

MODULE 12

Procedural Due Process

Goldberg · Roth · Sindermann · Goss · Paul v. Davis · Mathews · Loudermill · Osborne

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Substance or procedure?

The same clause asks two different questions.

SUBSTANTIVE

- May the government take it at all?
- First Amendment Law; Module 2.

PROCEDURAL

- How must it decide before taking?
- This module.

No State shall “deprive any person of life, liberty, or property, without due process of law.”

Three questions, in order

My board, from top to bottom.

1

An interest?

Life, liberty or property.

2

A deprivation?

Deliberate, not merely
negligent.

3

What process?

Case by case: Mathews.

Answer them in order. Most mistakes happen at the first.

Goldberg v. Kelly, 1970

Welfare benefits are cut off first, and heard later.

THE INTEREST

- Food, clothing, housing, care.
- Welfare as “new property.”

THE PROCESS

- A hearing before termination.
- Notice with reasons; confrontation.

Welfare provides “the means to obtain essential food, clothing, housing, and medical care.”

Property as entitlement, 1972

Roth and Sindermann: two teachers, decided the same day.

ROTH

- A one-year contract, not renewed.
- No entitlement: no property.

SINDERMANN

- Ten years; a de facto tenure policy.
- An entitlement may exist.

A person “must have more than a unilateral expectation” — “a legitimate claim of entitlement.”

School, and reputation

Goss finds an interest. Paul v. Davis refuses one.

GOSS, 1975

- A suspension of ten days or less.
- Notice, and a chance to respond.

PAUL v. DAVIS, 1976

- A “shoplifters” flyer.
- Reputation alone: no interest.

Goss: notice of the charges, an explanation of the evidence, and “an opportunity to present his side of the story.”

Mathews v. Eldridge, 1976

The balancing test for what process is due.

1

The private interest

What does the person stand to lose?

2

The risk of error

Would more process help?

3

The government's interest

Cost and administrative burden.

Disability benefits: a hearing after termination is enough.

Goldberg and Mathews, side by side

Same question, different answers. The factors explain why.

GOLDBERG • WELFARE

MATHEWS • DISABILITY

PRIVATE INTEREST

The margin of subsistence.

Not based on need.

RISK OF ERROR

Credibility; oral hearing helps.

Medical records; less so.

THE RESULT

A hearing before.

A hearing after.

The government's interest was the same. The other two factors moved.

Loudermill: the bitter with the sweet

Can the State define the process along with the property?

THE STATE'S ARGUMENT

- The statute gave the job.
- It can set the process too.

THE COURT, 8 - 1

- Property: from state law.
- Process: from the Constitution.

“‘Property’ cannot be defined by the procedures provided for its deprivation any more than can life or liberty.”

Notice and a hearing: the menu

The baseline, and everything that can be added to it.

THE BASELINE

- Notice: the charges, the evidence.
- A hearing: an impartial decider.

THE ADD-ONS

- Before or after? Judge or ALJ?
- Discovery? Witnesses? Counsel?

Hamdi: “a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker.”

Osborne: process after conviction

Is there a right to test the evidence with DNA?

THE CLAIM

- Access to evidence for DNA tests.
- Years after conviction.

THE COURT, 5 - 4

- State procedures were adequate.
- No freestanding right.

“Osborne's right to due process is not parallel to a trial right.”

Current case: Chianne D. v. Harris

Florida ends Medicaid coverage with notices no one can read.

THE NOTICES

- No income figure; no limit applied.
- Called “convoluted, vague, and confusing.”

THE COURT

- Goldberg governs: need-based.
- Case-specific reasons, in writing.

An injunction: proper notice, or no termination.

Chianne D.: whose burden is notice?

The State said the answers were a phone call away.

THE STATE

- Standard notices, plus a call center.
- Ask, and you'll be told.

THE COURT

- The burden is the State's.
- The vulnerable ask least.

“[T]he most vulnerable are the ones least likely to receive sufficient information.”

For discussion: five deprivations

A hypothetical. Every case in this module is in play.

THE ACTIONS

- An untenured lecturer let go.
- A license suspended first.
- A wrong “tax delinquent” list.
- A year's expulsion, two minutes' talk.
- “No longer eligible. Call us.”

QUESTIONS FOR DISCUSSION

1. An entitlement?
2. Is afterward enough?
3. Where is the “plus”?
4. How much more than Goss?
5. Notice, or a phone number?

Module 12 on one slide

One line per rule.

THE LINE, ONE RULE AT A TIME

- Property is an entitlement, not a hope (Roth).
- Reputation alone is not liberty (Paul v. Davis).
- Negligence is not a deprivation (Daniels).
- Process due: balance three factors (Mathews).
- Need-based benefits: hearing and reasons first (Goldberg).
- The State makes the property, not the process (Loudermill).

Next — review for the final examination.