

3.8: Amendments: Due Process and the Rights of the Accused **Explain the extent to which states are limited by the due process clause from infringing upon individual rights.**

Federalism, as intended, allowed state governments to constitute their own legal systems. Law and order, in no small way, was at the discretion of state and local governments for much of our history. We have a dual legal system. There are federal, that is national, laws and federal courts. But there are also fifty separate state legal systems with their own court system. This certainly has caused confusion, but also gross disparities in how our citizens are treated. At the same time, federalism and its dual legal system allows for states to recognize that gun laws, for example, can and probably should be different in Wyoming versus New York. Certain crimes are more prevalent in urban areas, while others in rural areas. Federalism was created to recognize these regional, cultural differences.

With the passage of the Fourteenth Amendment, however, Federalism's delicate balance between national and state authority was changed forever. The due process clause, in particular, has been used by the United States Supreme Court to selectively incorporate the Bill of Rights. In essence this has meant the standardization of our legal system. Fourth Amendment protections, for instance, once only applicable to the national government are now extended and efficacious in all fifty states. Due process and the rights of the accused are now parallel in all fifty states. With the incorporation of the Bill of Rights the differences between legal systems around the country have become less pronounced. States are limited by the due process clause from infringing upon individual rights. The Bill of Rights have grown to be more important. It is for this reason that some political scientists have called the passage of the Fourteenth Amendment our second American revolution.

But remember, the courts have interpreted our liberties to be balanced with the obligation of government to keep order. We have seen this when the court limited speech to counter dangerous circumstances. The Miranda rule, for example, involves the interpretation and application of accused persons' due process rights as protected by the Fifth and Sixth Amendments, yet the Court has sanctioned a "public safety" exception that allows unwarned interrogation to stand as direct evidence in court. "You have the right to remain silent," sometimes.

Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security. The Bill of Rights now guarantees to all the right to legal counsel, speedy and public trial, and an impartial jury. The courts have recognized the protection against warrantless searches of cell phone data along with limitations placed on bulk collection of telecommunication metadata (Patriot and USA Freedom Acts). Due to incorporation, these protections are now existent in all fifty states. Their application is universal. As much as they have strengthened the power of the national government, it has also protected individual citizens more equally.

The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable and searches and seizures, as represented by the case *Gideon v. Wainwright* (1963), which guaranteed the right to an attorney for the poor or indigent. *The* exclusionary rule that stipulates evidence illegally seized by law enforcement officers in violation of the suspect's Fourth Amendment right to be free from unreasonable searches and seizures

cannot be used against that suspect in criminal prosecution. Recent history has seen the expansion of the rights of the accused along with the standardization of police procedures. At the same time, due to pressures regarding security and safety, some of those protections have receded.

Clearly provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.