

Due Process Amendments



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- Five of the ten amendments in the Bill of Rights are called the “Due Process Amendment”.
- What is this due process?
- Why is it so important to protecting our rights?

There has been a lot of talk about due process lately, but little of it seems to be informed by proof or evidence. Five of the ten amendments in the Bill of Rights are called the “Due Process Amendments.” With a little bit of research, we can not only be sure of what due process is, but how the Constitution protects our rights to it.

Due Process

We all know that the Bill of Rights was created to, well, protect our rights. Since half of the amendments are known as the “Due Process Amendments,” I think it’s safe to say that due process is important to protecting our rights.

If we’re going to talk about the due process amendments, we should start by making sure we know what due process is. From the Free Legal Dictionary we read:

An established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the individual.

[due process – The Free Legal Dictionary](#)

Due process is the protection of your legal and individual rights. With that in mind, let's look at those due process amendments.

Fourth Amendment

While often described as protecting your right to privacy, that word does not exist in the Fourth Amendment. Because the Fourth Amendment is about so much more than "privacy."

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[U.S. Constitution, Amendment IV](#)

Privacy is defined by not being observed. From Webster's 1828 Dictionary, privacy is:

A place of seclusion from company or observation

[Privacy – Webster's 1828 Dictionary](#)

However, the Fourth Amendment starts with protecting you, your home, and your stuff. It makes sure you are not unreasonably searched or seized. From making sure you are:

Free from danger of being taken by an enemy

[Secure – Webster's 1828 Dictionary](#)

The one question we really need to answer then, is what is reasonable?

Having the faculty of reason; endued with reason

[Reasonable – Webster's 1828 Dictionary](#)

I was taught not to use a word in its own definition. While I've heard a lot of people describe it in many different ways, based on the rest of the amendment I think you can sum up 'reasonable' as having a good reason to do something.

For example, what makes a search or seizure reasonable? According to the Fourth Amendment, having a valid warrant makes it reasonable. Why? Because in order to get a valid warrant, you have to have probable cause, supported by oath or affirmation. That sounds like a good reason to me, having evidence that shows that something has probably happened. And not just your word, but the oath or affirmation of someone who knows. This is important because lying under oath or affirmation is a crime. That seems pretty reasonable, but there's more. You see the warrant has to be specific about where someone can search and who or what can be seized. These requirements protect more than your right to privacy, but your legal right to security.

Fifth Amendment

I'm sure we're all familiar with "pleading the fifth", but there's so much more to this 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.

[U.S. Constitution, Amendment V](#)

This amendment starts with what happens when you are accused of a serious crime. The government cannot simply charge you

with a capital or infamous crime (a felony). Only a Grand Jury, made up of citizens, can actually charge you. The only exceptions are for military forces, including the militia when in actual service. That's because they are subject to the Uniform Code of Military Justice. Also, you cannot be charged twice for the same offense. Of course, courts play fast and loose with this, claiming that both the federal and state governments can charge you with the same offense.

Then there's your right to not be forced to self-witness. Notice, unlike what you see on TV, it's not a right against self-incrimination, but against self-witness. It doesn't matter if it's incriminating or not, you cannot be forced to witness against yourself. Again, the courts have taken this further with your right to remain silent.

And don't forget one of my favorite clauses: Your right to not be deprived of life, liberty, or property without due process of law. This is probably my favorite clause in the Bill of Rights because it doesn't just protect your life and property, but your liberty, your ability to live your life as you see fit, without unnecessary external interference.

The other thing the Fifth Amendment is known for is eminent domain. This protection that says the government cannot take your property unless it's for public use, in which case they must give you just compensation.

Sixth Amendment

The Sixth Amendment is all about criminal processes.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his

favor, and to have the Assistance of Counsel for his defence.

[U.S. Constitution, Amendment VI](#)

When you are charged with a crime, you have a right to a trial. Said trial must be both speedy and public. We often talk about a right to a jury of your peers, but your right is to an impartial jury. Furthermore, the jury must be in the state and district where the crime was committed. Courts make exceptions to the location when it can be shown that the accused cannot get an impartial jury.

You also have a right to be informed of what you are charged with, to confront witnesses against you, and to compel witnesses in your favor. You even have a right to the assistance of counsel. It's funny, because we talk about a right to a lawyer, though that's not what the Constitution says; it says you have a right to counsel. But why should you only be allowed to pick your counsel from someone who's been to law school and a member of a private organization?

Seventh Amendment

While the Sixth Amendment dealt with the criminal process, the Seventh deals with civil suits.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[U.S. Constitution, Amendment VII](#)

One of the ways we petition our government for a redress of grievances (protected by the First Amendment), is a civil lawsuit. When you sue someone, or are sued by someone, you have a right to have the case decided by a jury as long as the value in question is greater than \$20. And no, the

Constitution did not allow for inflation.

Furthermore, when a fact is tried by a jury, no other court can re-examine that decision. When a lawsuit decision is appealed, it's not the facts of the case that are reviewed, but the procedures used during the trial.

Eighth Amendment

The last of the Due Process Amendments is also probably the least considered. It is also the shortest.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[U.S. Constitution, Amendment VIII](#)

What is excessive bail or fine? I guess that depends on what the crime is. For example, bail for a misdemeanor shoplifting charge shouldn't be as high as first degree murder. Similarly, what makes punishment cruel and unusual? Because I'm sure the victim's family might have a different answer than someone not involved in the case. I'm sure there are things that most people would consider cruel, but what if it was your family member that was harmed?

Conclusion

Due process is crucial to protecting your rights. So why is it so often overlooked in preference of the "sexier" amendments like the First or Second? I can't tell you how many First Amendment cases I've reviewed that had nothing to do with that amendment. Rather, they were a case of being deprived of life, liberty, or property without due process of law.

As I stated earlier, half of the amendments in the Bill of Rights are dedicated to protecting your rights through due process. Maybe these amendments should be the "sexy" ones. These amendments focus on our legal rights that are designed to make sure the wheels of government don't run over us. For

that reason alone, I think we should spend more time considering these Due Process Amendments, not to mention the rights they are designed to protect.

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