

**CASES AND MATERIALS ON  
CONSTITUTIONAL LAW  
THEMES FOR THE  
CONSTITUTION'S  
THIRD CENTURY**

By

**Daniel A. Farber**

*Henry J. Fletcher Professor of Law  
University of Minnesota*

*and*

**William N. Eskridge, Jr.**

*Professor of Law  
Georgetown University*

*and*

**Philip P. Frickey**

*Faegre & Benson Professor of Law  
University of Minnesota*

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inertia, decisions by non-representative state officials, or interest group maneuvering. (Compare the *Croson* decision in Ch. 2, where the Court imposed a similar requirement for state affirmative action plans.) *Roe* and *Bowers* both involved very old statutes that might or might not reflect current legislative preferences, and that were not based on any consideration of current social or medical realities. Why not remand them to the legislature? And *Cruzan* is also vulnerable to a process attack: not only was it the result of a judicial rather than legislative determination, but the judicial process itself was very peculiar. The deciding vote was cast by a judge who was not a regular sitting member of the Missouri Supreme Court, and the dissenting judges claimed that he was not legally entitled to sit on the case.

### PROBLEM ON THE SCOPE OF "LIBERTY"

A state prison has a rule that inmates may not marry anyone (whether a fellow inmate or otherwise) unless the prison superintendent concludes that there are compelling reasons for marriage (apparently only pregnancy or the birth of a child outside of marriage will be considered "compelling"). Is this rule constitutional? First, reread Part II of *Loving v. Virginia* (p. 138, *supra*), which held that there is a fundamental right to marry. You might also want to consult *Zablocki v. Redhail*, 434 U.S. 374 (1978), where the Court said:

The decisions of this Court confirm that the right to marry is of fundamental importance to all individuals. [Citing *Loving*; *Griswold*; *Skinner*; *Meyer*.] It is not surprising that the decision to marry has been placed on the same level of importance as decisions relating to procreation, childbirth, child rearing, and family relationships. \* \* \* [I]t would make little sense to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society. \* \* \* If [the] right to procreate means anything at all, it must imply some right to enter the only relationship in which the [State] allows sexual relations legally to take place.

Now consider the cases you have read in this Chapter (*Griswold*, *Roe*, *Casey*, *Bowers*, *Cruzan*), as well as the holding that a prison inmate "retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817 (1974). For how the Court handled the issue, see *Turner v. Safley*, 482 U.S. 78 (1987).

## SECTION 6. PROCEDURAL DUE PROCESS

### A. INTRODUCTION

Whatever force there might be to the criticism that "substantive due process" is logically an oxymoron and without support in the Constitution's text and history, the due process clauses of the Fifth and Fourteenth Amendments clearly have *some* content. Both Amendments state that a person is entitled to "due process of law" before she is

deprived of certain important interests by the government. Even if this language is given a purely procedural definition, it could still be a source of great protection against governmental abuse.

One important aspect of due process is a guarantee of procedural fairness in adjudication, whether in the courts or in trial-like hearings before administrative agencies. In *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980), in discussing the importance of procedural due process in this context, the Supreme Court explained some of the significant values underlying procedural due process:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Consider the "two central concerns of procedural due process" identified in *Jerrico*. The first is utilitarian—the government should not deprive a person of an important interest unless the correct understanding of the facts and the law allows it to do so. The second is normative and is often called the "dignitary" or "intrinsic" value to due process—even if the government may lawfully deprive someone of an important interest, respect for that individual demands that she have the opportunity to be heard by a neutral decisionmaker under fair proceedings before the deprivation occurs. In other words, one concern relates to the actuality of justice, and the other involves the appearance of justice.

Note that these two concerns of procedural due process make the most sense in contexts in which a judge or administrative official is enforcing a governmental directive in a way that deprives an individual of life, liberty, or property. The utilitarian concern suggests that the individual should be allowed to show that the deprivation is not justified under the governmental directive or that the directive itself is unenforceable. The normative concern highlights the individual's dignitary interest in observing and participating in a procedure that has singled her out for a potentially grievous loss. In contrast, the Supreme Court has held that due process does not require a legislature or other governmental lawmaking body adopting a statute or rule that applies across a class of persons to provide any special procedural protections. The notion is that the legislative or administrative process provides all the process that is due. See *Bi-Metallic Investment Co. v. State Board of Equalization*, 239

U.S. 441 (1915) (state agency may increase the valuation of all taxable property in a jurisdiction without providing hearing). In such situations, providing procedural protections becomes much more impracticable—how can the legislature identify all the persons who might be affected and provide them prior notice and the opportunity to be heard? In addition, perhaps special procedural protections are less important: the democratic process allows citizens to participate and generally provides legitimacy for the statute or rule, and no individual has been singled out for disparate treatment. Moreover, trial-type hearings with individual witnesses may generate information too geared to their own variable circumstances and insufficiently attuned to the broader issues of policy that are before the legislature or agency.

This distinction may be clarified by an example. Suppose the legislature imposes a tax on anyone who owns more than two cars. In passing the statute, the legislature is under no duty to conduct hearings of any kind. But imposing the tax is a different story. A taxpayer must be given some opportunity to establish that she does not in fact own more than two cars. In short, legislative policy decisions (should car owners be taxed?) are not generally subject to procedural due process. (The idea of legislative due process, which we discussed earlier, is an unconventional effort to impose some process restrictions on legislation, but even so, nothing like a conventional trial-type hearing is contemplated.) On the other hand, individualized fact-determinations (how many cars does Jane Doe own?) are usually subject to some due process requirements.

Moving beyond the distinction between individuated and legislative decisions, one encounters many other issues of due process. A key problem is that the due process clause leaves all of its terms undefined. Consider another simple example. Assume that someone receiving public assistance from the state gets a letter informing him that his benefits will be cut off at the end of the month. This is the first time he learns that any questions had been raised about his eligibility. Upon phoning the welfare office, he is informed that the only avenue of relief available to him is to write a letter of protest, which will be reviewed administratively at some point (perhaps months) in the future.

How do the words of the due process clause apply to this situation? The man is certainly a person, and the state is taking away from (and therefore arguably "depriving") him of a benefit he has been enjoying. Beyond that, many questions arise. It is hard to consider his deprivation one of "life"—but what if he starves as a result of the loss of welfare? Should "liberty" include the ability to continue to rely upon governmental benefits? Could the benefits be considered "property"? To make the example even harder, consider a second person who has not been receiving welfare, considers herself eligible for it despite the government's rejection of her application, and is given no way to complain about the rejection of her application. In this situation, is the state even "depriving" her of anything? Could "liberty" or "property" be defined in

a way to reach her situation? Note that we are again back in the quagmire of defining "baselines."

Assuming that either or both persons have suffered a deprivation of life, liberty, or property, the inquiry then turns to what "process" is "due." Here the questions relate to the formality and complexity of the required procedures. Must the state engage in trial-like proceedings before cutting off his benefits? Before denying benefits to her in the first place? If trial-like proceedings are unnecessary, what kind of process short of them will suffice? Once the basic format of the proceedings is ascertained, other important procedural questions remain, such as who bears the burden of proving the welfare recipient or applicant eligible or ineligible, the degree of the burden of proof (beyond a reasonable doubt, or by a clear and convincing evidence, or by a preponderance of the evidence), whether the recipient or applicant may be represented by an attorney (indeed, whether the state must provide such indigent persons attorneys at state expense to promote a fairer outcome), whether there is a right to confront and cross-examine adverse witnesses, whether an administrative appeal and/or the chance to challenge the administrative decision in court must be available, and so on.

Note that in considering what process is due, the two values identified in *Jerrico* can point in different directions. The utilitarian concern might suggest that the determination of what process is due should be done by cost/benefit analysis (balancing the cost of additional procedures against their utilitarian value—i.e., the product of the likelihood that they would prevent erroneous deprivations and the magnitude of those deprivations). The dignitary or intrinsic value to due process might suggest that better procedures are required as long as they do not unduly burden the government and tend to foster the appearance of justice and to reduce psychological harm.<sup>1</sup>

In light of the analytical difficulties and the wealth of precedents concerning procedural due process, we can present only an overview designed to illuminate some of the central problems that arise. For detailed treatment, see John Nowak, Ronald Rotunda, *Constitutional Law* ch. 13 (4th ed. 1991); Laurence Tribe, *American Constitutional Law* §§ 10-7 to 10-19 (2d ed. 1988).

Prior to the 1960s, the Supreme Court tended to look to the common

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1. For example, suppose that you believe that you did far better on a law school examination than the grade awarded it. Assuming that some process should be available to you in these circumstances (maybe your "contract" with the law school constitutes a "property" interest and contains an implied term of fair grading), is it enough for the school to require the professor to provide you a short written, truthful response, such as "I graded the exam according to my usual grading processes, which include anonymous grading, and thus you were treated just like everyone else"? Or should the professor be required to discuss the exam with you, or even regrade it? The written response might satisfy the utilitarian value of due process, since requiring any additional procedure is very unlikely to result in a change of grade and would involve some burden to the professor. The dignitary or intrinsic value of due process is premised on the notion that you'll justifiably feel better if, at a minimum, the professor stares you in the eye and tells you personally, even if your grade remains the same.

law for guidance in defining what constituted a "liberty" or "property" interest. If one of these interests was present, the Court ordinarily assumed that the "process" that was "due" included notice and an opportunity to be heard before the deprivation occurred. This approach became increasingly difficult to support in light of the expansion of government activities in the twentieth century.

On the one hand, the traditional approach might seem too narrow. The common law considered government benefits (public employment, welfare, and so on) mere privileges rather than rights. Thus, due process was not triggered when a public employee lost her job or a recipient of governmental benefits like welfare or social security was cut off from those funds. In essence, this approach allowed the government to grant the "privilege" subject to whatever conditions the government chose to impose, including revocation without any accompanying procedural protections. The absence of procedural protections in these circumstances may seem harsh, however, in light of the post-New Deal expansion in the role of government as employer, regulator, and provider of "social security" in the broad sense.

Seemingly inspired by the recognition of the government's new roles in society upon which increasing numbers of persons rely, *Goldberg v. Kelly*, 397 U.S. 254 (1970), held that the state cannot terminate welfare benefits being provided to a recipient without affording "the opportunity for an evidentiary hearing prior to termination." *Goldberg* stated that "[i]t may be realistic today to regard welfare entitlements as more like property than a 'gratuity.' Much of the existing wealth in this country takes the form of rights that do not fall within traditional common law concepts of property." *Goldberg* considered the interest in continuing to receive welfare benefits a "statutory entitlement" that amounted to a property interest.<sup>1</sup> In the *Roth* case excerpted in Part B below, however, the Court stopped short of taking the *Goldberg* philosophy to its logical conclusion.

On the other hand, another aspect of the traditional approach that was incorporated into *Goldberg*, the assumption that notice and an elaborate hearing are almost always required before any deprivation could occur, might seem too inflexible in the complicated administrative state. In some circumstances, at least, couldn't a hearing after the deprivation occurred be sufficiently protective of individual interests? Moreover, in some circumstances couldn't some process short of an oral, evidentiary hearing suffice? In *Mathews v. Eldridge*, excerpted in Part C below, the Court adjusted the "process" that is "due" to fit utilitarian notions of the modern administrative state.

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1. For an influential pre-*Goldberg* discussion of the need to redefine "property" in light of modern circumstances, see Charles Reich, *The New Property*, 73 Yale L.J. 733 (1964).

# Black's Law Dictionary<sup>®</sup>

Seventh Edition

Bryan A. Garner  
Editor in Chief



ST. PAUL, MINN., 1999

who are present, abetting the crime, are guilty as principals in the second degree.

"Dueling is prearranged fighting with deadly weapons, usually under certain agreed or prescribed rules. . . . It is a misdemeanor at common law to fight a duel, even though no death result, to challenge another to a duel, intentionally to provoke such a challenge, or knowingly to be the bearer of such a challenge." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 243 (3d ed. 1982).

**duellum** (d[y]oo-el-əm), *n.* [fr. Latin *duo* "two"]  
*Hist.* See TRIAL BY COMBAT.

**due negotiation.** See NEGOTIATION.

**due notice.** See NOTICE.

**due-on-encumbrance clause.** A mortgage provision giving the lender the option to accelerate the debt if the borrower further mortgages the real estate without the lender's consent.

**due-on-sale clause.** A mortgage provision that gives the lender the option to accelerate the debt if the borrower transfers or conveys any part of the mortgaged real estate without the lender's consent.

**due posting.** 1. The stamping and placing of letters or packages in the U.S. mail. 2. The proper entry of an item into a ledger. 3. Proper publication; proper placement of an item (such as an announcement) in a particular place, as on a particular wall.

**due process.** The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case. — Also termed *due process of law*; *due course of law*.

"The words '*due process*' have a precise technical import, and are only applicable to the process and proceedings of the courts of justice; they can never be referred to an act of legislature." Alexander Hamilton, Remarks on an Act for Regulating Elections, New York Assembly, 6 Feb. 1787, in 4 *Papers of Alexander Hamilton* 34, 35 (Harold C. Syrett ed., 1962).

"The words, 'due process of law,' were undoubtedly intended to convey the same meaning as the words, 'by the law of the land,' in *Magna Charta*." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276 (1856) (Curtis, J.).

"Due process of law in each particular case means, such an exertion of the powers of government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question

belongs." Thomas M. Cooley, *A Treatise on the Constitutional Limitations* 356 (1868).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . The notice must be of such nature as reasonably to convey the required information." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950) (Jackson, J.).

**economic substantive due process.** The doctrine that certain social policies, such as the freedom of contract or the right to enjoy property without interference by government regulation, exist in the Due Process Clause of the 14th Amendment, particularly in the words "liberty" and "property."

**procedural due process.** The minimal requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and 14th Amendments, esp. if the deprivation of a significant life, liberty, or property interest may occur.

**substantive due process.** The doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective.

**Due Process Clause.** The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property. • There are two Due Process Clauses in the U.S. Constitution, one in the 5th Amendment applying to the federal government, and one in the 14th Amendment applying to the states (although the 5th Amendment's Due Process Clause also applies to the states under the incorporation doctrine). Cf. EQUAL PROTECTION CLAUSE.

**due process of law.** See DUE PROCESS.

**due-process rights.** The rights (as to life, liberty, and property) so fundamentally important as to require compliance with due-process standards of fairness and justice. See DUE PROCESS; DUE PROCESS CLAUSE.

**due proof.** Sufficient and properly submitted evidence to produce a result or support a conclusion, such as an entitlement to benefits supported by an insurance policy.

**DUI.** *abbr.* DRIVING UNDER THE INFLUENCE.

**DUIL.** *abbr.* Driving under the influence of liquor. See DRIVING UNDER THE INFLUENCE.



**UNITED  
STATES  
CODE  
ANNOTATED**

**CONSTITUTION  
of the  
UNITED STATES  
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**Amendment 5**



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Due process of law in general, see Constitutional Law ¶251 to 255(1).

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General considerations affecting due process of law, see C.J.S. Constitutional Law §§ 945 to 991.

1. Construction

This clause is not to be so broadly construed that Congress is put in a strait jacket when it attempts to suppress business and industrial conditions which it regards as offensive to the public welfare. Lincoln Federal Labor Union No.

# Amend. 5

## Note 1

19129, A.F. of L., v. Northwestern Iron & Metal Co., Neb. & N.C.1948, 69 S.Ct. 251, 335 U.S. 525, 93 L.Ed. 212. See, also, Hanson v. Union Pac. R. Co., 1955, 71 N.W.2d 526, 160 Neb. 669.

The restraints imposed on the national government by this amendment are no greater than those imposed on the states by Amend. 14. Bowles v. Willingham, Ga.1944, 64 S.Ct. 641, 321 U.S. 503, 88 L.Ed. 892. See, also, Foley Securities Corporation v. Commissioner of Internal Revenue, C.C.A.8 1939, 106 F.2d 731; Bartlett Trust Co. v. Elliott, D.C.Mo.1929, 30 F.2d 700; U.S. v. Armstrong, D.C.Ind. 1920, 265 F. 683; Lebowitz v. Forbes Leasing & Finance Corp., D.C.Pa.1971, 326 F.Supp. 1335, affirmed 456 F.2d 979, certiorari denied 93 S.Ct. 42, 409 U.S. 843, 34 L.Ed.2d 82, rehearing denied 93 S.Ct. 509, 409 U.S. 1049, 34 L.Ed.2d 502.

Standards of interpretation of this amendment are: (1) common and statutory law of England and laws of many of the states at time of adoption of the amendment; (2) entire Bill of Rights; and (3) intent of framers of the Constitution to be ascertained by examination of document as a whole as well as by analysis of legislative history. U.S. v. Tarlow-ski, D.C.N.Y.1969, 305 F.Supp. 112.

\* This clause should be liberally construed in favor of citizen. U.S. ex rel. Flannery v. Commanding General, Second Service Command, D.C.N.Y.1946, 69 F.Supp. 661. See, also, U.S. v. Hoffa, D.C.N.Y.1957, 156 F.Supp. 495.

### 2. Construction with other Constitutional provisions—Generally

Constitutional limitations on commingling of executive and adjudicatory functions arise out of this clause, not separation of powers principles. Kalaris v. Donovan, 1983, 697 F.2d 376, 225 U.S. App.D.C. 134, certiorari denied 103 S.Ct. 3088, 462 U.S. 1119, 77 L.Ed.2d 1349, rehearing denied 104 S.Ct. 30, 463 U.S. 1236, 77 L.Ed.2d 1451.

### 3. — Bankruptcy clause

While 11 U.S.C.A. former § 207 passed under Art. 1, § 8, cl. 4 empowering Congress to enact uniform laws on the subject of bankruptcy was subject to the restriction of this clause, Congress may prescribe rules which will permit a change in the form of the interest or right to the property which a creditor or other claimant has in the assets of the debtor, with the approval of a percentage of the creditors, so long as the rela-

tive positions are not changed and inferior claimants are not advanced ahead of those of superior rank. In re Caffall Oil Corporation, D.C.La.1938, 22 F.Supp. 484.

While Art. 1, § 8, cl. 4 gives Congress the power to enact legislation to establish uniform laws on the subject of bankruptcies throughout the United States, this clause limits the exercise of that power by Congress. In re Phillips, Bkrcty.Ill.1981, 13 B.R. 82.

### 4. — Commerce clause

Courts cannot invalidate federal legislation because it places a burden on interstate commerce, since Congress, within limits of this amendment, has authority to burden commerce if that seems to it a desirable means of accomplishing a permitted end. Morgan v. Com. of Va., Va.1946, 66 S.Ct. 1050, 328 U.S. 373, 90 L.Ed. 1317.

This amendment does not require full and uniform exercise of the commerce power, but Congress may weigh relative needs and restrict the application of a legislative policy to less than the entire field. Mabee v. White Plains Pub. Co., N.Y.1946, 66 S.Ct. 511, 327 U.S. 178, 90 L.Ed. 607.

The exercise of the commerce power is subject to this clause. Currin v. Wallace, N.C.1939, 59 S.Ct. 379, 306 U.S. 1, 83 L.Ed. 441. See, also, U.S. v. Twin City Power Co., C.A.S.C.1954, 215 F.2d 592; City of Atlanta v. National Bituminous Coal Commission, D.C.D.C.1939, 26 F.Supp. 606, affirmed 60 S.Ct. 170, 308 U.S. 517, 84 L.Ed. 440.

This amendment and Amend. 14 are not guaranties of untrammelled freedom of action and of contract, and Congress, in exercise of its power to regulate commerce, can subject both to restraints not shown to be unreasonable. Virginian Ry. Co. v. System Federation No. 40, Va.1937, 57 S.Ct. 592, 300 U.S. 515, 81 L.Ed. 789. See, also, Hanson v. Union Pac. R. Co., 1955, 71 N.W.2d 526, 160 Neb. 669.

Congress, in choice of means to effect permissible regulation of commerce, must conform to due process, but where means chosen are appropriate to permissible end, there is little scope for operation of this clause. Virginian Ry. Co. v. System Federation No. 40, Va.1937, 57 S.Ct. 592, 300 U.S. 515, 81 L.Ed. 789.

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that power is limited by this clause and the taking clause of this amendment. U.S. v. Stoeco Homes, Inc., C.A.N.J.1974, 498 F.2d 597, certiorari denied 95 S.Ct. 1124, 420 U.S. 927, 43 L.Ed.2d 397.

Legislation constituting exercise by Congress of its plenary power over commerce is not violative of due process merely because of variation in state laws. Turf Center, Inc. v. U.S., C.A. Wash.1963, 325 F.2d 793.

The exercise of commerce power is subject to this clause; the requirements of due process are satisfied if law passed in exercise of commerce clause, art. 1, § 8, cl. 3, has reasonable relation to legitimate legislative purpose and is not arbitrary, capricious or discriminatory; if means chosen are appropriate to permissible end there is little scope for operation of this clause. Boylan v. U.S., C.A.Or.1962, 310 F.2d 493, certiorari denied 83 S.Ct. 882, 372 U.S. 935, 9 L.Ed.2d 766. See, also, U.S. v. Hawes, C.A.Ga. 1976, 529 F.2d 472.

### 5. — Contract clause

See Notes of Decisions under note numbers 1318 to 1326.

### 6. — Taxing power

See Notes of Decisions under Subdivision XXVII, "Subjects of Federal Regulation—Taxes".

### 7. — War power

Substantive due process is a limitation upon all powers of Congress, including the war power. Galvan v. Press, Cal. 1954, 74 S.Ct. 737, 347 U.S. 522, 98 L.Ed. 911, rehearing denied 75 S.Ct. 17, 348 U.S. 852, 99 L.Ed. 671.

The mere existence of a state of war does not suspend or change the operation upon the power of Congress of the guaranties and limitations of this clause and Amend. 6, as to delegating legislative power to courts and juries, penalizing indefinite acts, and depriving citizens of the right to be informed of the nature and cause of accusations against them. U.S. v. L. Cohen Grocery Co., Mo.1921, 41 S.Ct. 298, 255 U.S. 81, 65 L.Ed. 516. See, also, Weed v. U.S., N.Y. 1921, 41 S.Ct. 306, 255 U.S. 109, 65 L.Ed.2d 537; Oglesby Grocery Co. v. U.S., Ga.1921, 41 S.Ct. 306, 255 U.S. 108, 65 L.Ed. 535; G.S. Willard Co. v. Palmer, Ohio 1921, 41 S.Ct. 305, 255 U.S. 106, 65 L.Ed.2d 534; Weed v. Lockwood, N.Y. 1921, 41 S.Ct. 305, 255 U.S. 104, 65 L.Ed.2d 532; Kinnane v. Detroit Creamery Co., Mich.1921, 41 S.Ct. 304, 255 U.S.

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102, 65 L.Ed.2d 531; Kennington v. Palmer, Miss.1921, 41 S.Ct. 303, 255 U.S. 100, 65 L.Ed.2d 528; Tedrow v. A.T. Lewis, etc. Co., Colo.1921, 41 S.Ct. 303, 255 U.S. 98, 65 L.Ed.2d 524; U.S. v. Masaaki Kuwabara, D.C.Cal.1944, 56 F.Supp. 716; Schueller v. Drum, D.C.Pa. 1943, 51 F.Supp. 383; Hammond v. Squier, D.C.Wash.1943, 51 F.Supp. 227; La-joie v. Milliken, 1922, 136 N.E. 419, 242 Mass. 508.

This clause is for the protection of the citizen, but it does not work a destruction of the general war-declaring and war-making provisions of Art. 1, § 8, cl's. 8, 11. Brown v. Wyatt Food Stores, D.C.Tex.1943, 49 F.Supp. 538.

The war power of Congress, Art. 1, § 8, cl. 11, is subject to limitations of this amendment. Henderson v. Kimmel, D.C.Kan.1942, 47 F.Supp. 635. See, also, U.S. v. Siegel Bros., D.C.Wash.1943, 52 F.Supp. 238; Henderson v. Bryan, D.C.Cal.1942, 46 F.Supp. 682.

### 8. — First Amendment

This amendment and Amends. 1 and 4 are related and safeguard not only privacy and protection against self-incrimination but conscience and human dignity and freedom of expression as well. Stanford v. State of Tex., Tex.1965, 85 S.Ct. 506, 379 U.S. 476, 13 L.Ed.2d 431, rehearing denied 85 S.Ct. 879, 380 U.S. 926, 13 L.Ed.2d 813.

Those rights derived from this clause alone may be overridden by less compelling grounds than necessary to justify infringement of rights under free exercise clause of amend. 1. Osgood v. District of Columbia, D.C.D.C.1983, 567 F.Supp. 1026.

### 9. — Fourteenth Amendment

Restraints imposed on national government by this amendment, are no greater than those imposed on states by Amend. 14. Blue & Gold Stamps-U-Save Premium Co. v. Sobieski, D.C.Cal.1961, 190 F.Supp. 133. See, also, Rok v. Legg, D.C.Cal.1939, 27 F.Supp. 243.

Due process under this amendment, when applied by federal courts, serves as basic protection of citizen against unjust federal action and must be given even broader connotation than due process under Amend. 14. U.S. v. Townsend, D.C.D.C.1957, 151 F.Supp. 378.

### 10. Purpose

Due process of law is primary and indispensable foundation of individual

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freedom. Application of Gault, Ariz. 1967, 87 S.Ct. 1428, 387 U.S. 1, 18 L.Ed.2d 527.

The "due process" provision of Amend. 14, just as that in this clause, was intended to guarantee procedural standards adequate and appropriate to protect at all times people charged with or suspected of crime by those holding positions of power and authority. *Chambers v. State of Florida*, Fla.1940, 60 S.Ct. 472, 309 U.S. 227, 84 L.Ed. 716.

This amendment and Amend. 6 are intended to protect the individual from governmental overreaching. *U.S. v. La Monica*, C.A.Ariz.1972, 472 F.2d 580.

### 11. District of Columbia, applicability to

District of Columbia is not a "state" for purposes of Amend. 14, and rights created by this clause apply to District of Columbia directly by way of this amendment. *Osgood v. District of Columbia*, D.C.D.C.1983, 567 F.Supp. 1026.

This amendment, not Amend. 14, applies in District of Columbia. *U.S. v. Townsend*, D.C.D.C.1957, 151 F.Supp. 378. See, also, *District of Columbia v. H.J.B.*, D.C.App.1976, 359 A.2d 285.

All the guaranties of the Constitution respecting life, liberty, and property are equally for the benefit and protection of all citizens of the United States residing permanently or temporarily within the District of Columbia, as those residing in the several states. *Lappin v. District of Columbia*, 1903, 22 App.D.C. 76. See, also, *Groot v. Reilly*, 1919, 266 F. 1008, 49 App.D.C. 388, error dismissed 41 S.Ct. 61, 254 U.S. 661, 65 L.Ed. 463; *Wilson v. McDonnell*, 1919, 265 F. 432, 49 App. D.C. 280, error dismissed 42 S.Ct. 46, 257 U.S. 665, 66 L.Ed. 424.

### 12. Territories and possessions, applicability to

The fundamental rights of individuals protected by the Amend. 14 from infringement by the states are guaranteed by this clause against action by the territorial legislature or officers, such clause applying to the federal government and all its agencies. *Farrington v. T. Tokushige, Hawaii*, 1927, 47 S.Ct. 406, 273 U.S. 284, 71 L.Ed. 646.

The constitutional limitations of power which operate upon the authority of Congress when legislating for the United States are inapplicable and do not control Congress when it comes to exert, in virtue of the sovereignty of the United

States, legislative power over territory not forming a part of the United States, because not incorporated therein. *Public Utility Com'rs v. Ynchausti, Phil.Is.* 1920, 40 S.Ct. 277, 251 U.S. 401, 64 L.Ed. 327.

Federal courts may hear due process claims raised by citizens held prisoner within territorial jurisdiction of the United States. *Rosado v. Civiletti, C.A.Conn.* 1980, 621 F.2d 1179, certiorari denied 101 S.Ct. 153, 449 U.S. 856, 66 L.Ed.2d 70, rehearing denied 101 S.Ct. 597, 449 U.S. 1027, 66 L.Ed.2d 489.

This amendment does not require extension of all protections of Bill of Rights to territories governed by United States. *Government of the Canal Zone v. Scott, C.A.Canal Zone* 1974, 502 F.2d 566.

The restriction imposed on Congress by this clause is applicable to the power of Congress to legislate for the Territory of Puerto Rico. *Cases v. U.S., C.C.A. Puerto Rico* 1942, 131 F.2d 916, certiorari denied 63 S.Ct. 1431, 319 U.S. 770, 87 L.Ed. 1718. See, also, *Arroyo v. Puerto Rico Transp. Authority, C.C.A. Puerto Rico* 1947, 164 F.2d 748.

This clause extends to the legislative enactments of the insular possessions of the United States. *Thornberg v. Jorgensen, C.C.A. Virgin Islands* 1932, 60 F.2d 471.

The right not to be "deprived of life, liberty or property, without due process of law" was engrafted by the Organic Act of Congress on the Danish laws of the Virgin Islands, 48 U.S.C.A. §§ 1391 et seq. *Soto v. U.S., C.C.A. Virgin Is.* 1921, 273 F. 628.

Although not every right guaranteed by the Constitution automatically adheres to residents of territories belonging to, but not part of, the United States, it is beyond dispute that the guarantees of certain fundamental personal rights declared in the Constitution, as for instance that no person may be deprived of life, liberty or property without due process of law, had, from the beginning, full application in the Philippines and Puerto Rico. *Matter of Naturalization of 68 Filipino War Veterans, D.C. Cal.* 1975, 406 F.Supp. 931.

Guaranty of due process of law embodied in this amendment is not applicable to Puerto Rico as a possession, dependency or territory subject to plenary power of Congress, but is applicable to Puerto Rico under the compact which

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exists between Puerto Rican people and United States government and which establishes a new relationship pursuant to which Puerto Rico enjoys self-government. Mora v. Torres, D.C.Puerto Rico 1953, 113 F.Supp. 309, affirmed 206 F.2d 377.

13. Generally

This amendment forbids federal government from depriving any person of life, liberty or property without due process of law. Bloom v. State of Ill., Ill.1968, 88 S.Ct. 1477, 391 U.S. 194, 20 L.Ed.2d 522.

14. Law of land

"The words 'due process of law' were undoubtedly intended to convey the same meaning as the words, 'by the law of the land,' in Magna Charta. Murray v. Hoboken Land, etc., Co., N.J.1856, 59 U.S. 276, 18 How. 276, 15 L.Ed. 372. See, also, Ochoa v. Hernandez y Morales, Puerto Rico 1913, 33 S.Ct. 1033, 230 U.S. 139, 57 L.Ed. 1427; Ex parte Toscans, D.C.Cal.1913, 208 F. 938; U.S. v. Ballard, D.C.Ky.1935, 12 F.Supp. 321; Payne v. Smith, 1948, 192 P.2d 964, 30 Wash.2d 646; Yarborough v. North Carolina Park Commission, 1928, 145 S.E. 563, 196 N.C. 284.

15. Flexible nature of due process

Due process is not technical conception with fixed content unrelated to time, place and circumstances; rather, it is flexible and calls for such procedural protections as particular situation demands. Mathews v. Eldridge, Va.1976, 96 S.Ct. 893, 424 U.S. 319, 47 L.Ed.2d 18.

Nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation, and it is not a technical conception with a fixed content unrelated to time, place and circumstances. Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy, App.D.C. 1961, 81 S.Ct. 1743, 367 U.S. 886, 6 L.Ed.2d 1230, rehearing denied 82 S.Ct. 22, 368 U.S. 869, 7 L.Ed.2d 70.

Due process is a flexible concept and its procedural requirements vary depending on the particular deprivation. Orloff v. Cleland, C.A.Cal.1983, 708 F.2d 372.

16. Facts of each case as controlling

Asserted denial of due process of law is to be tested by an appraisal of the totality of facts in a given case. Betts v. Brady, 1942, 62 S.Ct. 1252, 316 U.S. 455,

86 L.Ed. 1595. See, also, Schwartz v. Schuker, D.C.N.Y.1969, 298 F.Supp. 238.

Procedures required by this clause depend upon particular circumstances involved, precise nature of government function and type of liberty or property interest affected. Flute v. U.S., 1976, 535 F.2d 624, 210 Ct.Cl. 34.

17. Persons protected—Generally

This clause's protection extends to all persons within the United States, but attaches only when federal government seeks to deny a liberty or property interest. Knoetze v. U.S., Dept. of State, C.A. Fla.1981, 634 F.2d 207, certiorari denied 102 S.Ct. 109, 454 U.S. 823, 70 L.Ed.2d 95.

18. — Aliens

See, also, Notes of Decisions under Sub-division XVII, "Subjects of Federal Regulation—Aliens and Nationality".

If accused of committing a crime against the laws of the United States, a resident alien is entitled to constitutional protection of the Fifth and Sixth Amendments. Lopez v. U.S. I.N.S., C.A.10 (Colo.) 1985, 758 F.2d 1390.

Rights conferred by this amendment are not limited to citizens of the United States but extend to all persons within the borders. Diaz v. Haig, D.C.Wyo. 1981, 594 F.Supp. 1.

United States air carrier's foreign national employees on flights between points outside continental United States and its territories are not residents of United States or its territories and are not entitled to protection of this clause. Air Line Stewards and Stewardesses Ass'n, Intern. v. Northwest Airlines, Inc., D.C.Minn.1958, 162 F.Supp. 684, affirmed 267 F.2d 170, certiorari denied 80 S.Ct. 208, 361 U.S. 901, 4 L.Ed.2d 156.

19. — Cities and municipalities

City is not "person" within meaning of this clause. City of Sault Ste. Marie, Mich. v. Andrus, D.C.D.C.1980, 532 F.Supp. 157.

20. — Corporations

Corporations are entitled to protection from unlawful demands made in the name of public investigation but they can claim no equality with individuals in the enjoyment of a right to privacy. U.S. v. Morton Salt Co., Ill.1950, 70 S.Ct. 357, 338 U.S. 632, 94 L.Ed. 401.

This clause shields corporate as well as individual property against federal ac-

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tion in violation of this clause. *Marshall v. Kieppe*, C.A.Cal.1980, 637 F.2d 1217.

This amendment contains a prohibition upon the government of the United States, similar to the one in Amend. 14 against the action of the states, declaring that no person shall be deprived of life, liberty, or property, without due process of law; and it has been assumed, if not expressly held, that this clause protects the property of corporations against confiscation equally with that of individuals. *San Mateo County v. Southern Pac. R. Co.*, C.C.Cal.1882, 13 F. 145.

The protection of this amendment may not be invoked by a corporation. *U.S. v. Alabama Highway Express*, D.C. Ala.1942, 46 F.Supp. 450. See, also, *U.S. v. Guterma*, D.C.N.Y.1959, 174 F.Supp. 581.

Corporations are "persons" for purposes of due process. *Jim Young Development Corp. v. State Highway Commission of Mo.*, D.C.Mo.1972, 56 F.R.D. 38. See, also, *People v. B.N.B. Realty Corp.*, 1976, 379 N.Y.S.2d 324, 85 Misc.2d 487; *State ex rel. Stephan v. Lane*, 1980, 614 P.2d 987, 228 Kan. 379; *State ex rel. Londerholm v. American Oil Co.*, 1968, 446 P.2d 754, 202 Kan. 185.

#### 21. — Incompetents

See *Notes of Decisions under note number 393*.

#### 22. — Indians

See *Notes of Decisions under Subdivision XXII, "Subjects of Federal Regulation—Indians"*.

#### 23. — Nationals

Since Filipinos were nationals of the United States, owing full allegiance to the United States until Philippine independence, they were entitled to due process and equal protection under this amendment. *Petition of Nisperos*, D.C. Cal.1979, 471 F.Supp. 296.

#### 24. — States

State is without standing as parent of its citizens to invoke due process clause of this amendment against federal government. *State of S.C. v. Katzenbach*, S.C.1966, 86 S.Ct. 803, 383 U.S. 301, 15 L.Ed.2d 769. See, also, *Carroll v. Finch*, D.C. Alaska 1971, 326 F.Supp. 891; *International Shoe Co. v. Cocreham*, 1964, 164 So.2d 314, 246 La. 244, certiorari denied 85 S.Ct. 193, 379 U.S. 902, 13 L.Ed.2d 177.

The states are not "persons" within the language of this clause and, hence, natu-

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ral gas producing states could not be heard to complain that certain portions of Natural Gas Policy Act, 15 U.S.C.A. § 3301 et seq., violated due process. *State of Okl. By and Through Derryberry v. Federal Energy Regulatory Commission*. D.C.Okl.1980, 494 F.Supp. 636, affirmed 661 F.2d 832, certiorari denied 102 S.Ct. 2902, 2903, 457 U.S. 1105, 73 L.Ed.2d 1313, rehearing denied 103 S.Ct. 16, 458 U.S. 1132, 73 L.Ed.2d 1402.

#### 25. Rights protected—Generally

Mere unilateral expectation or an abstract need is not a "property interest" entitled to protection under this clause. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, Fla.1980, 101 S.Ct. 446, 449 U.S. 155, 66 L.Ed.2d 358, on remand 394 So.2d 1009.

The limitations of this clause, and of those portions of Amends. 1 to 10 which it has been held to incorporate, come into play only when the government activity in question violates some protected right of the defendant. (Per Mr. Justice Rehnquist with the Chief Justice and one Justice concurring and two Justices concurring in the judgment.) *Hampton v. U.S.*, Mo.1976, 96 S.Ct. 1646, 425 U.S. 484, 48 L.Ed.2d 113.

Range of interests protected by procedural due process is not infinite. *McFarland v. U.S.* 1975, 517 F.2d 938, 207 Ct.Cl. 38, certiorari denied 96 S.Ct. 776, 423 U.S. 1049, 46 L.Ed.2d 638.

#### 26. — Vested rights

Evaluation of whether a right has vested is important for claims under this clause, which solely protects preexisting entitlements. *Weaver v. Graham*, Fla. 1981, 101 S.Ct. 960, 450 U.S. 24, 67 L.Ed.2d 17.

Federal regulation of future action based on rights previously acquired by person regulated is not prohibited by this clause. *Fleming v. Rhodes*, Tex. 1947, 67 S.Ct. 1140, 331 U.S. 100, 91 L.Ed. 1368. See, also, *Kemp v. Day & Zimmerman*, 1948, 33 N.W.2d 569, 239 Iowa 829.

This clause protects vested property rights. *In re Hill*, Bkrcty.Ohio 1980, 4 B.R. 310.

#### 27. — Life

Procedural due process is not invoked by every government action adversely affecting private interests; instead, procedural due process safeguards apply only when a person is deprived of life,

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liberty, or property, without due process of law. *Cervoni v. Secretary of Health, Ed. and Welfare, C.A.Puerto Rico* 1978, 581 F.2d 1010.

Constitutional protection of right to one's own life is afforded by this amendment and not by Amend. 9. *U.S. v. Dorris, D.C.Pa.*1970, 319 F.Supp. 1306.

28. — Liberty

The term "liberty" within this amendment is not confined to mere freedom from bodily restraint, but it extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. *Bolling v. Sharpe, App.D.C.*1954, 74 S.Ct. 693, 347 U.S. 497, 98 L.Ed. 884, supplemented on other grounds 75 S.Ct. 735, 349 U.S. 294, 99 L.Ed. 1083.

An expectation of receiving process is not, without more, a liberty interest protected by this clause. *Velasco-Gutierrez v. Crossland, C.A.Colo.*1984, 732 F.2d 792.

Liberty is common-law right which constitution protects from governmental invasion without due process of law; this amendment and Amend. 14 did not create any new rights to liberty. *Walker v. Savell, D.C.Miss.*1965, 243 F.Supp. 478.

Each liberty specified in Amend. 1 is a liberty which is secured by this clause to all persons without regard to citizenship. *U.S. v. Korner, D.C.Cal.*1944, 56 F.Supp. 242.

29. — Property

A person has the right to be free from unauthorized actions of government officials which substantially impair his property interests. *Greene v. McElroy, 1959, 79 S.Ct.* 1400, 360 U.S. 474, 3 L.Ed.2d 1377.

Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of "due process" if the opportunity given for the ultimate judicial determination of the liability is adequate. *Bowles v. Willingham, Ga.*1944, 64 S.Ct. 641, 321 U.S. 503, 88 L.Ed. 892. See, also, *Phillips v. Commissioner of Internal Revenue, N.Y.* 1931, 51 S.Ct. 608, 283 U.S. 589, 75 L.Ed. 1289.

To claim a due process property interest in a benefit, a person clearly must have more than a unilateral expectation of it; he must have a legitimate claim of

entitlement to it. *Castro v. U.S., C.A.1 (Puerto Rico)* 1985, 775 F.2d 399.

Guarantee of due process extends to property rights less substantial than full legal title, whether they come from a private contract or state law; even a merely arguable right of possession constitutes property. *Federal Deposit Ins. Corp. v. Morrison, C.A.Ala.*1984, 747 F.2d 610, rehearing denied 763 F.2d 419, certiorari denied 106 S.Ct. 568, 88 L.Ed.2d 553.

Protected property interest requires more than unilateral expectation; source of claim of entitlement must be acts of sovereign, state or federal, manifested in legislation, rules or customs. *Punikaia v. Clark, C.A. Hawaii* 1983, 720 F.2d 564, certiorari denied 105 S.Ct. 83, 469 U.S. 816, 83 L.Ed.2d 30.

Mutually explicit understandings do not create a property interest for purposes of due process when they are contrary to the express provisions of regulations and statutes. *Chu v. Schweiker, C.A.N.Y.*1982, 690 F.2d 330.

For purpose of this amendment a "property interest" is an entitlement to a government benefit arising out of law or contract and it is not created by the Constitution. *Garcia v. U.S., C.A.Fla.* 1982, 666 F.2d 960, certiorari denied 103 S.Ct. 73, 459 U.S. 832, 74 L.Ed.2d 72.

Right to hold property free from unwarranted intrusions is protected by this amendment. *Asociacion de Trabajadores Agricolas de Puerto Rico v. Green Giant Co., C.A.Del.*1975, 518 F.2d 130.

Whether a particular constitutional protection attaches depends upon the relative weights of private interest affected and governmental function involved and not upon assignment of meaning to the word "property." *U.S. v. Husband R. (Roach), C.A.Canal Zone* 1971, 453 F.2d 1054, certiorari denied 92 S.Ct. 1785, 406 U.S. 935, 32 L.Ed.2d 136.

Potential sources in state and federal law of property interests within the protection of this amendment include formal contracts, implied agreements stemming from policies and practices of institutional employers, state and federal statutes and regulations and municipal ordinances; a similarly broad range of protected interests exists in public education and employment, welfare benefits, and occupancy of public or quasi-public housing. *Gramercy Spire Tenants' Ass'n v. Harris, D.C.N.Y.*1977, 446 F.Supp. 814.



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Requirements of this clause apply only to denial of property or liberty rights protected by the constitution. National Ass'n for Advancement of Colored People (Atlanta Local) v. U.S. Postal Service, D.C.Ga.1975, 398 F.Supp. 562. See, also, Pan Am. World Airways, Inc. v. U.S. Dist. Court for Central Dist. of California, C.A.Cal.1975, 523 F.2d 1073; DeWalt v. Barger, D.C.Pa.1980, 490 F.Supp. 1262; National Ass'n for Advancement of Colored People v. Wilmington Medical Center, Inc., D.C.Del.1978, 453 F.Supp. 330; International Tel. & Tel. Corp. v. Alexander, D.C.Del.1975, 396 F.Supp. 1150.

### 30. — Access to courts

The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time and in a meaningful manner. Matter of N.C. Trading, 1978, 586 F.2d 221, 66 CCPa. 11.

### 31. — Double jeopardy

Prohibition against double jeopardy is so fundamental that its basic core must be included within the equally fundamental constitutional right of due process. U.S. v. Security Nat. Bank, C.A.N.Y.1976, 546 F.2d 492, certiorari denied 97 S.Ct. 1591, 430 U.S. 950, 51 L.Ed.2d 799.

### 32. — Equal protection

See, also, Notes of Decisions under Amend. 14.

When social and economic legislation enacted by Congress is challenged on equal protection grounds as being violative of this clause, the rational basis standard is the appropriate standard of judicial review, and if the classification has some "reasonable basis," it does not offend this clause simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. U.S.R.R. Retirement Bd. v. Fritz, Ind.1980, 101 S.Ct. 453, 449 U.S. 166, 66 L.Ed.2d 368, rehearing denied 101 S.Ct. 1421, 450 U.S. 960, 67 L.Ed.2d 385.

This clause encompasses equal protection principles. Mathews v. de Castro, Ill.1976, 97 S.Ct. 431, 429 U.S. 181, 50 L.Ed.2d 389. See, also, National Ass'n for Advancement of Colored People v. Wilmington Medical Center, Inc., D.C. Del.1978, 453 F.Supp. 330; United Federation of Postal Clerks v. Blount, D.C.D.C.

1971, 325 F.Supp. 879, affirmed 92 S.Ct. 80, 404 U.S. 802, 30 L.Ed.2d 38.

There may be overriding national interest which would justify selective federal legislation which would be unacceptable for an individual state under Amend. 14 but, when a federal rule is applicable only to a limited territory and there is no special national interest involved, this clause will be construed as having the same significance as the equal protection clause. Hampton v. Mow Sun Wong, Cal.1976, 96 S.Ct. 1895, 426 U.S. 88, 48 L.Ed.2d 495.

Supreme Court's approach to equal protection claims under this amendment is the same as its approach to equal protection claims under Amend. 14. Weinberger v. Wiesenfeld, N.J.1975, 95 S.Ct. 1225, 420 U.S. 636, 43 L.Ed.2d 514.

If a classification would be invalid under the equal protection clause of Amend. 14, it is also inconsistent with this clause. Johnson v. Robison, Mass. 1974, 94 S.Ct. 1160, 415 U.S. 361, 39 L.Ed.2d 389. See, also, Richards v. Secretary of State, Dept. of State, C.A.Cal. 1985, 752 F.2d 1413; U.S. v. Gordon-Nikkar, C.A.Fla.1975, 518 F.2d 972; Young v. Pierce, D.C.Tex.1982, 544 F.Supp. 1010.

This amendment contains no equal protection clause, but it does forbid discrimination that is so unjustifiable as to be violative of due process. Shapiro v. Thompson, U.S.Conn., Dist.Col. & Pa. 1969, 89 S.Ct. 1322, 394 U.S. 618, 22 L.Ed.2d 600. See, also, U.S.R.R. Retirement Bd. v. Fritz, Ind.1980, 101 S.Ct. 453, 449 U.S. 166, 67 L.Ed.2d 368, rehearing denied 101 S.Ct. 1421, 450 U.S. 960, 67 L.Ed.2d 385; Schlesinger v. Ballard, Cal.1975, 95 S.Ct. 572, 419 U.S. 498, 42 L.Ed.2d 610, rehearing denied 95 S.Ct. 1363, 420 U.S. 966, 43 L.Ed.2d 446; Johnson v. Robison, Mass.1974, 94 S.Ct. 1160, 415 U.S. 361, 39 L.Ed.2d 389; Schneider v. Rusk, Dist.Col.1964, 84 S.Ct. 1187, 377 U.S. 163, 12 L.Ed.2d 218; Kiyoshi Hirabayashi v. U.S., 1943, 63 S.Ct. 1375, 320 U.S. 81, 87 L.Ed. 1774; Jones v. Reagan, C.A.Ill.1983, 696 F.2d 551; Mack v. U.S., 1980, 635 F.2d 828, 225 Ct.Cl. 187, certiorari denied 101 S.Ct. 1988, 451 U.S. 913, 68 L.Ed.2d 304; Tanner v. Weinberger, C.A.Ohio 1975, 525 F.2d 51; NAACP v. Allen, C.A.Ala.1974, 493 F.2d 614, affirmed 767 F.2d 1514; Wright v. Atlas Production Credit Ass'n, C.A.Okl.1972, 468 F.2d 997.

# ***FEDERAL CONSTITUTION***

## **Selected Excerpts:**

### **Article I, Section. 10.**

Clause 1: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Clause 2: No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Clause 3: No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

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### **Article. IV.**

#### **Section. 1.**

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

### **Section. 2.**

Clause 1: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Clause 2: A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Clause 3: No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.  
*(See Note 11)*

### **Section. 3.**

Clause 1: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Clause 2: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

### **Section. 4.**

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature,

or of the Executive (when the Legislature cannot be convened) against domestic Violence.

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## **Article. VI.**

Clause 1: All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Clause 3: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

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## **Amendment I.**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## **Amendment IV.**

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.

#### **Amendment V.**

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.

#### **Amendment VI.**

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.

#### **Amendment VII.**

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.

#### **Amendment VIII.**

Excessive bail shall not be required, nor excessive fines

imposed, nor cruel and unusual punishments inflicted.

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## **Amendment XIV.**

### **Section 1.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Section 2.**

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,<sup>4</sup> and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

### **Section 3.**

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State

legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.**

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.**

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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