

### Handout 3

#### *Introduction to America's Core Democratic Values*

The United States is built on shared **core democratic values**. These values provide underpinnings of our democracy, unite us as citizens, and help protect individual rights. They are expressed in the Declaration of Independence, the U.S. Constitution, and many other significant documents and speeches. America's core democratic values overlap, and they sometimes conflict with each other. Developing and disputing their meaning and application is a part of our democratic tradition. This handout addresses four core democratic values: *due process*, *equality*, *justice*, and *rule of law*.

#### **Due Process**

The phrase “due process of law” appeared first in an English statute in 1354, which codified the 1215 Magna Carta. That first text stated: “No man of what[ever] state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law.” In those early days, “due process” meant most crucially that rules should be established in advance, and that court procedures should be fair. In the United States, the Constitution's Fifth Amendment recognizes numerous more specific guarantees against unfair treatment for criminal defendants, and then dictates more generally that “No person shall . . . be deprived of life, liberty, or property, without due process of law.” This first Due Process Clause, in the Bill of Rights, was originally applicable only against the federal government. It was joined in 1868 by the Fourteenth Amendment's similar requirement, applicable against the states: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” While many procedural protections are, in different circumstances, considered “due,” the core of due process is that individuals must be provided notice of the government's claim against them and an opportunity to be heard by a fair decisionmaker at a meaningful time and in a meaningful way.

#### **Equality**

American ideals of equality have been central to our self-conception from the dawn of the republic, when the Declaration of Independence proclaimed, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” Of course, the ideal dramatically outpaced the reality. At various times in American history, American Indians were dislocated and slaughtered; women forbidden to own property or participate in democratic self-governance; Asian immigrants barred from citizenship. And most shamefully, enslavement of African Americans marred American equality for generations, and slavery's aftermath continues to undermine achievement of this key value.

But even as a matter of theory, the claim of equality is not that everyone is equally strong, smart, or talented. It is that governments, to be just, must value all people equally and give them equal respect. As the Universal Declaration of Human Rights puts the idea, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” A government acts unjustly if it protects the rights of some of its people while denying the same protection to others, because all people share a common humanity and value. Equality claims have been vital and often persuasive over

the course of American history. A claim of equal humanity and worth motivated the movement to abolish slavery in the nineteenth century and the movement to abolish Jim Crow segregation in the 1960s. Similar claims have been pressed by women seeking the vote and more recently seeking equal treatment in employment, education, and other endeavors. Gay and lesbian people, people with disabilities, and members of religious minorities have all founded often-successful civil rights movements on the shared democratic value of equality.

Only after the Civil War and end of American slavery did the Constitution centrally and plainly embrace equality, with the Fourteenth Amendment's Equal Protection Clause. It reads, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." (The Supreme Court has made clear that this requirement applies to the federal government as well.) Ratification of the Fourteenth Amendment was, however, just one step in our nation's hesitant expansion of who is considered part of "We the People" and our still in-progress task of bolstering equality.

### *Justice*

Justice is a vital goal of our Constitution, stated as such in its Preamble:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

The Constitution's most central drafter, James Madison, explained in *The Federalist* (#51), "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." But what does "justice" really mean? Political, philosophical, and legal thinkers agree that the idea of justice combines "desert" (deservingness), procedural fairness, and distributional fairness.

Some philosophers emphasize "*desert*"—justice, they say, requires that people be treated in accordance with the praiseworthiness or blameworthiness of their conduct. The Roman legal thinker Cicero, for example, wrote that "Justice renders to every one their due." This idea was a key part of Martin Luther King, Jr.'s famous *I Have a Dream* speech, when he described his "dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."

*Procedural justice* is a different aspect of justice, encompassing procedural fairness not just in court but in all dealings between individuals and their government. Ideas about procedural justice may be quite a bit broader than *Due Process* (see above). For example, some scholars have identified the key dimensions of procedural justice to include not just the right to a hearing but to decisional transparency and procedural respect for the dignity of participants. Procedural justice helps ensure that societal conflicts are settled in an orderly, non-arbitrary, and respectful manner.

*Distributive justice* addresses the distribution of good—money, resources, benefits—among people. Public programs that provide medical care, housing, food, money, etc. for people who

need them implement an idea of distributive justice. But of course members of any democracy can and do debate how much resource redistribution justice requires.

### *Rule of Law*

When John Adams, the United States' second President, drafted the Massachusetts Constitution, in 1780, he included a phrase that soon became famous: the state, he wrote, should have “a government of laws and not of men.” In *Marbury v. Madison*, the 1803 Supreme Court case establishing judicial review of the constitutionality of legislation, Chief Justice John Marshall borrowed the phrase and applied it to the whole of the United States. The phrase encapsulates the core democratic value of *rule of law*—as English theorist John Locke put it in 1690, people should “not be subject to the inconstant, uncertain, unknown, and arbitrary will of others,” but are, rather entitled to laws and rules that are:

- Developed and adapted under fair procedures.
- Announced in advance.
- Applicable to everyone, including the government.
- Binding and enforced.

### Additional Sources:

- DANIELLE ALLEN, *OUR DECLARATION: A READING OF THE DECLARATION OF INDEPENDENCE IN DEFENSE OF EQUALITY* (2014)
- Yick Wo and the Equal Protection Clause Video (20 mins), available at: <http://www.annenbergclassroom.org/page/yick-wo-equal-protection-clause>
- “Right to Equal Protection of the Laws” from *Our Rights* by David J. Bodenhamer, available online at: [http://www.annenbergclassroom.org/files/documents/books/our-rights/chapter\\_3\\_our\\_rights.pdf](http://www.annenbergclassroom.org/files/documents/books/our-rights/chapter_3_our_rights.pdf)
- U.S. Constitution: Fourteenth Amendment (History and Meaning), available at: [http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Fourteenth%20Amendment\\_Our%20Constitution.pdf](http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Fourteenth%20Amendment_Our%20Constitution.pdf)
- “We Are All Slaves of the Law” from *The Pursuit of Justice* by Kermit L. Hall and John Patrick, available online at: [http://www.annenbergclassroom.org/files/documents/books/the\\_pursuit\\_of\\_justice/200\\_203\\_epilogue.pdf](http://www.annenbergclassroom.org/files/documents/books/the_pursuit_of_justice/200_203_epilogue.pdf)
- Law and the Rule of Law, available at: <http://judiciallearningcenter.org/law-and-the-rule-of-law/>