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Government Benefits and the Rule of Law: Toward a Standards-Based Theory of Due Process

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Abstract by Melissa Sutton

The article investigates the entitlement approach to due process, which allows Congress or a state legislature to preclude application of the Due Process Clause simply by declining to create an entitlement to a government benefit. The authors propose that this approach denies due process safeguards to individuals who cannot claim an entitlement to a government benefit, no matter how important the benefit is to them or how arbitrarily the government has acted.

The article argues that a standards-based approach is superior to the current entitlement construct of due process. Part I of the article claims that the entitlement approach fails to provide an adequate foundation for the rule of law, and therefore warrants reconsideration. Part II examines the historical application of due process to government benefits decisions, demonstrating that the conventional account of the due process revolution is wrong. Part III describes the standards-based approach to due process and explains how it would solve the dilemma of how to secure due process for government benefits without establishing a substantive constitutional right to benefits, and serve as a powerful explanatory tool for related administrative law doctrines. The article concludes with an explanation as to why the standards-based approach is superior to alternative approaches proposed by other commentators as solutions to the problems confronting the current doctrine.