

## 2C

# Equal Protection & Due Process

All people are entitled to equal protection and due process under the law and to be free from arbitrary deprivation of their life, liberty, property, and privacy. Criminal justice and national security institutions must be designed in ways that preserve and uphold those rights for all people equally (see [D&C 101:77](#)).

*Because of the depth and uniqueness of each of the concepts of equal protection, due process, and criminal justice, we will cover PEG 2c in two separate documents. For simplicity, this paper will generally use the term “due process” to mean procedural due process. Substantive due process is briefly discussed as well.*

## GOALS

1. To honor equal protection and due process as part of our commitment to the Constitution, the rule of law, and fundamental rights.
2. To recognize the importance of freedom from arbitrary deprivation of life, liberty, property, and privacy.

George Washington declared justice to be “[the firmest pillar of good Government](#).” When revolting against the British, the Founding Fathers were responding to the lack of [equal protection](#) and [due process of law](#), core components of justice, rule of law, and [ethical government](#).

The concept of **equal protection** requires that federal and state governments rule impartially — to not draw distinctions due to differences (such as race, sex, national origin, color, or religion) that are irrelevant to a legitimate governmental objective. [The equal protection clause](#) is crucial to guarding [civil rights](#). As President Dallin H. Oaks [has written](#), “America has been blessed by an inspired Constitution that aims at equal justice. . . . [A]ll persons are to be equal before the law” (see also [Alma 30:7](#)).

The closely related idea of [due process](#) existed in [the Magna Carta](#) of 1215, though the exact term “due process of law” did not appear until [1354](#). The U.S. Constitution enshrines due process not once, but [twice](#): Neither the [federal](#) nor the [state](#) governments may deprive a person of “life, liberty, or property without [due process of law](#).” Due process ensures that

## SCRIPTURE STUDY

“For if ye thoroughly amend your ways and your doings; if ye thoroughly execute judgment between a man and his neighbour; If ye oppress not the stranger, the fatherless, and the widow, and shed not innocent blood in this place . . . Then will I cause you to dwell in [the Lord’s house].” — [Jeremiah 7:5-7](#)

justice follows certain processes and will not be randomly altered, more fully enabling equal protection.

Unfortunately, both concepts have been unevenly applied throughout our nation's history, depriving some people of the fairness the Constitution promises. Extrajudicial actions, such as [lynching](#) and [terror](#), breach the rule of law. Disregard for equal protection and due process not only attacks core values of our Constitution, it allows terrible violence against humanity.

The Constitution, notably the 5th and 14th Amendments, clearly states that every "[person](#)" is entitled to due process and equal protection under the law, and the U.S. Supreme Court has repeatedly affirmed that these rights extend to all persons as soon as they arrive on U.S. soil, regardless of citizenship or immigration status. Upholding due process and equal protection with vigor and exactness at the individual, institutional, and systemic levels is crucial to [rooting out prejudice](#).

## WHY ARE DUE PROCESS AND EQUAL PROTECTION IN THE CONSTITUTION?

---

Americans believe in the rule of law and in fairness. However, before the [Bill of Rights](#) (adopted in 1791) and the Reconstruction Amendments (particularly the [14th](#), adopted 1868), due process and equal protection were not in the Constitution.

Fortunately our Constitution evolves through amendments. [President J. Reuben Clark](#), a lawyer and member of the First Presidency of The Church of Jesus Christ of Latter-day Saints, [referred to the Constitution](#) as "part of my religion" — but he also said it was not his belief or part of the Church's doctrine that the Constitution was a "fully grown document." Instead, he said, "We believe it must grow and develop to meet the changing needs of an advancing world."

## WHAT IS DUE PROCESS OF LAW?

---

*"Due process is a fundamental value in our constitutional system — the linchpin of fairness. But in discussing due process as a legal and cultural concept, we can't be selective. . . . [We] should be concerned . . . for all people, particularly those whose rights are being trampled."*

— [Lenora Lapidus and Sandra Park in The Atlantic](#)

The American revolutionaries experienced infringements on their basic rights and so wrote [due process of law](#) into the [5th Amendment](#), in the Bill of Rights, upholding rights to life, liberty, property, and privacy. [Due process](#) “prevents governments from impacting citizens in an abusive way.”

It includes both procedural standards ([procedural due process](#)) that the federal and state governments “must uphold in order to protect peoples’ personal liberty and a range of liberty interests [[substantive due process](#)] that statutes and regulations must not infringe.” Procedural due process also includes rules for regulating when a charge can be brought against you, what type of evidence is allowed, the right to an attorney, and the right to confront witnesses. [Substantive due process](#) “has been interpreted to include things such as the right to work in an ordinary kind of job, marry, and to raise one's children as a parent.” Due process [has been called](#) “the most important safeguard against tyranny.”

It is because of due process that [our government cannot](#):

- Forcibly enter your home without a warrant and search it if you object (4th Amendment).
- Force or coerce you to confess your guilt (5th Amendment).
- Repeatedly put you on trial for the same offense, otherwise known as double jeopardy (5th Amendment).
- Take your property without paying you for it (5th Amendment).
- Charge you with a crime without informing you or allowing you to respond to the accusations (6th Amendment).
- Ignore your rights to a speedy trial, an impartial jury, and legal counsel (6th Amendment).
- Violate other individual rights found in the Constitution.

## WHAT IS EQUAL PROTECTION?

*“There is one way in this country in which all men are created equal. An institution that makes a pauper the equal of a Rockefeller, the ignorant man the equal of any president, and the stupid man the equal of Einstein. That institution is the court. But a court is only as sound as its jury, and the jury is only as sound as the men who make it up.*

— [Atticus Finch](#), in Harper Lee’s [“To Kill a Mockingbird”](#)

The Cornell Law School Legal Information Institute [explains](#) that equal protection is the idea that a governmental body may not deny people equal protection of its governing laws. The governing body must treat an individual in the same manner as others in similar conditions and circumstances. Yet despite the assertion in the [Declaration of Independence](#) that “all Men are created equal” and have basic rights including “Life, Liberty, and the Pursuit of Happiness,”

[equal protection](#) was included in the Constitution only after the Civil War.

The [Civil War](#) and [Reconstruction](#) Amendments ([13th](#), [14th](#), and [15th](#)) were passed to recognize the freedom, citizenship, and voting rights of formerly enslaved persons. The 14th Amendment also gave federal protection to the rights of due process and equal protection, even in states whose legislatures desired to negate them. It declares: “No State shall . . . 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*” (italics added).

In the [words of Supreme Court Justice Thurgood Marshall](#), including equal protection in the Constitution provided a “new, more promising basis for justice and equality.” For [President Dallin H. Oaks](#), such changes helped to heal an “inspired Constitution that aims at equal justice” and considers “all persons . . . to be equal before the law.”

## FURTHER CLARIFICATION

Additional clarifications have come through decisions by the Supreme Court and have become established case law. Certain rights that have been “[enumerated](#)” (explicitly stated, or numbered) are recognized as fundamental to the Constitution and the law of the land. Other rights may be recognized as being fundamental to the concept of liberty as enshrined in the Constitution [but may not be explicitly stated](#); they are thus recognized as “[unenumerated](#)” rights. As stated in the [9th Amendment](#), “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Additional rights, which may not be expressed in the Constitution, may nonetheless be recognized by the courts and considered essential rights.

The judicial branch often relies on precedent in making determinations around due process and equal protection, acknowledging nuances regarding which rights are protected and what constitutes discrimination by the government. The broad principles are clear, but the specifics continue to evolve through case law. As the judicial entity empowered with interpretation of the Constitution, the rulings of the Supreme Court carry the force of law at a level equal to the Constitution. In addition, the Supreme Court's power of judicial review, which empowers the Supreme Court to review the constitutionality of actions or orders of the states or federal government when cases are brought by affected people, is an important function in upholding and ensuring due process.

The principles of due process (both procedural and substantive) and equal protection are foundational to how the law is interpreted and followed by the U.S. government in its treatment of people. Every person is entitled to due process and equal protection of the law, regardless of their race, sex, color, religion, or national origin.

**What do you think?**

- Should law-abiding citizens care about protections for someone who has broken the law? How do due process protections for the accused actually protect us all?
- How does equal protection for minorities protect us all? If you lived in a society that didn't have due process under the law, what would that mean for you? If unjustly accused, would you have recourse? Would there be any real limit to the government's powers?
- How do due process and equal protection make it more likely that government is ethical?

## COMPARING DUE PROCESS AND EQUAL PROTECTION

Both equal protection and due process of law are mentioned in the latter portion of Section 1 of the [14th Amendment](#) to the U.S. Constitution, which reads:

"No State shall . . . 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*" (italics added).

### DUE PROCESS OF LAW

### EQUAL PROTECTION OF LAW

WHAT?	Reasonable adherence by government to consistent and transparent procedures.	Individuals in similar situations be treated equally by the law.
WHY?	<p>To provide citizens with oversight to government actions through the judiciary.</p> <p><a href="#">Procedural due process</a> requires the government to observe certain procedures in both criminal and civil legal contexts, such as regulating when a charge can be brought against you, what type of evidence is allowed, the right to an attorney, and the right to confront witnesses. <a href="#">Substantive due process</a> is itself a source of certain fundamental rights, including family autonomy, marriage, and the right to direct the upbringing of one's children. See <a href="#">Meyer v. Nebraska (1923)</a>.</p>	<p>To validate the equality provisions contained in the <a href="#">Civil Rights Act of 1866</a>.</p> <p>To prevent the government from legally discriminating against certain citizens based on factors irrelevant to <a href="#">governmental interests</a>.</p>
SCOTUS CASES	<a href="#">Gideon v. Wainwright (1963)</a> unanimously upheld the 6th Amendment's guarantee of a right to assistance of counsel, requiring state courts (by way of the 24th Amendment) to appoint attorneys for defendants who cannot afford them.	<a href="#">Brown v. Board of Education (1954)</a> was a <a href="#">unanimous decision</a> that " <a href="#">separate educational facilities are inherently unequal</a> " and, hence, a violation of the <a href="#">equal protection clause</a> .



Joseph Smith faced great antagonism for his beliefs. He was besieged with dozens of unjustified lawsuits, and his life was often in jeopardy. He was poisoned, beaten, tarred, unjustly imprisoned, and once sentenced to die by firing squad. Such [actions against Joseph](#) largely violated due process.

Similarly, the early members of the Church were not always given due process or equal protection, as when Governor Lilburn Boggs issued the [Missouri Executive Order 44](#). Members [were charged with](#) “open and avowed defiance of the laws, and of having made war upon the people of this State” — a charge that was never proven through due process in court. The [statement ordered](#) that “[t]he Mormons must be treated as enemies, and must be exterminated or driven from the State, if necessary” — a blatant violation of both due process and equal protection.

Yet scripture also tells of people protecting due process. In the Book of Mormon, the time came when the people chose to have a system of ruling judges instead of kings, “to judge them according to the law.” They made this change out of “desire that this land be a land of liberty, and every man may enjoy his rights and privileges alike.” They viewed liberty as rights, privileges, and opportunities, but also responsibilities, insomuch that each person “expressed a willingness to answer for his own sins.” The people chose to be judged “according to the law which had been given them,” ensuring due process. The result of a government that adhered to consistent procedures was a people who “were exceedingly rejoiced because of the liberty which had been granted unto them” ([Mosiah 29:32-41](#)).

### **What do you think?**

- *Why were violations of due process experienced by the Prophet Joseph? What are the consequences if we are selective in applying due process?*
- *What factors in their history led to the Book of Mormon people’s staunch commitment to due process of law?*