

Week 6

DUE PROCESS PROTECTION

Section B
(Feb 13, 2008)

THE RELATIONSHIP BETWEEN THE BILL OF RIGHTS AND THE 14th AMENDMENT

- **General Constitutional Theory**
 - “Whatever would be a violation of the original bill of rights if done by the federal government is now equally unlawful by force of the Fourteenth Amendment.” (Palko, P. 286)
- **Dispute**
 - “There is no such general rule.” (Palko, P. 286)
- **Selective Absorption**
 - If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed.” Palko, 287

THE WARREN COURT REVOLUTION

- **Fifth Amendment**

- Self-incrimination: Malloy v. Hogan (1964)
- Double jeopardy: Benton v. Maryland (1969)

- **Sixth Amendment**

- Right to counsel: Gideon v. Wainwright (1963)
- Cross examination: Pointer v. Texas (1965)
- Speedy trial: Klopfer v. North Carolina (1967)
- Jury trial: Duncan v. Louisiana (1968)

PALKO V. STATE OF CONNECTICUT, 302 U.S. 319 (1937)

- **FACTS**

- Palko shot and killed two police officers
- Found guilty of second-degree murder, resulting in life in prison.
- The Conn. S.Ct. found the trial in error.
- On remand, Palko was found guilty of first-degree murder, resulting in death penalty.
- Palko challenged, arguing that the state had put him twice in jeopardy in violation of the Fifth Amendment.

- **QUESTION**

- Whether “whatever is forbidden by the Fifth Amendment is forbidden by the Fourteenth also.”

- **OPINION**

- No. The Bill of Rights is brought within the Fourteenth Amendment by a process of absorption.

- **UNDERLYING RATIONALE**

- If the Fourteenth Amendment has absorbed the privileges and immunities in the original Bill of Rights, “the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed.” P. 287.
- Does “double jeopardy” violate the fundamental principles of liberty and justice?
- The answer is no.
- The retrial was simply a matter of truth-finding.

GIDEON V. WAINWRIGHT

372 U.S. 335 (1963)

- **FACTS**

- Convicted of having broken and entered a poolroom with intent to commit a misdemeanor.
- At trial, Gideon, a pauper, asked the court to appoint counsel to represent him; but the court denied the request.
- Gideon complained to the FL S.Ct. that he was deprived of the right to counsel guaranteed by the Sixth Amendment.
- FL Supreme Court denied his habeas corpus request.

THE SIXTH AMENDMENT

- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.



Lee (Feb 13, 2008)

- **QUESTION BEFORE THE COURT**

- Whether *Betts v. Brady* (316 U.S. 445 [1942]) be overruled
- The divided Betts Court held that “a refusal to appoint counsel for an indigent defendant charged with a felony did not necessarily violate the Due Process Clause of the Fourteenth Amendment.”

- **Opinion of the Court**

- Justice Black delivered the unanimous opinion of the Court, holding, “The right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial.” p. 289.
- “We think the Court in Betts was wrong.”

- **Underlying Rationale**

- Betts's logic, which was based on historical data (induction) was unwarranted.
- Just because the American colonies did not consider the appointment of counsel to be a fundamental right, one cannot conclude that it is not a fundamental right under the Constitution of the United States.

- If the right to counsel is a fundamental right under the Sixth Amendment, it must be a fundamental right under the Fourteenth Amendment.
- “Plainly, had the Court concluded that appointment of counsel for an indigent criminal defendant was ‘a fundamental right, essential to a fair trial, it would have held that the Fourteenth Amendment requires appointment of counsel requires in a state court, just as the Sixth Amendment requires in a federal court.” p. 291