Due Process

• The Constitution has two due process clauses.

  – The 5th Amendment prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.”

  – The 14th Amendment extends this prohibition to all state and local governments and extends most of the protections of the Bill of Rights to the states.
Types of Due Process

- Why are both procedural and substantive due process necessary?

- Both procedures and laws must be fair for due process to be effective.
What is Due Process?

- There is no exact definition of due process. The meaning of due process has been defined by the Supreme Court on a case-by-case basis.

  - In the cartoon at right, is it possible that the prisoner’s complaint is justified? Explain.
Examples of Due Process

• In one procedural case, police officers broke into a suspect’s room and later pumped his stomach to recover evidence of drugs. The Court threw out this case as a violation of due process.
Examples of Due Process, cont.

• In a substantive due process case, the Court ruled that an Oregon law requiring children to attend only public schools violated due process because it was unfair to prevent children from attending private schools.
• Standards for due process apply to the collection of evidence, including forensic evidence.
The Police Power

• States have a reserved police power to safeguard the well-being of their people.

• States must balance individual rights versus the needs of society when using this power.

  – To protect public safety, states are allowed to test people to determine if they are drunk while driving, even without a search warrant or an individual’s consent
Police Power, cont.

- States have broad authority to use their police powers in the public interest.
  - To promote **health**, states can require child vaccinations, make laws to reduce pollution, and limit the sale of alcohol and tobacco.
  - To promote **general welfare**, states can aid the medically needy and require young people to attend school.
Police Power, cont.

• To promote **morals**, states can regulate gambling and outlaw prostitution.

• To promote **safety**, states can require the use of seat belts, ban the use of cell phones while driving, and punish drunk drivers.
Right to Privacy

• The Constitution does not specifically mention the right to privacy.

• The Supreme Court has ruled that under the 14th Amendment’s Due Process Clause, individuals have a broad right to be free from unwanted government intrusions into their personal privacy.

• Cases involving state attempts to limit access to abortion have tested this right.
In the 1973 case *Roe v. Wade*, the Court struck down a Texas law that made abortion illegal unless needed to save the mother’s life.

The Court ruled that:
- In the first trimester of pregnancy, a state must recognize a woman’s right to an abortion.
- The state can regulate abortions in the second trimester of pregnancy.
- The state can ban abortions in the third trimester unless they are medically necessary.
Changes to *Roe v. Wade*

- The Court has allowed states to ban abortions in publicly operated hospitals or clinics.

- The Court has upheld state laws requiring minors to notify a parent before obtaining an abortion.

- The Court has allowed state laws that place “reasonable limits” on a woman’s right to an abortion if no undue burden is caused.
• The 13th Amendment outlawed slavery in 1865.

• What kinds of involuntary servitude are permitted today?
  – Citizens are drafted into the military.
  – Convicts can be imprisoned and forced to work.
• For many years the Supreme Court allowed racial discrimination by private individuals and businesses.

• Beginning in 1968, the Court began ruling that racial discrimination violates the 13th Amendment.

• Under current laws, all citizens must have an equal right to buy, sell, and hold property and to enter and enforce contracts.
The 2nd Amendment protects “the right of the people to keep and bear Arms.”

There has been controversy over whether this right, which was added to protect the idea of the citizen soldier, applies to all individual citizens.
• For many years the Court rejected the individual right to bear arms and upheld laws that banned some firearms.

• The Court ruled in 2008 that ownership of handguns for self-defense cannot be banned, though their sale and possession can be regulated in some cases for public safety. Future cases on gun control laws will surely follow.
• The 3rd Amendment forbids soldiers from being housed in private homes without the owner’s consent except in wartime.

• The 4th Amendment was adopted to prevent the use of blanket search warrants to search private property.
  – This same right is provided by each state constitution and is applied to the states by the 14th Amendment.
Probable Cause

• In most situations, police officers looking for evidence must first gain a search warrant from a court by showing that they have probable cause to suspect a crime.

  – This rule does not apply if the evidence of a crime is in plain view.
  – Police officers do not need a warrant to search a suspect or the immediate area after making a legal arrest.
Probable Cause, cont.

- Police officers must have reasonable suspicion that a crime has occurred or is about to take place before they stop and arrest or search a person.
• Today police need probable cause, but not a warrant, to search vehicles and passengers that they have lawfully stopped or suspect of being involved in a crime.
Exclusionary Rule

• Under the exclusionary rule, evidence gained illegally by police cannot be used as evidence against the person from whom it was seized.
  – This is meant to limit police misconduct, but critics say it protects criminals.

• The Supreme Court has ruled that federal and school district drug-testing programs are legal and do not require warrants.
• **Mapp v. Ohio**, 1961, extended the exclusionary rule to the states.

• State and local police cannot use evidence gained by unreasonable searches and seizures in court.
Exceptions

• The exclusionary rule may not apply in any of the following situations:
  – The evidence would have been discovered legally.
  – Police fail to announce their presence before serving a warrant but do not endanger anyone by doing so.
  – Officers make an honest mistake by accidentally performing a search with a faulty warrant or searching the wrong place.
Patriot Act

• The Patriot Act was passed in 2001 to increase the government’s power to fight terrorism.

  – The Act allows federal agents to conduct searches of a suspect’s home when no one is there and to collect visual and written evidence without a warrant.
• Checkpoint: How did the Court’s ruling in *Katz v. United States* differ from its ruling in *Olmstead v. United States*?

– In *Olmstead*, the Court held that an electronic wiretap did not need a warrant because it was not a physical search.

– In *Katz*, the Court ruled that people have a right to private communications and that wiretaps required warrants.
Wiretapping, cont.

• The Bush administration authorized warrantless wiretaps of Americans suspected to have ties to terrorism.

• When this secret program was revealed, the administration defended its actions as a reasonable use of the President’s authority as commander in chief.

• This issue remains unresolved.
Chapter 20: Civil Liberties: Protecting Individual Rights

Section 3

Lecture Notes
Habeas Corpus

- The Constitution and the state constitutions protect the right of the accused to be brought before a court to hear the charges against them. This is called a **writ of habeas corpus**.
Habeas corpus can be suspended only by Congress or the President during an invasion or rebellion.

- This happened during the Civil War.
- Hawaii’s governor illegally suspended habeas corpus after Japan bombed Pearl Harbor.
Limits on Laws

- The Constitution bans the federal and state governments from passing bills of attainder or ex post facto laws.

  - **Bills of attainder** are laws that punish someone without a court trial. Such laws would violate the separation of powers between the legislative and judicial branches.

  - **Ex post fact laws** are criminal laws that apply to acts committed *before* the laws were passed and that harm the accused.
Rights of the Accused

**Steps of Justice**

Any person accused of a crime is presumed to be innocent until proven guilty. *What protections does the Constitution extend to those accused of a crime?*

- **Arrest**
- **Interrogation**
- **Grand Jury Proceeding**
• Most states do not use grand juries.
• Federal prosecutors must use grand juries to indict, or charge, people accused of federal crimes.
  – A grand jury is made up of 16 to 23 people from the area of a district court.
  – The jurors hear only evidence against the accused. If at least 12 agree there is enough evidence, the case goes to trial. Otherwise the charges are dropped.
Double Jeopardy

• The 5th Amendment says that no person can be tried twice for the same crime.

  – A person can be charged with both a federal and a state crime for the same act. They can then be tried in both federal and state court.

  – Double jeopardy does not apply when a trial ends with no decision or when cases are appealed to higher courts.
Speedy and Public Trial

• The 6th Amendment grants the right to a speedy and public trial.
  – To determine if a trial was delayed for too long, the Court looks at the length of the delay, the reasons for it, whether the delay hurt the defendant, and whether the defendant asked for a speedy trial.

  – Too much publicity can harm the fairness of a trial.

  – Federal trials may not be televised but state trials can.
Trial by Jury

• Federal crimes and serious state crimes are tried by jury.
  – Most juries have 12 members, but some have as few as six.
  – Jury members must be drawn from a cross section of the community where the crime occurred.

• A defendant can waive the right to a jury trial and be tried by a judge alone.
Adequate Defense

• Every person accused of a crime has a right to the best possible defense under the circumstances.

• The 6th Amendment says that a defendant has the right:
  – To know the charges against him or her
  – To confront and question witnesses
  – To subpoena witnesses
  – To have counsel for his or her defense
Adequate Defense, cont.

- In *Gideon v. Wainwright*, 1963 the Court ruled that an attorney must be provided to a defendant who cannot afford one.

  - Gideon wrote to the Supreme Court to appeal his conviction.
Self-Incrimination

• The 5th Amendment protects people from being forced to incriminate themselves.
  
  – It applies to many types of legal proceedings.
  
  – It does not apply to being fingerprinted or photographed.
• Checkpoint: What does the Miranda rule require of police officers?

  – Suspects must be informed of their constitutional rights, including their right to a lawyer and to not incriminate themselves, before they are questioned.

  – The rule is controversial and is being refined on a case-by-case basis.
Bail

• Bail is money posted by a defendant with the court to guarantee that they will appear in court when called.

• Bail exists for two reasons:
  – A person should not be jailed until his or her guilt has been established;
  – A defendant is better able to prepare for trial outside of a jail.
Bail, cont.

- The amount of bail is set by the court for each particular case.
  - The more serious the crime or the wealthier the defendant, the higher the bail amount.
  - Poorer defendants may be released “on their own recognizance” without posting bail.
• The Constitution does not require that bail be set for all crimes.

• A defendant can make a legal appeal over the denial of bail or the amount of bail required.
Preventive Detention

• People accused of federal and state crimes can be held in preventive detention if it is suspected they would commit further crimes before trial.

  – Critics say this amounts to punishing the accused before they are convicted.

  – The Supreme Court has upheld this practice as a means of protecting the community.
Cruel and Unusual Punishment

• The 8\textsuperscript{th} amendment forbids “cruel and unusual punishment” and the 14\textsuperscript{th} Amendment extends this protection to the states.
  – The Supreme Court denies most claims of cruel and unusual punishment.
  – The Court has upheld California’s “three strikes” law, which sets a minimum sentence of 25 years for those convicted of a third crime.
• The Court has ruled that crowded prison conditions do not qualify as cruel and unusual punishment.

• What point is the cartoonist making here?

“OVERCROWDED—I'll say it’s OVERCROWDED!”
• Checkpoint: What was the significance of the Court’s ruling in *Furman v. Georgia*?

– The Court struck down Georgia’s laws punishable by the death penalty because those laws were not fairly administered--mostly poor people and African Americans were executed.

– This ruling led many states to rewrite their capital punishment laws.
• The Court has ruled that state laws requiring the death penalty for certain crimes are unconstitutional.

• The Court allows state laws that use a two-stage approach to capital punishment:
  – First a trial is held to decide if the accused is innocent or guilty
  – A second proceeding then determines if the death penalty is justified.
Capital Punishment Limits

- The death penalty can only be imposed for crimes that result in the death of the victim.

- The death penalty cannot be imposed on people who are mentally challenged or who were under age 18 when they committed their crime.

- A jury, not a judge, must decide whether the death penalty will be imposed.
The Court has determined that the death penalty is constitutional.

Few people sentenced to death are executed, but some innocent people have been freed from death row.

The American people are evenly divided on the issue.

47% prefer death penalty
Public Opinion
48% prefer life without parole

SOURCE: Gallup poll, 2006
• Treason is the only crime defined in the Constitution.

– It applies to all U.S. citizens who engage in war against the United States or who aid and comfort America’s enemies.

– It can only be committed during wartime, but Congress has made it a crime to conspire against the United States or commit espionage or sabotage during peacetime.
Checkpoint: Who may be convicted of treason? What is the maximum penalty for this crime?

- Any American citizen can be convicted of treason.

- The maximum penalty is death, but no one has ever been executed for treason.

- Most state constitutions also condemn treason.