

# Symposium

## FOREWORD: POLITICAL SCIENCE AND LAW

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Recent legal events have moved discussions about the intersection of political science and the law squarely into the mainstream. During the epic *Bush v. Gore* clash of 2000, Americans watched mesmerized as five unelected, life-tenured Justices determined the outcome of a presidential election.<sup>1</sup> Even more recently, debates concerning the constitutionality of the health care reform bill<sup>2</sup> and same-sex marriage<sup>3</sup> have sounded in legislatures, courthouses, and ballot boxes. Classic philosophical debates about separation of powers, democratic governance, and political transparency undergird these politically divisive issues.

Political scientists engage in this discussion with their research on contemporary government. Their research reveals political beliefs, patterns,

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<sup>1</sup> *Bush v. Gore*, 531 U.S. 98 (2000).

<sup>2</sup> See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (to be codified in scattered sections of 42 U.S.C.); see also Brad Joondeph, *Our Pending National Debate: Is Health Care Reform Constitutional?*, 62 MERCER L. REV. 605 (2011); Alana Goodman, *Supreme Court Obamacare Case Could Overshadow Election*, COMMENTARY (Aug. 15, 2011, 2:10 PM), <http://www.commentarymagazine.com/2011/08/15/supreme-court-obamacare-election>; *Is the Health Care Law Unconstitutional?*, N.Y. TIMES: ROOM FOR DEBATE (Mar. 28, 2010, 7:00 PM), <http://roomfordebate.blogs.nytimes.com/2010/03/28/is-the-health-care-law-unconstitutional>; Andrew Koppelman, *Bad News for Mail Robbers: The Obvious Constitutionality of Health Care Reform*, 121 YALE L.J. ONLINE 1, 1 (2011), <http://yalelawjournal.org/images/pdfs/981.pdf> (“The Supreme Court may be headed for its most dramatic intervention in American politics—and most flagrant abuse of its power—since *Bush v. Gore*.”).

<sup>3</sup> See Chase D. Anderson, Note, *A Quest for Fair and Balanced: The Supreme Court, State Courts, and the Future of Same-Sex Marriage Review After Perry*, 60 DUKE L.J. 1413 (2011).

and consequences that contradict conventional understandings of the political system. These uncertain times require a robust understanding of how the legal system is operating that looks beyond rhetorical attacks and political talking points. Political scientists offer well-researched, realist insights into government during a precarious period when judges face dramatically politicized issues and the public's opinion of Congress has plunged to historic lows.<sup>4</sup>

Although widely publicized events like those described above have triggered a renewed interest in political science, the discipline itself is hardly new. Even as the legal system tentatively begins to embrace less conventional areas of interdisciplinary scholarship, the study of political science and the law stands apart as one of the oldest areas of interdisciplinary study that is undeniably relevant, influential, and innovative.<sup>5</sup> The marriage of law and political science remains significant because the subject matter of political science intrinsically concerns the actions of the three branches of government and because the methodologies of political science offer varied alternatives for analyzing legal processes and outcomes.

On September 25 to 26, 2010, legal scholars and political scientists convened at the Northwestern University School of Law conference "Political Science and Law." The conference featured three panels and a keynote address from Judge Richard Posner. The pages that follow contain papers from the symposium, refined by feedback from panelists and conference participants. The authors employ methodologies ranging from those traditionally associated with political science, such as in-person interviews and empirical studies, to theoretical inquiries more commonly found in legal scholarship.

Two of the pieces analyze in-person interviews: Professors Tracey George, Mitu Gulati, and Ann McGinley assess how a landmark employment discrimination case has altered attitudes and practice in Las Vegas casinos, and Professor Nancy Scherer evaluates the benefits and drawbacks of a judicial selection strategy centered on diversity. Relying on original empirical studies, Professor Anne Joseph O'Connell analyzes agency rulemaking during periods surrounding political transitions, and Professor Neal Devins identifies a connection between the overall decline of congressional constitutional hearings and increasing party polarization. Two of the pieces challenge popular legal theories: Professor Pauline Kim warns about the inherent limits of using principal-agent models to describe the federal judicial hierarchy, and Judge Richard Posner traces the evolution of the timeless le-

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<sup>4</sup> See Michael Cooper & Megan Thee-Brenan, *Disapproval Rate for Congress at Record 82% After Debt Talks*, N.Y. TIMES, Aug. 4, 2011, at A1.

<sup>5</sup> The interdisciplinary study of law and political science dates back to 1876, when Columbia University appointed John W. Burgess as professor of constitutional law and political science. See Christopher Tomlins, *History in the American Juridical Field: Narrative, Justification, and Explanation*, 16 YALE J.L. & HUMAN. 323, 367-68 (2004).

galist–realist debate through distinguished jurists from Plato to Judge Harry Edwards. Finally, Professor Jide Nzelibe uses two case studies to demonstrate how political parties use international legal commitments to bolster domestic political objectives and to instigate internal conflict within their political opposition.

We are grateful to Professors Lee Epstein and John O. McGinnis for organizing the conference and to the Searle Center for its generous financial support, and we invite you to explore the following symposium papers. These pieces offer special insights and practical understandings regarding the rule of law in contemporary America.

