

Lesson 27

What is the right to due process and how is it protected?

Purpose of Lesson

Fairness is an important idea to Americans. It is an idea we learn at an early age in our society. We begin to say "But that's not fair!" when we are still very young.

Think of a situation in which you or someone you know was treated unfairly. What was unfair or unjust about the situation? How could this unfairness or injustice have been prevented? In what kinds of situations do you think people should have their right to fair treatment protected by law?

In the last lesson we examined the equal protection clause in the Constitution that deals with unfair discrimination. In this lesson we will look at another clause in the Constitution that is concerned with fairness—the due process clause. This clause is intended to guarantee that the government will not interfere with an individual's right to life, liberty, or property without a good and fair reason.

When you have completed the lesson you should be able to explain in general terms what due process means and particularly how it has been applied to the rights of juveniles who are accused of breaking the law.

Terms to know

due process clause
procedure

The due process clauses

A **due process clause** can be found in two places in the Constitution—in the Fifth Amendment of the Bill of Rights, ratified in 1791, and in the Fourteenth Amendment, ratified in 1868.

The Fifth Amendment and the other amendments that make up the Bill of Rights were designed to protect people from unfair and unreasonable treatment by the **federal government**. The Bill of Rights did not at first protect people from unfair treatment by **state governments**.

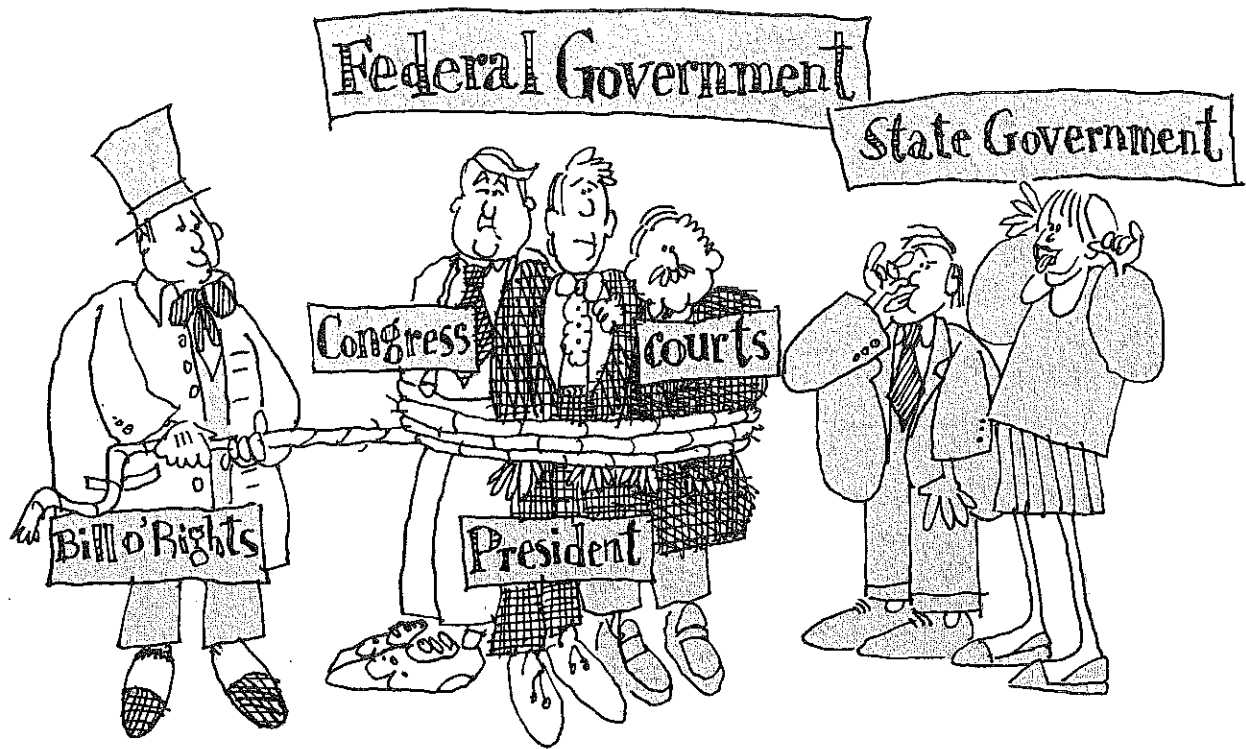
The Fifth Amendment says:

No person shall...be deprived of life, liberty, or property, without due process of law;...

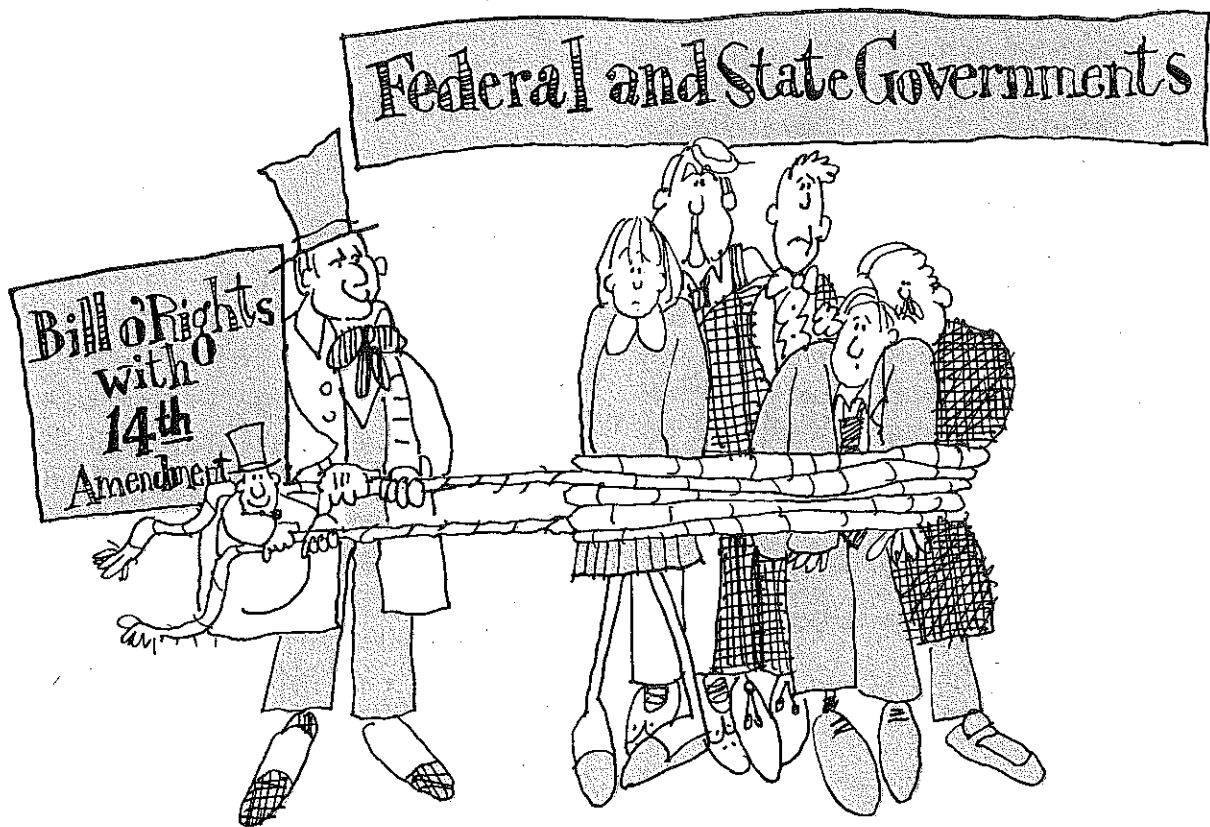
The Fourteenth Amendment contains a due process clause that is intended to limit the powers of **state governments**. Over the years, the Supreme Court has interpreted this clause to mean that almost all of the protections in the Bill of Rights apply also to actions of state governments.

The Fourteenth Amendment, Section 1, says:

...nor shall any State deprive any person of life, liberty, or property, without due process of law;...



Compare these two pictures. What effect did the passage of the 14th Amendment have on the way the Bill of Rights is applied?



What is due process of law?

It is impossible to define "due process of law" exactly. The closest meaning is that the right to due process is the right to be treated fairly by government. There are two important ways this meaning is applied.

- Due process means that the **content** of laws that legislatures pass must be fair and reasonable. Congress and the state legislatures cannot pass laws that place unfair or unreasonable limitations on people's rights to life, liberty, or property.
- Due process means that the **procedures**, or methods used to conduct hearings and to apply and enforce the law, must be fair and reasonable. All branches of the federal and state governments must use fair procedures when they are carrying out the responsibilities given to them by the people.

This lesson will deal with the second meaning of due process — that members of all branches of government must use fair procedures when fulfilling their responsibilities. We will concentrate on the rights of persons suspected or accused of crimes. To show the importance of due process, we will examine the procedures followed in a situation that led to a famous Supreme Court case called *In re Gault*. This case concerns the treatment of a juvenile accused of a crime.

Problem solving

What are fair procedures?

Your class should be divided into small groups for the following activities:

1. Read the case that follows.
2. Make a list of the procedures used by government officials in Gerald Gault's case that the group thinks were unfair.
3. Identify the parts of Amendments V and VI of the Bill of Rights that the group thinks should apply to the procedures used in this case.
4. Take and defend a position on how the Supreme Court should have dealt with this case.

Was Gerald Gault treated fairly?

Fifteen-year-old Gerald Gault was already on six months' probation because he had been in the company of another boy who had stolen a wallet from a woman's purse. At about 10 a.m. on June 8, 1964, Gerald and a friend, Ronald Lewis, were arrested by the Sheriff of Gila County. The boys were taken to the county Children's Detention Home. They were accused of telephoning a neighbor of the boys, Mrs. Cook, and saying offensive and obscene things to her. Mrs. Cook had called the sheriff.

The boys were questioned by the superintendent of the detention home, Probation Officer Flagg. The boys admitted making the calls, but each boy blamed the other.

At the time Gerald was picked up, his parents were at work. The sheriff did not leave a notice telling them Gerald was being taken to the detention home. No one from the sheriff's office called the Gaults. When his mother arrived home at about 6 p.m. to find Gerald gone, she sent his older brother to the Lewis's home. The brother learned that Gerald was being held in the detention home. He went home and

told his mother, and the two of them went to the detention home. There, Officer Flagg told Mrs. Gault why Jerry was taken there. He said there would be a hearing in juvenile court the next afternoon.

The next day, Officer Flagg told Judge McGhee of the juvenile court that Gerald was under 18 years of age and a juvenile delinquent. Gerald, his mother, his older brother, Officer Flagg, and Judge McGhee were at the hearing. Gerald's father was at work outside the city. Mrs. Cook was not present either.

No one was asked to swear to tell the truth at this hearing. No record was made of what was said. No lawyers were present. At later hearings, Judge McGhee, Mrs. Gault, and Officer Flagg agreed on some things that were said at the first hearing and disagreed about others. They agreed that the judge had asked Gerald about the telephone call. They disagreed about what Gerald answered. His mother remembered that Gerald said he had dialed Mrs. Cook's number and then handed the telephone to Ronald. Officer Flagg said that Gerald had admitted making one insulting remark.

After the first hearing, Gerald was taken back to the detention home. Two or three days later, he was driven home. No explanation was given for why he was kept in the detention home or why he was taken home.

On the day Gerald was driven home, his mother received a note from Officer Flagg. It was on plain paper. It said: "Mrs. Gault, Judge McGhee has set Monday, June 15, 1964, at 11:00 for further hearings on Gerald's delinquency."

On June 15, the Gaults appeared in court before Judge McGhee. Mrs. Cook

was not at this hearing either, although Mrs. Gault had asked that she be present. Judge McGhee, who had never spoken with Mrs. Cook, said that she did not have to be there. Again no one was asked to swear to tell the truth and no record was made of this hearing. People at this hearing later disagreed about what happened. Mr. and Mrs. Gault remembered that Gerald again said he had only dialed the number. Gerald did not admit making the remarks. Judge McGhee later said Gerald had admitted making nuisance calls in the past, "silly calls, or funny calls, or something like that."

At this hearing, the probation officer gave the judge a report that was not given to the Gaults. This report said Gerald had made insulting phone calls. The judge ruled that Gerald had broken a section of the Arizona criminal law that said that a person who "in the presence of or hearing of any woman or child...uses vulgar, abusive, or obscene language, is guilty of a misdemeanor." The judge committed Gerald as a juvenile delinquent to the State Industrial School until he reached age 21, unless he was discharged sooner by "due process of law."

If Gerald had been 18, he would have been tried in a regular criminal court. There, the maximum penalty for making "vulgar, abusive, or obscene" calls would have been a \$5 to \$50 fine or not more than two months' imprisonment.

Mr. and Mrs. Gault filed a petition for Gerald's release from the Industrial School, which was denied. The case was appealed by Gerald's lawyer, Amelia Lewis, and eventually reached the United States Supreme Court. His lawyers argued that the procedure used in Gerald's case had denied him due process under the

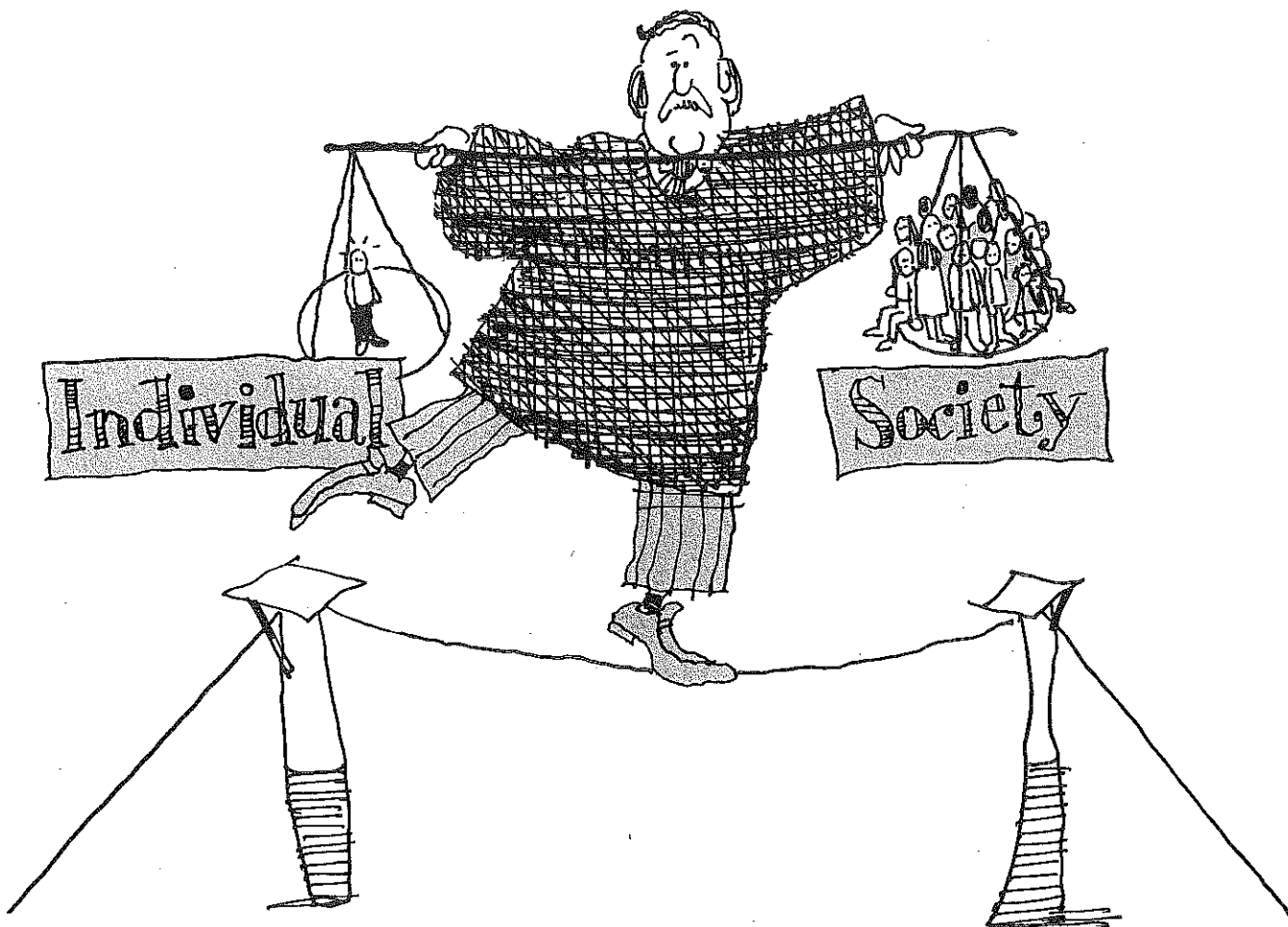
Fourteenth Amendment. Attorneys for the state argued that the informal proceedings under the juvenile court system were intended to help juveniles, rather than treat them as regular criminals. They said this system would be undermined if the Court gave young offenders all the specific guarantees in the Bill of Rights.

The rights of the individual versus the rights of society

Problems of due process involve two responsibilities of government that sometimes conflict. These are the government's responsibility to:

- protect the rights of the individual who may have broken the law, and
- protect everyone else from people who break the law and endanger the lives, liberty, or property of others.

Balancing these two responsibilities is a difficult job that members of the government and the courts must face. In spite of this difficulty, the due process protections of the individual against unfair treatment by government is among the most important protections of our constitutional democracy.



What are some of the issues that require our courts to balance the rights of the individual against those of society?

Due process in other situations

This lesson has dealt with due process of law as it applies to the rights of people accused of crimes. However, the right to due process means the right to be treated fairly by all agencies of government, not just the courts and law enforcement agencies. It applies to your local school board hearings, to congressional hearings, and to hearings of the administrative agencies of your state and federal government. Due process of law has been called the "primary and indispensable foundation of individual freedom" because it protects the individual from government wrongdoing.

Reviewing and using the lesson

1. Why do you think the guarantee of due process is so important?
2. Why are the courts given the responsibility to protect due process?
3. Should adults and juveniles be treated alike when they break laws? Explain your answer.



Do you think that juveniles and adults accused of crimes should be treated the same?