Book Review: Defending Due Process: Why Fairness Matters in a Polarized World

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Book Details

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Central Thesis

Garrett's book argues that due process—the requirement that government actions depriving life, liberty, or property provide notice, an opportunity to be heard, and neutral decision-makers—is fraying in today's hyper-polarized environment. Through a combination of narrative case studies, original empirical research, and policy discussion, he exposes how both societal attitudes and weak legal protections threaten fairness across criminal justice, civil administration, AI- driven decision-making, and public institutions

Major Themes

1. Polarization & Psychological Bias

Garrett explores how individuals increasingly prioritize desired outcomes—such as swift punishment or exclusion—over procedural fairness. Drawing on moral psychology, he shows how shared moral intuitions about fairness diverge sharply depending on ideological framing, leading many to abandon presumption of innocence .

2. Systemic Failures in Modern Practice

He illustrates how ostensibly routine administrative practices—traffic fines, civil forfeiture, bail hearings, algorithmic employment exclusions—frequently occur without meaningful procedural safeguards. Citizens accumulate crippling

consequences before ever facing a judge, undermining constitutional protections in practice .

3. Error-Prone and Discriminatory Processes

Garrett documents evidence showing error rates and bias in systems that lack transparency. These systems disproportionately affect poor and marginalized communities, exacerbating inequality in outcomes from public benefits to criminal justice decisions .

4. AI and "Black Box" Threats

A crucial theme is the rise of inscrutable AI tools in areas like predictive policing, forensic interpretation, risk assessment, and employment screening. Garrett argues for interpretable or "glass-box" systems that allow affected individuals, counsel, and courts to meaningfully challenge automated decisions .

5. Pathways for Reform

Chapters on reform outline both legal and technological remedies: judicial mandates for transparency, legislative protections for basic procedural rights, and research advocacy. Garrett underscores that restoring due process is vital to rebuilding trust and bridging political divisions

Key ideas:

a) Due Process Is in Decline in Polarized Societies

Garrett argues that public support for due process is weakening, especially in politically polarized environments. People are more likely to prioritize punishment or political outcomes over legal fairness, even if it undermines constitutional protections like the presumption of innocence or the right to a fair hearing.

b) Fair Procedures Are Often Missing in Practice

While the legal framework for due process exists, many routine systems (e.g., fines, civil forfeiture, child support enforcement, or administrative hearings) operate without meaningful protections. Often, people suffer serious consequences—fines, arrests, or property loss—before they even have a chance to challenge the action in court.

c) AI and Automated Decision-Making Threaten Fairness

Garrett raises serious concerns about the growing use of artificial intelligence in policing, employment, and criminal sentencing. These systems often function as "black boxes," offering no explanation or way to contest the decisions. He calls for "glass-box AI"—transparent, explainable systems that uphold procedural fairness.

d) The Public Doesn't Always Value Fairness Over Outcomes

Citing his own research with Gregory Mitchell, Garrett shows that many Americans believe convicting the guilty is more important than avoiding wrongful convictions, which clashes with long-standing legal values like Blackstone's principle: "It is better that ten guilty persons escape than that one innocent suffer."

e)   Systemic Bias and Inequality in Access to Justice

Garrett documents how due process failures disproportionately affect low-income and marginalized communities, particularly in areas like bail, civil forfeiture, and immigration enforcement. He argues these inequities undermine trust in the legal system and worsen societal divides.

f)   Reform Is Possible—But Requires Structural Change

Despite the challenges, Garrett offers a roadmap for reinvigorating due process, including:

i.   Legal requirements for algorithmic transparency

ii.   Stronger protections in civil and administrative proceedings

iii. Public education campaigns to rebuild understanding of procedural justice

iv.   Judicial standards that enforce fairness even when political pressures push the other way

Counter- Debates & Critiques

a. Blackstone vs. Public Attitudes

Garrett cites his earlier empirical study co- authored with Gregory Mitchell revealing that most Americans view wrongful convictions and acquittals as equally bad—or even consider false acquittals worse. This challenges the legal orthodoxy of Blackstone's dictum: "better that ten guilty persons escape than that one innocent suffer" . Garrett argues that reliance on juror fidelity to "reasonable doubt" is misplaced; systemic reforms that don't depend on jurors' values are needed.

Critique: Skeptics argue that emphasizing public impatience with procedural rights risks legitimizing authoritarian shortcuts, eroding due process rather than protecting it.

b. Trade-offs: Speed vs. Fairness

Some commentators maintain that in crises—eg public health emergencies, national security—due process must yield to administrative expediency to protect safety. Garrett responds that even there, fairness retains democratic legitimacy, and shortcuts often backfire by fostering public distrust.

c. Feasibility of Reform

Critics question whether legislatures or courts will adopt the reforms Garrett proposes, given institutional inertia and political polarization. Garrett acknowledges these challenges but maintains that cross‑ideological coalition-building, grounded in shared moral value of fairness, creates potential for durable change.

The Researcher's Perspective

As a researcher in procedural justice and legal sociology, I find Garrett's synthesis compelling and urgently needed:

Originality: The integration of large‑scale empirical work (e.g. public error-aversion surveys) with legal narrative is rare and powerful. It illuminates why fair procedure matters not only normatively, but instrumentally.

Balance: Garrett treads a careful line—warning against both complacency about process, and the temptation of outcome-first populism. His cautious treatment of AI—acknowledging benefits but demanding interpretability—is methodologically sound.

Practical utility: The reform proposals are grounded: from mandating discovery of algorithms to legislative guardrails for civil adjudication. They are strategic, not idealistic.

That said, further empirical work could elaborate how due process failures differ cross‑nationally or in non‑U.S. civic systems; Garrett briefly mentions global implications, but focus remains U.S.-centric.

External Reviews & Commentary

Wilson Center for Science and Justice, Duke Law

In their institutional description, the Wilson Center underscores Garrett's central contribution: a "crucial exploration of the decline of a key social and legal value", noting how due process is under assault from public polarization, weak administrative safeguards, and the opaque proliferation of AI in governance

Brandon Garrett Commentary in *The Hill (co-authored)*

In an opinion piece on bail reform and procedural discovery tied to Defending Due Process, Garrett (with colleagues) makes the case—and cites empirical outcomes— that enhanced fairness does not compromise public safety, but actually improves it: citing reforms in Harris County, TX, where eliminating cash bail and requiring pretrial discovery led to reduced misdemeanor arrests and cost savings, while upholding due process

Scholarly Context: Peer Feedback & Academic Debate

While formal book reviews remain scarce online at this time, Garrett's earlier article with Gregory Mitchell, "Error Aversions and Due Process", forms the empirical backbone for several critiques that engage similar themes in Defending Due Process:

They challenge Blackstone's principle ("better ten guilty go free than one innocent suffer") by demonstrating across more than 10,000 survey respondents that many Americans are conviction-prone, viewing wrongful acquittals as at least equally problematic as wrongful convictions

Conclusion

Defending Due Process is a landmark contribution—scholarly yet highly accessible, urgent yet optimistic. Garrett successfully reframes due process as not just a constitutional formality, but a foundational civic value under threat. Readers interested in criminal justice reform, procedural fairness, or the intersection of technology and rights will find both foundational analysis and actionable insights. Its themes resonate across disciplines—legal theory, political psychology, AI ethics, public policy.