

cess in court, and therefore to be so limited that “due process of law” would be what the legislative branch enacted it to be. But that is not the interpretation which has been placed on the term. “It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process ‘due process of law’ by its mere will.”⁴²² All persons within the territory of the United States are entitled to its protection, including corporations,⁴²³ aliens,⁴²⁴ and presumptively citizens seeking readmission to the United States,⁴²⁵ but States as such are not so entitled.⁴²⁶ It is effective in the District of Columbia⁴²⁷ and in territories which are part of the United States,⁴²⁸ but it does not apply of its own force to unincorporated territories.⁴²⁹ Nor does it reach enemy alien belligerents tried by military tribunals outside the territorial jurisdiction of the United States.⁴³⁰

Early in our judicial history, a number of jurists attempted to formulate a theory of natural rights—natural justice, which would limit the power of government, especially with regard to the property rights of persons.⁴³¹ State courts were the arenas in which this struggle was carried out prior to the Civil War. Opposing the “vested rights” theory of protection of property were jurists who argued first, that the written constitution was the supreme law of the State and that judicial review could look only to that document in scrutinizing legislation and not to the “unwritten law” of “natural rights,” and second, that the “police power” of government enabled legislatures to regulate the use and holding of property in the public in-

Congress, 2d Sess. 1688 (1909), whereas Virginia used the clause in a section of guarantees of procedural rights in criminal cases. 7 *id.* at 3813. New York in its constitution of 1821 was the first state to pick up “due process of law” from the United States Constitution. 5 *id.* at 2648.

⁴²² *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276 (1856). Webster had made the argument as counsel in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). *See also* Chief Justice Shaw’s opinion in *Jones v. Robbins*, 74 Mass. (8 Gray) 329 (1857).

⁴²³ *Sinking Fund Cases*, 99 U.S. 700, 719 (1879).

⁴²⁴ *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

⁴²⁵ *United States v. Ju Toy*, 198 U.S. 253, 263 (1905); *cf.* *Quon Quon Poy v. Johnson*, 273 U.S. 352 (1927).

⁴²⁶ *South Carolina v. Katzenbach*, 383 U.S. 301, 323–24 (1966).

⁴²⁷ *Wight v. Davidson*, 181 U.S. 371, 384 (1901).

⁴²⁸ *Lovato v. New Mexico*, 242 U.S. 199, 201 (1916).

⁴²⁹ *Public Utility Comm’rs v. Ynchausti & Co.*, 251 U.S. 401, 406 (1920).

⁴³⁰ *Johnson v. Eisentrager*, 339 U.S. 763 (1950); *In re Yamashita*, 327 U.S. 1 (1946). Justices Rutledge and Murphy in the latter case argued that the Due Process Clause applies to every human being, including enemy belligerents.

⁴³¹ *Compare* the remarks of Justices Chase and Iredell in *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388–89, 398–99 (1798).