Due Process

So what is this whole due process thing about anyway? Due process is the most important legal concept in the American system of justice. There are two Amendments to the U.S. Constitution that address the issue: the Fifth Amendment, which is applicable to the federal government, and the Fourteenth Amendment, which makes due process applicable to the states. Contained within each amendment is what is known as the “due process clause.”

Due process is really just the legal requirement that the government (both state and federal) must respect all of the legal rights owed to a person. When a government commits a due process violation, it goes against the rule of law.

The Fifth Amendment to the U.S. Constitution:

“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 offense 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.”

The Fifth Amendment contains numerous provisions. I’ve added emphasis to the portion that is commonly referred to as the “due process clause.” As you can see, under that clause, no person shall be “deprived of life, liberty, or property, without due process of law.” The U.S. Supreme Court has interpreted the due process clause as providing four protections to people: procedural protection guaranteeing due process in civil and criminal proceedings; substantive due process in the applicability of laws; a prohibition against vague laws; and finally, as a means of incorporating the Bill of Rights. Due process applies to all legal persons, so that includes individuals, corporations, and any other entity that is defined as a “person” under the law.

The Fourteenth Amendment to the U.S. Constitution:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

I’ve added emphasis to the portion that is commonly referred to as the “due process clause” in the Fourteenth Amendment. As you can see, the due process clause is similar to the Federal clause in the Fifth Amendment, except that the Fourteenth Amendment is clearly directed towards the states. Keep in mind that the due process clauses in both the Fifth and the Fourteenth Amendments provide a guarantee of fairness to all persons, but that this guarantee applies as restraints on governmental actions as opposed to private ones.

The clauses only apply specifically to the deprivation of certain protected rights: the right to life, liberty, and property. “Life, liberty, and property” have very expansive definitions that have been developed by the courts through the years.

Procedural Due Process

One type of due process is procedural due process. This applies to the formal procedures by which people are deprived of life, liberty, or property. Before any deprivation of life, liberty, or property by the government, there must be some essential procedures to ensure fairness. The Essential Components of
Procedural Due Process include notification, opportunity for a fair hearing, and that the proceedings are before a neutral tribunal. The extent of procedural due process depends primarily on the seriousness of the deprivation. The more serious the deprivation, the more extensive the procedural due process safeguards that exist.

Each of the 50 states and the federal government have rules in place that govern civil and criminal litigation. In criminal cases, procedural due process plays a major role in securing rights to the accused, making sure that limits are placed on police investigative techniques, as well as prosecutor behavior and conduct of a trial. In civil cases, the due process rules are less extensive. Civil due process requires a court have jurisdiction over the parties and subject matter, that defendants receive proper notice of the case, and that all parties have an equal opportunity to present evidence and argument before the decision-maker. This ensures that decisions are made in a reasonable and fair manner.

Substantive Due Process
Substantive due process means that the laws must be reasonable attempts to achieve legitimate governmental goals. These goals must be accomplished by putting the least burden on people’s rights. (Remember, these are the rights to life, liberty, and property). It is a way for the courts to enforce limits on legislative and executive powers and authority. So, laws cannot be vague or overly broad. Utilizing the idea of substantive due process, the laws must be clear enough so that people of ordinary or normal intelligence know what is allowed and what is not.

The courts use substantive due process analysis to determine whether laws interfere with unenumerated rights. These are rights that are not specifically spelled out in our government documents such as the Bill of Rights. An example of an unenumerated liberty is the right to privacy. The right to privacy includes other abstract liberty interests like the right to personal autonomy, bodily integrity, self-dignity, and self-determination.

The first case to examine the right to privacy was *Griswold v. Connecticut*, in which the Supreme Court struck down a state statute that forbid married adults from using birth control on the ground that the law violated the sanctity of the marital relationship.

The issue arose again seven years later in *Eisenstadt v. Baird*, in which the U.S. Supreme Court struck down a Massachusetts statute that made illegal the distribution of contraceptives to unmarried persons. In striking down this law, the Supreme Court did not rely on the right to privacy that it had outlined in *Griswold*, but instead used the equal protection portion of the Fourteenth Amendment, stating that “all persons, married or single, enjoy the liberty to make certain intimate decisions free from government restraint, including the decision of whether to bear or beget a child.”

These two cases were the precursor for the well-known due process case of *Roe v. Wade*, in which the Supreme Court ruled that the due process clause guarantees women the right to have an abortion during the first trimester of pregnancy without state interference. Subsequent interpretations of *Roe* prevents state and federal governments from passing laws that unduly burden a woman's right to terminate her pregnancy. Understand that the Supreme Court does not decide whether actions are legal or illegal, but whether the laws or procedure were in line with the Constitution. Thus, *Roe v. Wade* does not make abortions legal per se, but affirms that it is against the Constitution for governments to infringe on a woman’s right to privacy regarding her own body.

**Washington v. Glucksberg**
Now let’s look at a case you have read that further illustrates the meaning of substantive due process. Here are the facts: Glucksberg, a physician, frequently treated mentally competent but terminally ill patients who wished to hasten their deaths with medication. Glucksberg and three others brought suit in a U.S. District Court in the state of Washington seeking to have a statute, which prohibited “causing or aiding another to attempt suicide” declared unconstitutional.
The physicians are seeking declaratory and injunctive relief from the statute, claiming that the state law is in violation of the U.S. Constitution’s Fourteenth Amendment guarantee to substantive due process because it is depriving patients of a “liberty interest” (that is, the right to choose the time and manner of death).

The U.S. District Court and Ninth Circuit Court of Appeals ruled for doctors. They decided that the Constitution allows the right to die. The State of Washington appeals the case to the U.S. Supreme Court. The relevant legal issue in this case is “whether Washington law prohibiting physician assisted suicide violates the 14th Amendment’s guarantee of substantive due process?”

The holding, or ruling, in this case is that the Washington law did not violate the Fourteenth Amendment. The U.S. Supreme Court reversed the lower court’s decision, concluding that due process does not afford someone the “right to die.” The Court distinguished between refusing unnatural life sustaining medical assistance and hastening one’s death with the aid of a physician. Accordingly, the court ruled the statute constitutional.

The Supreme Court reasoned that substantive due process requires that laws that infringe on fundamental liberty interests must serve a “compelling state interest.” Not all personal decisions are protected liberty interests. Suicide is one of those. The state has a compelling interest in preventing suicide and protecting the integrity of the medical profession.

The state must protect the sick and disabled from being devalued and “pressured” into suicide. If physician assisted suicide is made legal, why should any suicide be illegal? Is involuntary euthanasia next? Washington’s law is not in violation of substantive due process because suicide is not a protected liberty.

Eleven years after the U.S. Supreme Court ruled in favor of the state of Washington, Washington voters redefined the state’s public policy regarding assisted suicide. On November 4, 2008, the voters supported Initiative 1000, a physician-assisted suicide law.