

***DIGNITY, TRADITION, & CONSTITUTIONAL DUE PROCESS:  
COMPETING JUDICIAL PARADIGMS***

The William S. Boyd School of Law (University of Nevada, Las Vegas) will host a symposium entitled: *Dignity, Tradition, & Constitutional Due Process: Competing Judicial Paradigms*. The symposium will be held: Thursday evening, March 14, 2019 – Friday, March 15, 2019. We encourage interested individuals to submit presentation proposals.

**The Symposium Will Address the Question:**

What should be the proper predominant -- overarching -- judicial standard or paradigm to apply the U.S. Constitution's Fifth and Fourteenth Amendments Due Process Clauses?

**The Premise of the Symposium Is:**

At present, the Supreme Court applies two distinct, arguably irreconcilable due process paradigms. One purports to discern empirically "deeply rooted" American traditions sounding in liberty. Under that standard, courts act essentially as uncritical investigators determining, but rarely judging, whether an espoused right is constitutionally protected because it emanates from some judicially recognized "deeply rooted tradition." The pivotal Second Amendment opinion *District of Columbia v. Heller*, 554 U.S. 570 (2008), claims that the "deeply rooted" traditions standard controls.

Perhaps an offshoot of "living constitutionalism," and despite *Heller*, the Supreme Court applies a second standard, the *dignity paradigm*, holding that governmental conduct violates "due process of law" if it impugns the innate human dignity of adversely affected persons. Under this benchmark, courts unapologetically judge the rightness, some would say the morality, of challenged governmental conduct. The "homosexual rights cases" typify this standard, although *dignity* theory has informed due process jurisprudence since the late 1800s and into the present century.

The Court's determination regarding which paradigm to apply depends, of course, on which receives at least five affirmative votes in any given appeal. Until his recent retirement, Justice Anthony Kennedy usually was the deciding vote. The probable confirmation of Hon. Brett Kavanaugh to Kennedy's seat may portend severely limited use of the *dignity paradigm*, if not its effective demise.

Our symposium, *Dignity, Tradition, & Constitutional Due Process: Competing Judicial Paradigms*, explores which of these two seemingly irreconcilable standards is correct, or whether there are one or more alternative approaches the courts should use.

**Call for Presentations and Commentators:**

*We invite interested persons to submit presentation proposals briefly describing the position you wish to advocate, and why.*

Of course, we are particularly interested in presentations explicitly embracing either the *deeply rooted traditions* or *dignity paradigm*. We invite as well, presentations that either augment those two due process frameworks, or suggest alternative standards. Such presentations could include:

- asserting some form of hybrid theory;
- asserting aspects of critical or post-modernist constitutional analysis;
- asserting originalist theories; and,
- asserting "living constitutionalism" without regard to any claimed original meanings.

*The foregoing is not an exhaustive list. We certainly encourage topics urging the adopting of entirely different "due process of law" paradigms.*

In addition, we hope to have each major presenter critiqued by at least two assigned commentators. Therefore, please let us know if you are interested in serving as a commentator and, if so, whether there are one or more topics you particularly wish to review.

Please submit topic proposals and requests to act as a commentator, along with contact information, by no later than October 8, 2018, to Prof. Peter B. Bayer, [peter.bayer@unlv.edu](mailto:peter.bayer@unlv.edu)

Thank you for considering this call for presentations. We hope to hear from you.