was the English practice and that Coke had indicated that it was a proceeding required as "the law of the land." The Court in *Murray's Lessee* meant "that a process of law, which is not otherwise forbidden, must be taken to be due process of law, if it can show the sanction of settled usage both in England and in this country; but it by no means follows that nothing else can be due process of law." To hold that only historical, traditional procedures can constitute due process, the Court said, "would be to deny every quality of the law but its age, and to render it incapable of progress or improvement."[436] Therefore, the Court concluded, due process "must be held to guarantee not particular forms of procedures, but the very substance of individual rights to life, liberty, and property." The Due Process Clause prescribed "the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. . . . It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law."[437]

Generally.—The phrase "due process of law" does not necessarily imply a proceeding in a court or a plenary suit and trial by jury in every case where personal or property rights are involved.[438] "In all cases, that kind of procedure is due process of law which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the courts."[439] What is unfair in one situation may be fair in another.[440] "The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment."[441]

---

[436] Hurtado v. California, 110 U.S. 516, 528–29 (1884).

[437] 110 U.S. at 532, 535, 537. This flexible approach has been followed by the Court. *E.g.*, Twining v. New Jersey, 211 U.S. 78 (1908); Powell v. Alabama, 287 U.S. 45 (1932); Palko v. Connecticut, 302 U.S. 319 (1937); Snyder v. Massachusetts, 291 U.S. 97 (1934).

[438] Davidson v. City of New Orleans, 96 U.S. 97, 102 (1878); Public Clearing House v. Coyne, 194 U.S. 497, 508 (1904).

[439] *Ex parte* Wall, 107 U.S. 265, 289 (1883).

[440] *Compare* Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272 (1856), *with* Ng Fung Ho v. White, 259 U.S. 276 (1922).

[441] Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951) (Justice Frankfurter concurring).