

Civics is all around us. There is a lot to know about the government and how "We the People" interact with the government and each other. Let's help each other expand our civic literacy.



In recent news, there has been much discussion over the rights of those with varying [citizenship](#) statuses. After news of [deportations and detentions](#), many Americans want to know, what is due process, and who does it apply to?

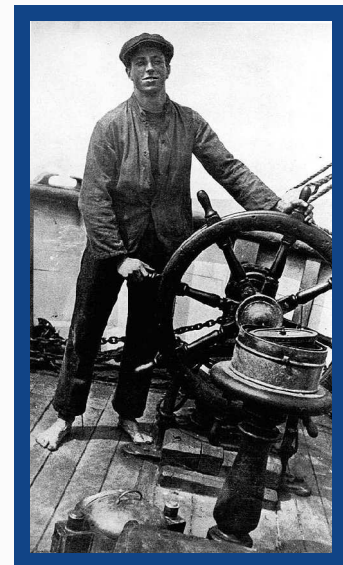
[Due process](#) is a fundamental right in the United States that establishes our fair and just legal system. This essential [founding principle](#) of our constitutional republic protects individual rights and prevents the government from acting arbitrarily. Due process is enshrined in both the [Fifth](#) and [Fourteenth Amendments](#) of the U.S. Constitution, which state that no person shall be deprived of "life, liberty, or property, without due process of law." This principle is divided into two main types: procedural due process and substantive due process.

[Procedural due process](#) focuses on the methods and procedures the government must follow before depriving someone of life, liberty, or property. The government must provide notice of any legal action being taken against an individual. The individual also has the opportunity to defend themselves in a hearing or before a judge. Fair procedures must take place in an unbiased manner. For example, [if the government wants to take away someone's property](#), it must first inform the person, allow them to present their case, and ensure that the decision is made by an unbiased judge or jury. Procedural due process ensures everyone is treated fairly and that decisions are made based on evidence and legal rules.

[Substantive due process](#) deals with actual laws and policies. It protects fundamental rights from government interference, even if those rights are not explicitly mentioned in the Constitution. Key examples of substantive due process rights would be the right to privacy or parental rights. This aspect of due process ensures that the government cannot pass laws that are unfair or violate fundamental human rights. Adhering to these helps maintain a balance between the power of the government and the rights of individuals

[The Immigration and Nationality Act \(INA\)](#) was enacted in 1952 and serves as the foundation for [modern U.S. immigration law](#). There have been several court cases over the years that emphasize the importance of due process, especially when dealing with immigration and citizenship. One notable landmark Supreme Court Case is [Bridges v. Wixon \(1945\)](#).

[Harry Bridges](#) was an Australian who legally resided in the United States as a merchant mariner and [union organizer](#). In 1941, the U.S. Attorney General Francis Biddle ordered the deportation of Bridges due to alleged communist ties. Biddle claimed that he was violating the [Smith Act](#), which allowed for deportation when the offender is a known affiliate with an organization looking to overthrow the U.S. government. Bridges denied any involvement with the Communist Party, but his petitions for [habeas corpus](#) and appeals were denied. In 1945, the U.S. Supreme Court heard his case and determined in a 5-3 ruling that his due process rights had been violated. There was unreliable evidence tying him to the Communist Party, and the Smith Act requires "concrete proof of meaningful and ongoing association" with the organization, not just casual cooperation or ideological alignment.



To Think and To Do:

"Whatever disagreement there may be as to the scope of the phrase 'due process of law,' there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard."
-Justice Oliver Wendell Holmes, Jr., *Frank v. Magnum*, 237 U.S. 309, 347 (1915).

Based on the quote and what you have read, what role does due process play in upholding justice and the rule of law?

Learn More:

- [The Magna Carta: Muse & Mentor](#), Library of Congress
- [Due Process of Law](#), Bill of Rights Institute



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