

**Abstract: *Copyright Through a Liberty Lens***

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In an effort to stem the tide of ever-expanding intellectual property rights and to establish some affirmative constitutional basis for using intellectual property ostensibly owned by others, scholars have often turned to the First Amendment. This approach has almost universally failed to convince courts and has little to offer individuals engaged in personal, rather than political or cultural, expression. In this article, Professor Rothman proposes a paradigm shift away from the First Amendment and toward an alternative constitutional model for determining when uses of copyrighted works should be permitted. The broader understanding of substantive due process and the liberty interest set forth by the Supreme Court in *Lawrence v. Texas* provides a fresh opportunity to consider the role of due process analysis in the context of copyright law. Rothman's approach provides a strong justification for protecting uses that are tightly connected with an individual's identity. Even though a liberty analysis would likely protect fewer uses than a First Amendment approach might (if it were ever embraced), the constitutional grounding for these liberty-based uses would be much more robust.