police power was explained by a state court in *Marshall v. Kansas City* (1962, p. 884): Police power is the exercise of the sovereign right of a government to promote order, safety, health, morals, and the general welfare of society, within constitutional limits."
- The police power is an essential attribute of government without which constitutional guaranties of personal and property rights would be ineffective and meaningless. In their very nature, neither the police power nor constitutional limitations can be absolute; they are necessarily relative and dependent in the complexities of modern life.

- It is a basic principle of constitutional due process that a law is void for vagueness if its prohibitions are not clearly defined.
- Vague laws offend several important values.
- First, because if we assume that a person is free to decide between lawful and unlawful conduct, then we should insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he or she may act accordingly. Vague laws may trap the innocent by not providing fair warning.
- Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."
- Even before the adoption of the Fourteenth Amendment, equal protection was an established principle in the United States.
- The Fourteenth Amendment prohibits the states from denying persons equal protection of the law.
- As a general rule, the equal protection clause permits states to treat people differently if there is a valid reason for the classification.

TEST BANK

True/False Questions

1. The due process clause in the Fifth Amendment is considered as a restraint on the state criminal trials and the due process clause in the Fourteenth Amendment applies only to civil trials. [F]

2. Procedural due process refers to the means or methods by which an individual exercises his or her due process rights. [T]
3. The concept of due process is distinctly an American product. [F]
4. The first case to apply one of the guarantees of the Bill of Rights to the states was *Hurtado v. California*. [F]
5. The total incorporation approach was used by the Supreme Court between the years of 1947 to 1969. [F]
6. The selective approach accepts the premise from the fundamental rights approach that not all rights contained in the Bill of Rights are fundamental to due process. [T]
7. The “due process” clause of the Fourteenth Amendment provides additional protections other than those rights set forth in the Bill of Rights. [T]
8. Only laws that affect fundamental rights come within the purview of the substantive due process doctrine. [T]
9. The police power of a state refers to the power of the state to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals. [T]
10. A city ordinance that prohibits people of certain nationality from living in one sector of the city is an example of the use of police power. [T]
11. A city ordinance that prohibits people of certain nationality from living in one sector of the city is an abridgement of a substantive due process right. [T]
13. Vague laws may trap the innocent by not providing fair warning as to what conduct is prohibited. [T]
14. The concept of equal protection of the law was first established by the Fourteenth Amendment. [F]
15. A Virginia statute which prohibited interracial marriages was a constitutionally proper exercise of the state’s police power. [F]

Multiple Choice Questions

1. A city ordinance that prohibited groups of young people from meeting in groups without any valid purpose is probably
 - a. constitutionally proper to prevent youth gangs.
 - b. a valid use of police power by a city.
 - c. unconstitutional because it violates the Fourth Amendment.
 - d. vague and unconstitutional. *
2. A California statute that made it unlawful for a adult male to have sexual intercourse with a female under the age of 18 is considered as a
 - a. valid exercise of the state's police power. *
 - b. violation of the equal protection clause because it applies only to males.
 - c. violation of due process.
 - d. violation of the right of privacy.
3. The equal protection clause of the Fourteenth Amendment
 - a. admits of a wide exercise of discretion.
 - b. only avoids a classification which is purely arbitrary or does not have a reasonable basis.
 - c. both a and b are correct. *
 - d. All of the above statements are incorrect.
4. Procedural due process refers
 - a. to the right to a hearing
 - b. to the right to notice
 - c. to the right not to be subject to arbitrary or capricious action by a state.
 - d. to the means by which an individual exercises her due process rights. *
5. The following right, although required in federal criminal proceedings, has not been imposed on the states:
 - a. right to counsel
 - b. right to privacy
 - c. requirement for grand jury indictment in felony cases *
 - d. right to a jury trial in cases involving felonies.
6. The due process clause of the ____ Amendment has been construed to provide most of the Bill of Rights' protections to individuals involved in a state justice system.
 - a. Fourth
 - b. Fifth
 - c. Fourteenth *
 - d. Eighteenth

7. The concept of due process can be traced back to
 - a. English common law. *
 - b. Colonial America.
 - c. the Warren Court.
 - d. the early Supreme Court cases.
8. The first American cases involving the concept of due process was
 - a. Barron v. Baltimore.
 - b. Hurtado v. California.
 - c. Mapp v. Ohio.
 - d. the 1693 case of Sir Thomas Lawrence. *
9. First case in which the Supreme Court considered the relationship between the Fourteenth Amendment and the Bill of Rights was in the case of
 - a. Barron v. Baltimore.
 - b. Hurtado v. California.*
 - c. Loving v. Virginia.
 - d. Chicago, Burlington, & Quincy R.R. v. Chicago.
10. The first case to apply one of the guarantees of the Bill of Rights to the states was
 - a. Barron v. Baltimore.
 - b. Hurtado v. California.
 - c. Loving v. Virginia.
 - d. Chicago, Burlington, & Quincy R.R. v. Chicago. *

Short Essay Questions

1. Explain the differences between the due process clauses in the Fifth and Fourteenth Amendments.
2. Under what circumstances may a state exercise its police power?
3. What is the present Supreme Court approach to the due process protections available to defendants in state criminal trials?
4. What are the issues involved with vague statutes?
5. What Fourth Amendment rights have been held to apply to the states?