

**A NOTE ON THE *FORDHAM LAW REVIEW*
ONLINE FALL ISSUE, *NOVEL PERSPECTIVES ON
DUE PROCESS***

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2019 has seen extensive discussion of due process in the American public sphere. There is a cultural sense of eroding norms, of institutions and procedural protections under threat. In response to the central role of due process in the cultural discourse and to the publication of Ingrid Wuerth's Article, *The Due Process and Other Constitutional Rights of Foreign Nations*,¹ in the November Issue of our print edition, *Fordham Law Review Online* presents a Fall Issue comprised both of response pieces to Professor Wuerth's Article and of Essays engaging other thorny questions about due process.

Procedural due process often is an unwieldy subject; it is at once fundamental to any principled understanding of constitutional protections, demanding of a high degree of analytical stringency in its application, susceptible to intelligible interpretation under any of several radically different constitutional theories which cut to the heart of basic questions about its derivation and scope, and colloquially understood to embody some perhaps unsatisfying subset of its rich constitutional valences.² Despite (or because of) this uneasy melding of attributes, core interrelated due process questions arise in a dizzying variety of legal contexts.

Within this Collection resonances exist, not only among the response pieces to Professor Wuerth's Article, but also between the set of response pieces and the issues raised in the Collection's other Essays. In Professors Bruce Green and Rebecca Roiphe's analysis of personhood,³ echoes of the debate over due process personhood central to the analysis in several of the

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1. Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 *FORDHAM L. REV.* 633 (2019).

2. See, e.g., Eileen Sullivan, *Trump Calls Impeachment Inquiry a "Lynching"*, N.Y. TIMES (Oct. 22, 2019), <https://www.nytimes.com/2019/10/22/us/politics/trump-impeachment-lynching.html> [<https://perma.cc/D3TY-VMR2>].

3. Bruce A. Green & Rebecca Roiphe, *Punishment Without Process: "Victim Impact" Proceedings for Dead Defendants*, 88 *FORDHAM L. REV. ONLINE* 28, 37 (2019).

response Essays⁴ emerge. When Jonathan D’Errico parses the extent to which fair process is coextensive with habeas corpus or derived elsewhere,⁵ parallels to Professor David Stewart’s analysis after Wuerth of the ramifications of deriving procedural protections from various possible constitutional sources⁶ are clear. In Brooklyn College President Michelle Anderson’s concern for the effect of inconsistent Executive Branch action on the due process rights of both parties involved in Title IX proceedings,⁷ broader questions of Executive responsibility for fair process surface. These recall Professor Katherine Florey’s separation-of-powers analysis as she sets the stage for a dialogue with Professor Wuerth.⁸ Beyond these resonances, the pieces in this Collection as well as Professor Wuerth’s Article epitomize the constitutional analysis—innovative but uncompromisingly rigorous—demanded of legal scholars in the face of shifting political and cultural norms.

The three standalone Essays in the Issue appear first, followed by the Essays in dialogue with Professor Wuerth’s Article.

4. See, e.g., Nathan S. Chapman, *Constructing the Original Scope of Constitutional Rights*, 88 FORDHAM L. REV. ONLINE 46, 47–49 (2019).

5. Jonathan G. D’Errico, *Uncoupling Habeas Corpus and Due Process*, 88 FORDHAM L. REV. ONLINE 18, 22 (2019).

6. See, e.g., David P. Stewart, *A Commentary on Ingrid Wuerth’s The Due Process and Other Constitutional Rights of Foreign Nations*, 88 FORDHAM L. REV. ONLINE 102, 114–15 (2019).

7. See, e.g., Michelle J. Anderson, *Do the Proposed Title IX Regulations Protect or Undermine Due Process?*, 88 FORDHAM L. REV. ONLINE 3, 14–15 (2019).

8. See, e.g., Katherine Florey, *Rights, Immunities, and Sovereigns*, 88 FORDHAM L. REV. ONLINE 74, 81–82 (2019).