Magruder’s American Government

CHAPTER 20

Civil Liberties: Protecting Individual Rights
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Civil Liberties: Protecting Individual Rights

SECTION 1  Due Process of Law

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Due Process of Law

• How is the meaning of due process of law set out in the 5th and 14th amendments?

• What is police power and how does it relate to civil rights?

• What is the right of privacy and where are its origins in constitutional law?
The Meaning of Due Process

Due Process

<table>
<thead>
<tr>
<th>The 5th Amendment</th>
<th>The 14th Amendment</th>
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<tbody>
<tr>
<td>provides that the Federal Government cannot deprive any person of life, liberty, or property without due process</td>
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<td>provides that State (and local) governments cannot deprive any person of life, liberty, or property without due process</td>
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Due Process is of two types:

- **Procedural**, the *how*, or methods of government action
  - Example: *Rochin v. California*, 1952

- **Substantive**, the *what*, or policies of government action
  - Example: *Pierce v. Society of Sisters*, 1925
• The 5th Amendment provides that “no person … shall be deprived of life, liberty, or property without due process of law…”.

• The 14th Amendment extends that restriction to State and local governments.

• **Due process** means that the government must act fairly and in accord with established rules at all times.

• Due process is broken down into two branches:
  
  **Substantive due process**—the fairness of the laws themselves
  
  **Procedural due process**—the fairness of the procedures used to enforce the laws
The police power is the authority of each State to act to safeguard the well-being of its people.

- **To promote health:** States can limit the sale of alcohol and tobacco, make laws to combat pollution, and require vaccination of school children.

- **To promote safety:** States can forbid concealed weapons, require the use of seat belts, and punish drunk drivers.

- **To promote morals:** States can outlaw gambling, the sale of obscene materials, and prostitution.

- **To promote the general welfare:** States can enact compulsory education laws, provide help to the needy, and limit profits of public utilities.
The constitutional guarantees of due process create a right of privacy.

- Established in *Griswold v. Connecticut*, 1965, which held that a law outlawing birth-control was unconstitutional.
- In *Stanley v. Georgia*, 1969, the right of privacy was defined as “the right to be free, except in very limited circumstances, from unwanted governmental intrusion into one’s privacy.”

The right of privacy provoked controversy when it was applied to a woman’s right to an abortion, beginning with *Roe v. Wade* in 1973.
1. Due process is broken down into substantive due process and
   (a) policing due process.
   (b) private due process.
   (c) State-regulated due process.
   (d) procedural due process.

2. The police power is the authority of each State to
   (a) arrest its citizens.
   (b) hire a police force.
   (c) protect and promote the public health and general welfare.
   (d) restrictions on alcohol and tobacco.
• Which Supreme Court cases have dealt with slavery and involuntary servitude?

• What is the intent of the 2nd Amendment’s protection of the right to keep and bear arms, and how is it applied?

• What constitutional provisions are designed to guarantee the security of home and person?
Slavery and Involuntary Servitude

• The 13th Amendment ended slavery in this country. It also protects against involuntary servitude, or forced labor.

  – *Neither the draft nor imprisonment can be classified as involuntary servitude.*

• Unlike any other part of the Constitution, the 13th Amendment covers the actions of private individuals as well as that of the government.

• Starting in 1968, the Supreme Court breathed new life into the 13th Amendment. The Supreme Court found that private citizens could not practice racial discrimination to exclude people on the basis of their color.
• The 2nd Amendment protects the right of each State to form and keep a militia.

• Many believe that the 2nd Amendment also sets out an individual right to keep and bear arms.

• In *District of Columbia v. Heller* (2008), the Court ruled that the Second Amendment protects an individual's right to possess a firearm, unconnected to service in a militia.
Security of Home and Person

The 3rd and 4th Amendments protect the security of home and person.

The 4th Amendment protects against *writs of assistance* (blanket search warrants) and “unreasonable searches and seizures.”
# Aspects of the 4th Amendment

<table>
<thead>
<tr>
<th>Probable Cause—to search a premise, in most cases, a warrant must be obtained based on a reasonable suspicion of crime</th>
<th>Arrests—to arrest a person, a police officer needs only probable cause</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Automobiles</strong>—police officers do not always need search warrants to search an automobile</td>
<td><strong>The Exclusionary Rule</strong>—Evidence gained as a result of an illegal search cannot be used in court</td>
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<td><strong>Wiretapping</strong>—unless police officers have a warrant, tapping phone calls is not legal</td>
<td><strong>Drug Testing</strong>—drug testing can be conducted without a warrant or probable cause</td>
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Section 2 Review

1. When did the 13th Amendment begin to be enforce laws against racial discrimination by private citizens?
   (a) 1791
   (b) 1865
   (c) 1866
   (d) 1968

2. The 3rd Amendment forbids
   (a) new taxes.
   (b) housing soldiers in private homes.
   (c) new colonies in the Americas.
   (d) all of the above.

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S E C T I O N 3

Rights of the Accused

• What are the writ of habeas corpus, bills of attainder, and ex post facto laws?

• What issues arise from the guarantee of a speedy and public trial?

• What constitutes a fair trial by jury?
• **Writ of Habeas Corpus**—A court order which prevents unjust arrests and imprisonment

• **Bills of Attainder**—laws passed by Congress that inflict punishment without a court trial

• **Ex Post Facto Laws**—new laws cannot apply to things that happened in the past
A **grand jury** is the formal device by which a person can be accused of a serious crime.

- It is required for federal courts under the 5th Amendment.
- **Indictment** - a formal complaint or accusation of wrongdoing
- Only the prosecution presents evidence before a grand jury.
Speedy Trial

• The 6th Amendment guarantees the right to a speedy and public trial.

• The Speedy Trial Act of 1974 requires that the beginning of a person’s federal criminal trial must take place no more than 100 days after the arrest.

• A judge can limit who can watch a trial if the defendant’s rights are in jeopardy.

Trial by Jury

• Americans in criminal trials are guaranteed an impartial jury chosen from the district where the crime was committed.

• If a defendant waives the right to a jury trial, a bench trial is held where the judge alone hears the case.

• Most juries have to be unanimous to convict.
## Right to an Adequate Defense

Some rights of the accused:

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<tr>
<th>1. to be informed of the content and form of the accusation</th>
<th>2. to be confronted with the witnesses against her/him</th>
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<tr>
<td>3. to be able to subpoena witnesses to testify on his/her behalf</td>
<td>4. to have a lawyer speak in his/her defense</td>
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Chapter 20, Section 3
Self-Incrimination

• “I plead the Fifth” - The 5th Amendment declares that no person can be “compelled in any criminal case to be a witness against himself.”

• A husband or wife cannot be forced to testify against their spouse, although they can testify voluntarily.

Miranda Rights

The **Miranda Rule** - In *Miranda v. Arizona*, 1966, the Supreme Court set an historic precedent by ruling a defendant must be informed of his or her rights before questioning.
Stare Decisis – “Let the decision stand”

• legal principle by which judges are obliged to respect the precedents established by prior decisions, or precedents.
• judges are independent but should rule in a fair, predictable and non-chaotic manner.
• At the same time, the law needs to be flexible to reflect changing views and values of society.

overturned
Plessy v. Ferguson, 1896
Section 3 Review

1. The ban on bills of attainder exists because
   (a) Congress had abused this power.
   (b) colonial English government had abused this power.
   (c) Thomas Jefferson was the victim of such a bill.
   (d) all of the above.

2. A bench trial is held if
   (a) the publicity surrounding a case requires it.
   (b) the defendant waives the right to a trial by jury.
   (c) the defendant pleads guilty.
   (d) the prosecutor has little evidence of a crime.

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SECTION 4

Punishment

• What is the purpose of bail and preventive detention?
• What is the Court’s interpretation of cruel and unusual punishment?
• What is the history of the Court’s decisions of capital punishment?
• What is treason?
• **Bail** is a sum of money that the accused may be required to deposit with the court as a guarantee that he or she will appear in court.

• The Constitution does not guarantee that all accused persons are entitled to bail, just that the amount of the bail cannot be excessive.

• **Preventive detention** is a law that allows federal judges to order that accused felons be held without bail if there is a danger that the person will commit another crime if released.

• Critics think preventive detention amounts to presuming the accused guilty. The Court upheld the law in *United States v. Salerno*, 1987.
Petty Offenses, Misdemeanors, and Felonies

• Crimes are classified by levels of seriousness in Federal and State law.

• The least serious crimes are **petty offenses**, which are punishable by a ticket or fine. Examples include jaywalking or speeding.

• **Misdemeanors** carry a penalty of up to one year in jail and/or a fine.

• **Felonies** are serious crimes, with penalties ranging anywhere from 1 year in prison to life imprisonment. Particularly heinous crimes may carry the death penalty.
Cruel and Unusual Punishment

The 8th Amendment forbids “cruel and unusual punishment.”

• The 8th Amendment is intended to prevent barbaric tortures such as drawing and quartering and other excessively cruel punishments.

• The Supreme Court held that defining narcotics addiction as a crime, rather than an illness, was cruel and unusual in *Robinson v. California*, 1962.

• The Supreme Court has upheld the use of *capital punishment*, or the death penalty, despite heated debate that it is cruel and unusual.
Treason is the only crime defined in the Constitution.

Treason is:

1. Levying war against the United States or
2. Giving aid and comfort to the enemies of the United States.

- A person can only commit treason in times of war, and it is punishable by the death penalty.
- Other related acts, such as sabotage or espionage, can be committed in peacetime.
- John Brown, who was hanged as a traitor to Virginia because of his raid on Harper’s Ferry, is the only person ever to be executed for treason against a State.
1. Bail is
   (a) a fine you have to pay if you are arrested.
   (b) a tax to support jails.
   (c) a deposit you put down to guarantee appearance in court.
   (d) a contract between the State and a prisoner.

2. Treason is
   (a) the only crime defined in the Constitution.
   (b) punishable by death.
   (c) committed only in wartime.
   (d) all of the above.

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