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Procedural Due Process

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relations of a citizen can be changed by insurrection, the war power must be invoked, which would require a declaration of war by Congress, acquiesced in by action of the president. In his view, no civil war existed until Congress declared war on July 13, 1861, after which it was recognized that in southern ports customs duties could not be collected because the ports were held by those in rebellion.

Although ostensibly a five-to-four decision, the four dissenters did not enter reasons for their objections to the holding on the Mexican-owned ship, and it is unlikely that they objected to the fundamental finding that Lincoln possessed the authority to take all necessary steps to put down the insurrection. Without a doubt, this decision judicially sustained the actions taken by Lincoln, and upheld the authority of the U.S. president.

Before the *Prize Cases* were argued, many American were concerned about how the Supreme Court would rule. The decision in *Dred Scott v. Sandford,* 60 U.S. 393 (1857), rendered a few years earlier, had not been popular because it had questioned certain powers of the federal government, and the implications of the *Dred Scott* decision were being widely discussed at the time. In addition, the argument could be made that, on basis of the *Prize Cases* decision, American citizens owed a greater loyalty to the federal government than to their state government, although this issue was not directly addressed in the opinion.

SEE ALSO *Chase Court; Civil War; Lincoln, Abraham; Taney Court*

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PROCEDURAL DUE PROCESS

Due process is the Constitution's promise of fair play. A due process clause in the Fifth Amendment binds the federal government; an identical clause in the Fourteenth Amendment binds state and local governments. The text explicitly makes these promises to any person. Governments must therefore afford due process not only to all actual persons without regard to their citizenship or domicile, but also to all legal persons, including corporations and partnerships.

The history of liberty has largely been the history of observance of procedural safeguards.

SOURCE: Felix Frankfurter, *McNabb v. United States,* 318 U.S. 332, 347 (1943).

The promise of due process has two dimensions, substantive and procedural. For more than a century, the Supreme Court has embraced a theory of substantive due process that restrains governments from interfering with certain fundamental human choices and activities except in circumstances sufficiently compelling to reviewing courts. The theory of procedural due process allows governments generally to interfere in our affairs, but only in compliance with an etiquette that requires prior notice, an adequate hearing, an unbiased decider, and some justification. The promise of a hearing serves only those disputing a government's version of relevant facts, not its interpretation of applicable law. Whether the sort of hearing offered by government, in lieu of a formal trial, suffices in any particular context is a matter for courts to decide by balancing the importance to the individual of the liberty or property in jeopardy against government's interest in economical administration and the associated risk of mistake (*Mathews v. Eldridge*, 424 U.S. 319 [1976]).

According to the Supreme Court, procedural due process matters only when government acts deliberately, not when it acts negligently or carelessly (*Daniels v. Williams*, 474 U.S. 327 [1986]). Moreover, the promise of fair play applies only when government interferes with life, liberty, or property. The process of criminal prosecution is regulated largely by other, more specific procedural guarantees in Article III of the Constitution and the Fourth, Fifth, Sixth, and Eighth Amendments. Due process dictates the procedure for involuntary commitment of the mentally ill, entitling them to contest in advance their confinement (*Addington v. Texas*, 441 U.S. 418 [1979]). According to the Supreme Court, liberty protected by due process includes not just freedom from physical restraint but also individual freedoms specified elsewhere in the Constitution, such as freedom of speech and free exercise of religion. Moreover, the Court has assumed for itself the final say as to what other human choices and activities qualify as liberties for which due process is assured. Meanwhile, the Court has treated as property protected by due process not just real estate and personal belongings, but also professional licenses, public contracts, tenure in office, and various forms of public subsidy. The key is whether ordinary law, state or federal, has established a particular interest sufficiently to make a person's claim to it something more than wishful thinking (*Board of Regents of State Colleges v. Roth*, 408 U. S. 564 [1972]).

SEE ALSO *Fourteenth Amendment; Goldberg v. Kelly, 397 U.S. 254 (1970); Substantive Due Process*

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PROFESSIONAL BASEBALL CASES

The Supreme Court regularly grapples with emotionally charged issues important to everyday Americans, such as religion and politics. In 1922 the Court did the same thing regarding America's pastime, professional baseball. In *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), the Court held that professional baseball was exempt from the Sherman Antitrust Act of 1890, which prohibits "restraints of trade" and monopolies that affect interstate commerce. That same legislation had been used during the three prior decades to "bust up" monopolies in other areas of American business, such as the railroads and oil companies. However, the Court decided that the antitrust laws simply did not apply to professional baseball. While the basis of the Court's decision might appear to have concerned a technical legal issue, the decision had a dramatic impact on the evolution of professional baseball—an impact that has continued, in part, into the twenty-first century.

The impetus of the Federal Baseball Club litigation was the collusion between the two main professional baseball leagues, the National League and American League, to destroy a newer, third league, the Federal League. The two established leagues worked together to buy out the various clubs of the Federal League, with the intent of shutting it down. The Baltimore club, whose business was destroyed by the buyout of all the other Federal League teams, filed an antitrust lawsuit against the American and National Leagues under the Sherman Act. The Baltimore club prevailed in the trial court and obtained what was then substantial money damages. On appeal, the Supreme Court reversed the judgment of the trial court.

The Supreme Court, in a unanimous opinion written by Justice Oliver Wendell Holmes Jr. (1841–1935), declared that the Sherman Act did not apply to the alleged monopolistic actions of the National and American leagues because professional baseball games are "not a subject of commerce" among the states. In order for the act to apply, monopolistic actions must interfere with interstate commerce. Because the Court held that professional baseball did not implicate interstate commerce, the National and American leagues' buyout, which unquestionably was monopolistic, was not deemed illegal.

Justice Holmes's opinion was clearly wrong as a matter of fact and law. Judge Henry Friendly (1903–1986)—in his decision for the U.S. Court of Appeals for the Second Circuit in *Salerno v. American League*, 429 F.2d 1003 (1970)—wrote that the opinion "was not one of Mr. Justice Holmes' happiest days." From its earliest days in the second half of the nineteenth century, professional baseball was indeed a business that involved interstate commerce. The very nature of professional baseball has always involved teams from various cities regularly playing teams from other cities, including those located in different states. The first professional baseball team, the Cincinnati Red Stockings, traveled more than 11,000 miles in 1869, playing teams from many different states in the process. The first World Series, in 1903, was between an American League team from Boston and a National League team from Pittsburgh. The players were paid handsome sums even in the earliest days of professional baseball, spectators were charged for admission, and team owners often profited greatly from the business of baseball.

Nevertheless, Justice Holmes's unanimous opinion was the law of the land, and it remained so for decades to come. In 1953 the Supreme Court reaffirmed its earlier decision in *Toolson v. New York Yankees*, 346 U.S. 356. In *Toolson* several major league baseball players filed an antitrust lawsuit challenging the "reserve clause" that each of the major league baseball teams had employed since the 1880s. The reserve clause was a device whereby each major league team owned the contractual rights of its players for their entire professional lives. The teams thus had the absolute right to keep players, or to trade them to other teams without their consent. The effect of the clause was to dramatically limit the bargaining power of individual players. If a player demanded a higher salary or wanted to be traded and his team refused, the player's only option was to stop playing. Under the reserve clause arrangement, the other teams agreed not to hire any player who had boycotted his team. As a result, players' salaries, while much higher than those of average Americans, were nothing like the multimillion-dollar salaries that many players command in the early twenty-first century.