

# The Rule of Law in American Govt: Due Process

## RIGHT TO DUE PROCESS

The phrase due process embodies society's basic notions of legal fairness. A first reading of the due process clauses of [the Fifth](#) and [Fourteenth Amendments](#), which prohibit government from taking a person's "life, liberty or property without due process of law," suggests a limitation that only relates to procedures. In fact many due process cases do involve the question of fair procedures or procedural due process. However, question of legal fairness may be related not only to procedures, but also to legislation that unfairly affects people. As a result, courts in the U.S. have interpreted the language of these Amendments as a limitation on substantive powers of legislatures to pass laws affecting various aspects of life. When applying what is called substantive due process, courts look at whether a law or government action unreasonably infringes on a fundamental liberty.

In a case from 1833, [the Supreme Court](#) of the U.S. decided that the Fifth Amendment was not directly binding on state governments. As a result of that case, neither the Supreme Court nor the federal court in general exercised much control over the substance of state laws or over the processes by which states administered their laws during America's early years. This situation changed dramatically with the passage of the Civil War Amendments (13, 14, and 15), which were designed to prevent discrimination by states against blacks freed from slavery as a result of that war.

The Fourteenth Amendment's due process clause was almost identical to the Fifth Amendment's clause. But the Fourteenth Amendment was specific in limiting the actions of the state governments. Courts have interpreted these two clauses identically: the Fifth Amendment now limits the power of the federal government and the Fourteenth Amendment limits the power of state (and local) governments.

Source: <http://www.lincoln.edu/criminaljustice/hr/Dueprocess.htm>