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# Yes, No, Maybe So

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## ETHICS

### What Does 'Due Process' Really Mean?

BY NICHOLAS BIRDSONG

Abstract legal doctrines rarely get much public attention. I can't tell you the last time I heard "res ipsa" or the "dormant commerce clause" mentioned on my morning news podcasts, for instance.

"Due process," on the other hand, comes up often in a surprisingly wide variety of contexts. The phrase is regularly mentioned in debates over gun rights, immigration, sexual assault, teacher tenure and more. Those who jump to the defense of a beloved popular figure newly accused of some bad behavior rarely fail to mention it.

But like many complicated ideas that enter the public discourse, explanations tend to be absent, oversimplified or off the mark altogether.

Definitions from legal scholars tend to derive from constitutional law, which separates due process into procedural and substantive dimensions. The procedural aspect refers to the limit on government depriving someone of life, liberty or property without sufficient notice and opportunity for a fair hearing. The more controversial substantive meaning limits government interference in certain fundamental liberty interests, such as right to privacy, regardless of process.

Both substantive and procedural limits apply exclusively to government action. Due process does not, for example, limit the ability of a private person or entity to fire an employee, revoke a sponsorship deal or issue a public rebuke, even if the

action is arbitrary, capricious or based on pure speculation. Contract law or other legal principles might limit such actions, but not due process.

Yet, those who decry public shaming often seem to be arguing that that's ex-

Snap judgments are prone to error, and the consequences can be severe. Loss of income, public humiliation and damage to one's reputation may be irreparable, even if the accusations are later proved false.

So is it better to just refrain from expressing any opinions? That might sound tempting, but life sometimes requires us to make decisions with limited information. A refusal to condemn may be perceived as enabling, perpetuating or endorsing undesirable acts. Public servants in particular face an abundance of these hard choices.

The tricky part is in navigating the boundaries between premature and overdue judgment. In other words, how much process should be due before a personal judgment is no longer rash?

Ultimately, it is a highly subjective and fact-dependent question. A legal stan-

dard applied to personal statements of opinion might be too restrictive, but ruining someone's career based on an unsubstantiated and anonymous rumor might be a bit harsh. Sticking to the established facts is always a safe and ethical bet, as is a willingness to apologize or change course in light of new information.

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actly how due process works. Message boards and opinion pieces decried private businesses' firing of those involved in the college admissions bribery scandal as punitive action prior to any due process.

Whether incorrect or simply a less-technical alternate meaning, this use of the phrase reflects a common value that one should not condemn others based on mere allegations or rumors. Some ethicists argue that it is unethical to rashly form convictions of someone's guilt of a bad act or character defect based on insufficient justification.