

# 8.5 Due Process of Law

*Government and Politics*

Essential question for this unit

*How much power should the government have?*

# Review Freedom of Assembly and Petition

Civil disobedience

Time, Place, Manner

Free speech zones

Public vs. Private

Freedom of association

# Understanding Due Process

The Constitution contains two due process clauses

5th amendment - **Federal** government cannot deprive any person of “life, liberty, or property, without due process of law”

14th amendment - places the same restriction on every one of the **states**

# Understanding Due Process

**Due process = government must act fairly and according to the law in all that it does**

it is a component of the concept of the rule of law  
balances the power of law and and protect the  
individual person from it  
must use fair procedures to enforce law

# Understanding Due Process

Fair procedures only have value with fair laws

**procedural due process - has to do with the *how* of government action**

**substantive due process - involves the *what* of government action**

(The Court extended protections of the Bill of Rights against the States through the 14th Amendment's Due Process Clause.)

# ★ DUE PROCESS ★

“Government cannot deprive any person of life, liberty, or property without due process of law.”



This limit is placed on the Federal Government in the 5th Amendment.



This limit is placed on State and local governments in the 14th Amendment.

Due process relates to both the **procedures** and the **laws** of government.

## PROCEDURAL

Due Process

The procedures, the methods, the **how** of governmental action must be fair.

## SUBSTANTIVE

Due Process

The substance, the meaning, the **what** of a law or action of government must be fair.

Both the procedures and the laws of government must be in accord with due process. Why are procedural and substantive due process both necessary?

# Due Process Lesson

Video lesson: Due process (5th and 14th amendments)



# Individual Rights and Public Good

The reserved powers of the states includes police power.

This is the authority to protect and promote the “wellbeing” of its people

The use of the police power produces conflicts with civil liberty protections.

When it does, courts must strike a balance between the needs of society and individual freedoms on the other

# Individual Rights and Public Good

Another aspect of due process relates to the right of government seizing private property

**Eminent domain = the right of a government to seize private property for public use, with payment of compensation**

Ex. Building of the Interstate Highway System following WWII. Many land owners lost portions of their property to the new roads.

# Review/Reflection

Review due process of law