Due Process of Law

Due process of law, first established in English common law, means that governments must act fairly and follow established rules. The 5th Amendment ensures that each person is entitled to due process from the federal government. The 14th Amendment extends this to the states.

The Supreme Court has recognized that fair procedures are of little value if the laws themselves are unfair. Therefore the court has established both “procedural” and “substantive” due process.

Procedural Due Process

Procedural due process pertains to methods used to carry out laws. States may exercise “police power” to protect and promote the public safety and welfare. In carrying out the duties, however, states must not violate an individual’s right to substantive due process. In many cases, the public interest overrides a person’s right to due process. In *Schmerher v. California* (1966), the Supreme Court found no fault with a police officer’s request to have blood drawn from a drunk-driving suspect.

Substantive Due Process

Substantive due process pertains to the fairness of laws themselves. *Pierce v. Society of Sisters* (1925) is a good example of this. A group of Roman Catholic nuns challenged the “due process” constitutionality of an Oregon law that said that all persons between the ages of 8 and 16 not completing 8th grade must attend public schools. The Supreme Court ruled in favor of the nuns, saying that the law itself was unfair, not the procedure the State of Oregon used to implement the law.

5th Amendment

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Eminent Domain

Under this section of the 5th Amendment, the government has the right to take an individual’s property if it is intended for the public good, providing that the government pays a fair price for it.

Example: The land and houses in an entire village were claimed in the early 1900s to build a much-needed reservoir for the State of Rhode Island. Even grave sites had to be removed.