

Procedural rights

Law



" The history of liberty has largely been the history of observance of procedural safeguards." We agree with this quote because our country is based on the right to have our guaranteed protection of life, liberty and property. Two of the greatest procedural guarantees that insure liberty are the Fifth and Fourteenth Amendments. According to the Fifth Amendment, a capital crime is punishable by death, while an infamous crime is punishable by death or imprisonment. This amendment guarantees that no one has to stand trial for such a federal crime unless indicted by a grand jury. Further, a person cannot be put in double jeopardy for the same offense by the same government. The amendment also guarantees that a person cannot be forced to testify against himself, and forbids the government from taking a person's property for public use without fair payment. Finally, this amendment deals with the " due process of law" for which it is probably best known. The takings clause of the Fifth Amendment states that private property cannot be taken by the government for public use without just compensation to the property owner. The drafters of the Bill of Rights included a takings clause to address outright physical appropriations of private property, such as government expropriation of private land for the paving of roads, since colonial governments' often confiscated private property for public projects without paying its owners. Because certain seventeenth century English courts forced confessions of heresy from religious dissenters, the framers of the Bill of Rights, were careful to include in the Fifth Amendment the provision that a person has the right to remain silent, and shall not be compelled to testify against himself in a criminal prosecution, it has also been interpreted to protect anyone questioned by a government agency, including a congressional committee. The grand jury

<https://assignbuster.com/procedural-rights/>

determines whether a person can be tried for a crime. Guaranteed by the Fifth Amendment, the right to be indicted by a grand jury meant to protect the accused from unjust prosecutors. The Fourteenth Amendment is one of the post-Civil War amendments, first intended to secure rights for former slaves. It includes the Due Process and Equal Protection Clauses among others. It is perhaps the most significant structural change to the Constitution since the passage of the United States Bill of Rights. The amendment provides a broad definition of United States citizenship, overturning the Dred Scott case, which excluded African Americans. It requires the states to provide equal protection under the law to all persons (not only to citizens) within their jurisdictions. Its Due Process Clause has driven much important and controversial case law regarding privacy rights, such as abortion and other issues. The first section formally defines citizenship and protects people's civil rights from infringement by any State. The provisions in Section 1 have been interpreted to the effect that children born on United States soil, with very few exceptions, are U. S. citizens. The phrase "and subject to the jurisdiction thereof" indicates that there are some exceptions to the universal rule that birth on U. S. soil automatically grants citizenship. In the case of *United States v. Wong Kim Ark*, the Supreme Court ruled that a person born within the territorial boundaries of the United States is eligible for birthright citizenship regardless of the nationality of his or her parents. The only exceptions to this rule identified in *Wong Kim Ark* concern diplomats, enemy forces in hostile occupation of the United States, and members of Native American tribes. The second section establishes rules for the apportioning of representatives in Congress to states, essentially counting all residents for apportionment and reducing apportionment if a

<https://assignbuster.com/procedural-rights/>

state wrongfully denies a person's right to vote. In *Plessy v. Ferguson*, the Supreme Court held that the states could impose segregation so long as they provided equivalent facilities—the genesis of the "separate but equal" doctrine. The popular understanding of what was encompassed under "civil rights" was much more restricted during the time of the Fourteenth Amendment's ratification than the present understanding, involving such things as equal treatment in criminal and civil court, in sentencing, and in availability of civil services if they apply. On this scheme, political rights were first guaranteed not with the Fourteenth Amendment but with the Fifteenth Amendment and its right to vote. Social rights first explicitly appeared with *Loving v. Virginia* (1967), which declared anti-miscegenation laws to be unconstitutional. The Fifth and Fourteenth Amendments included the greatest procedural safeguard, due process of law. In United States law, due process of law is the principle that the government must respect all of a person's legal rights instead of just some or most of those legal rights when the government deprives a person of life, liberty, or property. Due process has also been frequently interpreted as placing limitations on laws and legal proceedings, in order for judges instead of legislators to guarantee fundamental fairness, justice, and liberty. The latter interpretation is analogous to the concepts of natural justice and procedural justice used in various other jurisdictions. Procedural due process is essentially based on the concept of "fundamental fairness." As construed by the courts, it includes an individual's right to be adequately notified of charges or proceedings, and the opportunity to be heard at these proceedings. Procedural due process has also been an important factor in the development of the law of personal jurisdiction. In the United States, criminal

<https://assignbuster.com/procedural-rights/>

prosecutions and civil cases are governed by explicit guarantees of procedural rights under the Bill of Rights, most of which have been incorporated under the Fourteenth Amendment to the States. Due process has also been construed to generally protect the individual so that statutes, regulations, and enforcement actions must ensure that no one is deprived of " life, liberty, or property" without a fair opportunity to affect the judgment or result. This protection extends to all government proceedings that can result in an individual's deprivation, whether civil or criminal in nature, from parole violation hearings to administrative hearings regarding government benefits and entitlements to full-blown criminal trials. In criminal cases, many of these due process protections overlap with procedural protections provided by the Eighth Amendment to the United States Constitution, which guarantees reliable procedures that protect innocent people from being punished, which would be tantamount to cruel and unusual punishment. In 1934, the United States Supreme Court held that due process is violated " if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental Criticisms of the doctrine continue as in the past. Critics argue that judges are making determinations of policy and morality that properly belong with legislators, or argue that judges are reading views into the Constitution that are not really implied by the document, or argue that judges are claiming power to expand the liberty of some people at the expense of other people's liberty or argue that judges are addressing substance instead of process. The current majority view of the Supreme Court supports substantive due process rights in a number of areas. An alternative to strict originalist theory is advocated by Supreme Court Justice Breyer, one of the Court's supporters of <https://assignbuster.com/procedural-rights/>

substantive due process rights. Breyer believes the justices need to look at cases in light of how their decisions will promote what he calls "active liberty", the Constitution's aim of promoting participation by citizens in the processes of government. That is an approach that ostensibly emphasizes "the document's underlying values" and looking broadly at a law's purpose and consequences. However, such an approach would also give judges the ability to look very broadly at the consequences and unwritten purpose of constitutional provisions, such as the Due Process Clause, and thereby remove issues from the democratic process. The right to privacy is a great guarantee that shields arbitrary government action, it is generally referred to as a person's right to be free of government interference in those areas of one's personal life that do not affect other citizens. The Supreme Court justice Louis Brandeis defined it as "the right to be let alone." Although the word "privacy" doesn't appear in either the Constitution or in the Bill of Rights, the Ninth Amendment allows for this right by stating, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In other words, there are some rights that people may retain even though they are not spelled out specifically in the Constitution, and the Supreme Court has held that the right of privacy is one such right. Physical privacy could be defined as preventing "intrusions into one's physical space or solitude" This would include such concerns as: preventing intimate acts or one's body from being seen by others preventing unwelcome searching of one's personal possessions preventing unauthorized access to one's home or vehicle. An example of the legal basis for the right to physical privacy would be the US 4th amendment, which guarantees "the right of the people to be secure in <https://assignbuster.com/procedural-rights/>

their persons, houses, papers, and effects, against unreasonable searches and seizures" Most countries have laws regarding trespassing and property rights also determine the right of physical privacy. Physical privacy may be a matter of cultural sensitivity, personal dignity, or shyness. There may also be concerns about safety, if for example one has concerns about being the victim of crime or stalking. One of the most important physical privacy cases by the Supreme Court would be Roe vs. Wade. In Roe vs. Wade questions were raised whether women have a right to make their own decisions about pregnancy and birth, even including having an abortion if they want one, or does the government have the power to interfere with such decisions and tell women that they are required to carry a pregnancy to term? Where does the government's power over us end and our own power over our selves begin? With this decision, abortions became legal for all women across the United States. Even today, the decision is hotly debated - both by people who believe that life begins at conception and by people who do not think that any rights beyond those expressed by the plain text of the Constitution should be judicially recognized and protected. Data privacy refers to the evolving relationship between technology and the legal right to, or public expectation of privacy in the collection and sharing of data about ones self. Privacy concerns exist wherever uniquely identifiable data relating to a person or persons are collected and stored, in digital form or otherwise. In some cases there concerns refer to how data is collected, stored, and associated. In other cases the issue is who is given access to information. Other issues includes whether an individual has any ownership rights to data about them, and/or the right to view, verify, and challenge that information. Government's agencies, corporations, and other organizations may desire to

<https://assignbuster.com/procedural-rights/>

keep their activities or secrets from being revealed to other organizations or individuals. Such organizations may implement various security practices in order to prevent this. Organizations may seek legal protection for their secrets. For example, a government administration may be able to invoke executive privilege or declares certain information to be classified, or a corporation might attempt to protect trade secrets. It is said that a right to privacy is inherent in many of the amendments in the Bill of Rights, such as the 3rd amendment, the 4th amendment's search and seizure limits, and the 5th amendment's self-incrimination limit. However, the word "privacy" is actually never used in the text of the US Constitution or any of its amendments and various court cases have set limits on privacy rights in the US. In a unanimous 2005 ruling, the Supreme Court of New Hampshire ruled: "A generalized concern for personal privacy is insufficient to meet the state's burden of demonstrating the existence of a sufficiently compelling reason to prevent public access." The Court ruled that financial information people disclose in divorce cases is not entitled to sweeping privacy protections. The court said the right of access to court proceedings and records predates both the state and federal constitutions. The decision relied heavily on the New Hampshire Constitution, which says power comes from the people. "To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted," the Constitution says. *The Associated Press v. New Hampshire* (2005). In *Davis v. Freedom of Information Commission*, 259 Conn. 45 (2001) the Connecticut Supreme Court ruled that the Drivers Privacy Protection Act (DPPA) does not apply to other government agencies who receive personal information from the State Department of Motor Vehicles (DMV) in the course of their normal

<https://assignbuster.com/procedural-rights/>

government functions. Therefore, records compiled by the office of the tax assessor, which were based on state motor vehicle records, were publicly accessible. Excerpt of a ruling by Judge Kenneth Johnson, Indianapolis, Indiana, " The great public interest in the reporting, investigation and prosecution of child abuse trumps even the patient's interest in privileged communication with her physicians because, in the end, both the patient and the state are benefited by the disclosure," Johnson wrote. In *Las Vegas Review v. Board of County Commissioners*, August 18, 2000, Nevada's highest court ruled that records showing the telephone numbers of incoming and outgoing calls on publicly owned cellular telephones are not confidential or private. As Justice Hugo Black wrote in the *Griswold vs. Connecticut* opinion, "'Privacy' is a broad, abstract and ambiguous concept." There is no one sense of privacy which can be extracted from the various Court decisions which have touched upon it. The mere act of labeling something " private" and contrasting it with " public" implies that we are dealing with something which should be removed from government interference. According to those who emphasize individual autonomy and civil liberties, the existence of a realm of both private property and private conduct should, as much as possible, be left alone by the government. It is this realm which serves to facilitate the moral, personal and intellectual development of each individual, without which a functioning democracy is not possible.