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The Adequacy of the Presidential Succession System in the 21st Century: Filling the Gaps and Clarifying the Ambiguities in Constitutional and Extraconstitutional Arrangements

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Fordham Law

Lincoln Center | New York City

The *Fordham Law Review* and the Fordham Law chapters
of the American Constitution Society and Federalist Society
present

THE **Adequacy**
OF THE **Presidential**
Succession System
IN THE **21st Century**

Filling the Gaps and Clarifying the Ambiguities in
Constitutional and Extraconstitutional Arrangements

Friday, April 16, 2010 | Saturday, April 17, 2010

Fordham Law School, McNally Amphitheatre

About the Symposium

The *Fordham Law Review* is honored to co-sponsor this event along with a Planning Committee consisting of former United States Senator Birch Bayh, and Professors Joel K. Goldstein and John D. Feerick. This program investigates the adequacy of our current presidential succession system through three panel discussions. The *Law Review* will publish the proceedings in a December 2010 issue.

The issue of presidential succession has perplexed our leaders since the Founding. The Founders dealt with the issue in part, leaving future generations to make their way through various crises in succession—presidential deaths and disabilities, and vacancies in the Vice Presidency—with only a measure of certainty.

The Twenty-Fifth Amendment resolved many of the most pressing ambiguities in our system. The Amendment itself was the product of a political crisis. The succession of Lyndon Johnson to the Presidency following the assassination of President Kennedy exposed a gap that unsettled the country—with no constitutional or statutory provision with which to fill the vacant office of the Vice President, the nation was concerned that the Presidency would devolve on House Speaker John McCormack or Senate President pro tempore Carl Hayden, the next in line according to the succession statute, who were then seventy-one and eighty-six years old, respectively. Into this void entered Birch Bayh, whose remarkable efforts as a freshman Senator from Indiana led to the passage of the Twenty-Fifth Amendment.

The Twenty-Fifth Amendment was successful in addressing the most pressing problems that presidents faced since the Founding: Section 1 constitutionalized the Tyler precedent (that upon the death of the President, the Vice President shall become President); Section 2 dealt with the problem of a vacancy in the Vice Presidency, a situation that had arisen sixteen times in the nation's history to that point; under Section 3, the President may, upon his own declaration, transfer the powers of the Presidency to the Vice President acting as President; and Section 4, the never-before-invoked disability provision, permits the Vice President, with a majority of the cabinet or some other body that Congress creates, to declare the President disabled.

Unresolved are some of the issues participants in today's program will investigate: what would happen, and what is constitutionally permissible, in the case of a double vacancy in the Presidency and Vice Presidency; what are some of the potential separation of powers violations posed by the current Succession Act, which puts members of Congress in the line of succession; how should we address gaps and conflicts at various stages of presidential and vice presidential transition, including disability or death prior to inauguration and potential conflicts of interest arising in confirmation hearings of an appointed Vice President; and are informal—extraconstitutional and extrastatutory—arrangements between Presidents and their Vice Presidents, members of their cabinet, and members of Congress constitutional?

This program brings together leading thinkers and experienced practitioners in the area of presidential succession: The framer of the Twenty-Fifth Amendment, Birch Bayh, who shepherded the Twenty-Fifth Amendment through Congress and who, as chairman of the Senate Subcommittee on Constitutional Amendments, oversaw hearings and debate on the topic; those who were on the front lines in developing the presidential succession structure (Fred F. Fielding, White House Counsel to President Ronald Reagan and Counsel to George W. Bush, and Benton Becker, Counsel to President Ford); those who have written articles and books on the subject from different perspectives (Professors Akhil Amar, Edward B. Foley, Joel K. Goldstein, Robert E. Gilbert, and Rose McDermott); Dr. John Fortier and Dr. Norman Ornstein, whose work with the Continuity in Government Commission has evaluated the adequacy of this system in a post-9/11 world; former Dean John D. Feerick, both a scholar and practitioner in the field, whose articles published in the *Fordham Law Review* were drawn on in the development of the Twenty-Fifth Amendment; as well as constitutional law scholars Dean William Michael Treanor, and Professors James E. Fleming and Robert J. Kaczorowski; and finally, Dr. William F. Baker, President Emeritus of the Educational Broadcasting Company, who will provide the unique perspective of one deeply familiar with the media and the sentiments of a nation's people regarding these issues.

Text of the Twenty-Fifth Amendment to the United States Constitution

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

The Adequacy of the Presidential Succession System

Filling the Gaps and Clarifying the Ambiguities in Constitutional and Extraconstitutional Arrangements

Friday, April 16, 2010

| | | | |
|-------------|---|-----------|--|
| 9:30–10:00 | Registration & Continental Breakfast | 2:00–2:45 | Keynote Speaker |
| 10:00–10:45 | Introductory Remarks WILLIAM MICHAEL TREANOR, Dean and Paul Fuller Professor of Law, Fordham Law School JOHN D. FEERICK, Director, Feerick Center for Social Justice; Norris Professor of Law and Former Dean, Fordham Law School A Framers' Perspective HON. BIRCH BAYH, Former United States Senator of Indiana and Author of the Twenty-Fifth Amendment to the United States Constitution | 2:45–4:30 | Panel & Response: Adequacy of Current Succession Law in Light of the Constitution and Policy Considerations JOEL K. GOLDSTEIN, St. Louis University School of Law JOHN D. FEERICK BENTON BECKER, Counsel to Gerald R. Ford during the Twenty-Fifth Amendment Vice Presidential Confirmation Hearings JAMES E. FLEMING, Boston University School of Law HON. BIRCH BAYH Moderator: ROBERT KACZOROWSKI, Fordham Law School |
| 10:45–12:30 | Panel & Response: Interpreting Ambiguities in Current Constitutional Arrangements ROBERT E. GILBERT, Northeastern University ROSE MCDERMOTT, Brown University AKHIL AMAR, Yale Law School HON. BIRCH BAYH Moderator: DR. WILLIAM F. BAKER, Columbia University School of Business; Fordham University; Former Chief Executive Officer, Educational Broadcasting Company | 4:30–4:45 | Day 1 Closing Remarks |
| 12:30–2:00 | Lunch | 4:45–5:15 | Day 1 Closing Reception |

in the 21st Century:

Saturday, April 17, 2010

| | | | |
|-------------|--|-------------|---|
| 9:30–10:00 | Breakfast | | |
| 10:00–11:45 | Panel & Response: Gaps in Electoral, Transition & Confirmation Processes | | |
| | DR. JOHN C. FORTIER, American Enterprise Institute; Executive Director, Continuity of Government Commission | | DR. NORMAN ORNSTEIN, American Enterprise Institute; Continuity of Government Commission |
| | EDWARD B. FOLEY, Moritz College of Law, Ohio State University | | HON. BIRCH BAYH |
| | | | Moderator: WILLIAM MICHAEL TREANOR |
| | | 11:45–12:30 | Closing Remarks |
| | | 12:30–1:00 | Day 2 Closing Refreshments |

CoSponsors

THE FORDHAM LAW REVIEW is a scholarly journal serving the legal profession. Approximately 75 articles, written by students or submitted by outside authors, are published each year. Each volume comprises six books, three each semester, totaling over 3,000 pages.

The *Fordham Law Review* is the 7th most cited student-edited law journal by courts, and the 10th most cited by journals in the nation according to a recent study by Washington & Lee University. The *Law Review* is published six times a year in October, November, December, March, April, and May. Within these six annual issues, the *Law Review* publishes five symposia: The Robert L. Levine Lecture, the Philip D. Reed Lecture, the annual Ethics Symposium, and two symposia on varying topics each year.

Managed by a board of up to eighteen student editors, the *Law Review* is a working journal, not merely an honor society. Nevertheless, *Law Review* membership is considered among the highest scholarly achievements at the Law School.

The journal's content consists generally of academic articles and essays, symposia, and student-written notes and comments. The journal receives about 1,500 submissions per year and selects approximately 15 manuscripts for publication.

THE AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY (ACS) is one of the nation's leading progressive legal organizations. Founded in

2001, ACS is a rapidly growing network of lawyers, law students, scholars, judges, policymakers, and other concerned individuals. Our mission is to ensure that fundamental principles of human dignity, individual rights and liberties, genuine equality, and access to justice enjoy their rightful, central place in American law. The Fordham Law School ACS Student Chapter furthers this mission by educating its community through open debate and fostering a new generation of progressive leaders.

THE FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities.

This entails reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students, and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.

Speakers

AKHIL REED AMAR is the Sterling Professor of Law and Political Science at Yale, where he teaches constitutional law in both Yale College and Yale Law School. After graduating in 1980 from Yale College and in 1984 from Yale Law School (where he served as an editor of the *Yale Law Journal*), he clerked on the First Circuit for Judge Stephen Breyer in 1984–1985 and then joined the Yale faculty in 1985. In 1994 he received the Paul Bator award from the Federalist Society; in 1998 his work on the Bill of Rights earned the ABA Certificate of Merit and the Yale University Press Governors Award; and his most recent book earned the ABA Silver Gavel Award of 2006. He is a member of the American Academy of Arts and Sciences and in 2008 he received the DeVane Medal—Yale’s highest award for teaching excellence. He has delivered endowed lectures at some three dozen colleges and universities, and has written widely on constitutional issues in both law journals and general-interest publications. Professor Amar is the co-editor of a leading constitutional law casebook, *Processes of Constitutional Decisionmaking*. He is also the author of several books, including *The Constitution and Criminal Procedure: First Principles* (Yale Univ. Press, 1997), *The Bill of Rights: Creation and Reconstruction* (Yale Univ. Press, 1998), and most recently, *America’s Constitution: A Biography* (Random House, 2005).

DR. WILLIAM F. BAKER directs the Bernard L. Schwartz Center for Media, Education, and Public Policy at Fordham University, and also holds positions at IESE Business School, Harvard, and Columbia University Business School. He is President Emeritus of Thirteen/WNET, New York’s PBS station, where he raised over one billion dollars during his tenure as President. During his four-decade career, Baker launched both Oprah Winfrey and Charlie Rose, and helped start the Discovery Channel and the Disney Channel. He is the recipient of four Emmy Awards and the executive producer of the theatrical film and PBS documentary, *The Face: Jesus in Art*. He is co-author of the book *Leading with Kindness* and hosts the series of the same name, which premiered on public television in 2008.

HON. BIRCH BAYH is a partner in the Legislative and Regulatory Group in the Washington DC office of Venable LLP. He has a deep and thorough understanding of the legislative process, having represented the State of Indiana for 18 years in the U.S. Senate (1962–1980), followed by a 20-year law career representing individuals, corporate clients, and public entities before all three branches of government. Senator Bayh authored two Amendments to the Constitution—the Twenty-Fifth Amendment on Presidential and Vice Presidential succession, and the Twenty-Sixth Amendment lowering the voting age to 18. He is the author of Title IX to the Higher Education Act, which mandates equal opportunities for women students and faculty; co-author of the Bayh-Dole Act,

which revitalized the nation’s patent system; and chief architect of the Juvenile Justice Act.

PROFESSOR BENTON BECKER served as a Trial Attorney in the Criminal Division, Fraud Section of the U.S. Department of Justice following graduation from the American University Law School in Washington DC, where he participated in numerous criminal investigations and prosecutions, including former Congressman Adam Clayton Powell. In 1969 Professor Becker entered the private practice of law as a partner in the DC law firm of Cramer, Haber and Becker, representing, among others, Commonwealth Oil Refinery of Puerto Rico against Texaco, Exxon and Mobile, and the U.S. House of Representatives in a landmark constitutional case interpreting the Article 1 “Speech and Debate” Clause. In 1973, Professor Becker served as lead counsel in the Senate and House confirmation procedures of Congressman Gerald R. Ford for the office of Vice President under the then-recently ratified 25th Amendment to the Constitution. In 1974 Professor Becker took a leave of absence from his law firm to assist President Ford in multiple matters, including personally conducting negotiations with former President Nixon regarding the terms of a possible presidential Pardon and Mr. Nixon’s waiver of any ownership claims to the records, papers, and tape recording accumulated during the Nixon Presidency. Professor Becker currently teaches Constitutional Law at St. Thomas University School of Law in Miami, Florida.

JOHN D. FEERICK is currently the Sidney C. Norris Chair of Law in Public Service at Fordham Law School and is the Director and Founder of the Feerick Center for Social Justice at the Law School. He served as the Chair of the New York State Commission on Public Integrity from 2007 to 2009. Mr. Feerick previously served as the Dean of the Law School from 1982 to 2002. Before coming to Fordham, Mr. Feerick was a partner at the firm of Skadden, Arps, Slate, Meagher & Flom (1961–1982), where he headed the labor and employment practice. He was the chair of the Board of Directors of the American Arbitration Association from 1998 to 2001. Mr. Feerick has served as both an arbitrator and mediator of difficult disputes in both the public and private sectors.

Mr. Feerick’s publications include *From Failing Hands: The Story of Presidential Succession* (1965), *The Twenty-Fifth Amendment* (1976 & 1992 eds.), which was nominated for the Pulitzer Prize, *The Vice Presidents of the United States* (co-authored with Emalie P. Feerick, 1967), and *NLRB Representation Elections: Law, Practice & Procedure* (co-authored with Henry P. Baer and Jonathan P. Arfa, 1979–1980).

Mr. Feerick is a Phi Beta Kappa graduate of Fordham College (B.S.), and he received his LL.B. from Fordham Law School, where he was Editor-in-Chief of the *Law Review*. Mr. Feerick has been the recipient of various awards and honorary degrees.

JAMES E. FLEMING has been Professor of Law and The Honorable Frank R. Kenison Distinguished Scholar in Law at Boston University School of Law since Fall 2007. Previously, he was the Leonard F. Manning Distinguished Professor of Law at Fordham Law School. He is author of *Securing Constitutional Democracy: The Case of Autonomy* (University of Chicago Press, 2006), co-author of *Constitutional Interpretation: The Basic Questions* (Oxford University Press, 2007) (with Sotirios A. Barber of University of Notre Dame), and co-author of *American Constitutional Interpretation* (4th ed., Foundation Press, 2008) (with Walter F. Murphy and Stephen Macedo of Princeton University and Sotirios A. Barber). He is working on a book on *Rights and Responsibility* (with his wife, Linda C. McClain, who is Professor of Law and Paul M. Siskind Research Scholar at Boston University School of Law). He is Editor of *Nomos*, the annual journal of the American Society for Political and Legal Philosophy, and Faculty Advisor to *Boston University Law Review*. While at Fordham, he organized or co-organized a number of conferences in constitutional theory for the *Fordham Law Review*, and he is happy to be coming back to participate in this conference.

FRED F. FIELDING is a partner in the Washington DC office of Morgan Lewis & Bockius. His practice is focused on crisis management, white collar litigation, internal investigations and independent board reviews, governmental oversight, as well as providing general counseling to corporate and individual clients on a broad array of legal and policy issues involving the intersection of business and government. A trial lawyer by training and experience, he also has extensive experience serving as an arbitrator in international and domestic disputes. Prior to joining Morgan Lewis, he served as an arbitrator in international and domestic disputes. Prior to joining Morgan Lewis, he served as Counsel to the President of the United States to George W. Bush, from January 2007 to January 2009. Mr. Fielding has also served as White House Counsel to President Ronald Reagan from 1981–1986, as well as in the Nixon White House as Deputy Counsel from 1972–1974 and as Associate Counsel from 1970–1972. His other public service has included service as a Commissioner on the “9-11 Commission” (2002–2004); U.S. Designated Arbitrator, Tribunal on U.S.-U.K. Air Treaty Dispute (1989–1994); Member, Panel of Arbitrators of the International Centre for Settlement of Investment Disputes (1987–1997, 2002–2007, and 2009–present); Member of the Secretary of Transportation Task Force on Air Disasters (1997–1998); and as a Member of the President’s Commission on Federal Ethics Law Reform (1989). Mr. Fielding is an honors graduate of Gettysburg College and the University of Virginia School of Law, where he was an editor of the *Law Review* and a member of the National Moot Court Team. He is admitted to practice in Pennsylvania, the District of Columbia, the U.S. Supreme Court, and various federal appellate courts.

EDWARD B. FOLEY, Robert M. Duncan/Jones Day Designated Professor in Law, is the Director of Election Law @ Moritz. One of the nation’s preeminent experts on election law, Professor Foley teaches and writes in all areas of this field. His current research focuses on improving the processes for resolving disputed elections. He is working on a project addressing lessons to be learned in light of Minnesota’s U.S. Senate

election of 2008, involving candidates Norm Coleman and Al Franken. A larger, longer-term project examines the entire history of disputed elections in the U.S., from New York’s gubernatorial election of 1792 (which involved John Jay, Alexander Hamilton, and other Founding Fathers as participants), through the Hayes-Tilden presidential election of 1876, down to *Bush v. Gore* and its aftermath. As part of this long-term project, Foley designed a simulated dispute of the 2008 presidential election, *McCain v. Obama*, which a distinguished panel of three retired judges decided in an opinion that will aid in resolving future disputes. His prior writings on *Bush v. Gore*, provisional ballots, and related topics, set the foundation for these current and ongoing projects.

DR. JOHN C. FORTIER is a Research Fellow at the American Enterprise Institute. He has been the principal contributor to the AEI-Brookings Election Reform Project since 2005 and has served as executive director of the Continuity of Government Commission since 2002. In July 2008, he was named the first director of the Center for the Study of American Democracy at Kenyon College. Mr. Fortier writes a column for *Politico*, commenting on current events in U.S. politics, and is a contributor to Politico.com’s “The Arena” forum. He has testified before Congress on issues concerning continuity, representation for the District of Columbia, and absentee voting.

Mr. Fortier is a frequent radio and television commentator on the Presidency, Congress, and elections, having made appearances on CNN, Fox News, BBC, ABC’s *Nightline*, PBS’s *News Hour*, and NBC’s *Today Show*. He has been an analyst for AEI’s Election Watch series for each election cycle since 2002. A political scientist who has taught at the University of Pennsylvania, University of Delaware, Boston College, and Harvard University, Mr. Fortier has written numerous scholarly and popular articles. His articles have been published in *The Hill*, *Los Angeles Times*, *Washington Times*, *Roll Call*, *American.com*, *Election Law Journal*, *Review of Politics*, and *PS: Political Science and Policy*. His books include *Absentee and Early Voting: Trends, Promises, and Perils* (2006), *After the People Vote: A Guide to the Electoral College* (editor; 2004), and *Second-Term Blues: How George W. Bush Has Governed* (editor; 2007). Mr. Fortier received his B.A. from Georgetown University and his Ph.D. in political science from Boston College.

ROBERT E. GILBERT is Edward W. Brooke Professor of Political Science at Northeastern University. A scholar of the American Presidency, he has focused in recent years on issues of presidential disability and succession. He is the author of four books and numerous articles in such journals as *Presidential Studies Quarterly*, *Political Psychology*, *Congress and The Presidency*, *White House Studies*, *Journal of Psychohistory*, *Politics and The Life Sciences*, and *Journal of American Studies*. In 1994, he was appointed to the Working Group on Presidential Disability, which presented its Report and Recommendations to President Clinton at the White House in 1996. In 2004, Gilbert delivered the Robert D. Klein university lecture at Northeastern, speaking on the subject of Presidential Disability in the Age of Terrorism. He chaired the Department of Political Science for 12 years and is a University Excellence in Teaching Award winner.

JOEL K. GOLDSTEIN is the Vincent C. Immel professor of Law at Saint Louis University School of Law where he teaches courses on constitutional law. He is the author of *The Modern American Vice Presidency: The Transformation of a Political Institution* (Princeton University Press, 1982) and other books and articles on the Presidency, Vice Presidency, presidential succession and inability, and constitutional law. He is a graduate of Princeton University and Harvard Law School and received his D.Phil. in politics from Oxford University, which he attended as a Rhodes Scholar. He was the law clerk for the Hon. W. Arthur Garrity, Jr., of the United States District Court for the District of Massachusetts and practiced law for 12 years at Goldstein and Price in St. Louis. Professor Goldstein is writing a new book on the Vice Presidency, and is also working on studies of Senator Edmund S. Muskie and Justice Louis Brandeis.

ROBERT J. KACZOROWSKI is Professor of Law at Fordham Law School and a professionally trained constitutional and legal historian (Ph.D. University of Minnesota) and lawyer (J.D. New York University) specializing in constitutional law. After graduating from law school, Professor Kaczorowski clerked on the Third Circuit Court of Appeals for Judge A. Leon Higginbotham, Jr., and he joined the Fordham Law School faculty in 1986. His book, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866–1876* (New York University School of Law Linden Studies in Legal History) (Oceana Press, 1985, Fordham University Press, 2005), has been required reading for lawyers in the Department of Justice, Civil Rights Division who have attended Justice Department Seminars on the legislative history of federal civil rights statutes and the history of the Justice Department's civil rights litigation. Professor Kaczorowski is also the author of *The Nationalization of Civil Rights: Constitutional Theory and Practice in a Racist Society, 1866–1883* (Garland Publishing, Inc., 1987), co-editor of *Constitutionalism and American Culture: Writing the New Constitutional History* (The University Press of Kansas, 2002) (with Sandra Van Burkleo and Kermit Hall), and many articles published in law reviews, such as the *Yale Law Journal*, and professional history journals, such as *The American Historical Review*. He is currently completing a centennial history of Fordham Law School entitled, *The Golden Door: A History of Fordham University School of Law*.

ROSE MCDERMOTT is a Professor of Political Science at Brown University. She holds a Ph.D. in Political Science and an M.A. in Experimental Social Psychology, both from Stanford University. She held a National Institute on Drug Abuse Post Doctoral Fellowship in Substance Abuse Treatment Outcome Research at the San Francisco VA through the University of San Francisco Psychiatry Department. Professor McDermott has also held fellowships at the Stanford Center for Advanced Studies in the Behavioral Sciences, and the John M. Olin Institute for Strategic

Studies and the Women and Public Policy Program, both at Harvard University. She is the author of *Risk Taking in International Relations: Prospect Theory in American Foreign Policy* (University of Michigan Press, 1998), *Political Psychology in International Relations* (University of Michigan Press, 2004), and *Presidential Illness, Leadership and Decision Making* (Cambridge University Press, 2007). She is co-editor of *Measuring Identity: A Guide for Social Science Research*, with Rawi Abdelal, Yoshiko Herrera, and Alastair Iain Johnston (Cambridge University Press, 2009).

DR. NORMAN ORNSTEIN is a long-time observer of Congress and politics. He writes a weekly column for *Roll Call* and is an election analyst for CBS News. He serves as codirector of the AEI-Brookings Election Reform Project and participates in AEI's Election Watch series. He also serves as a senior counselor to the Continuity of Government Commission. Mr. Ornstein led a working group of scholars and practitioners that helped shape the law, known as McCain-Feingold, that reformed the campaign financing system. He was elected as a fellow of the American Academy of Arts and Sciences in 2004. His many books include *The Permanent Campaign and Its Future* (AEI Press, 2000); the co-authored *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* (Oxford University Press, 2006); and, most recently, *Vital Statistics on Congress 2008* (Brookings Institution Press, 2008), also co-authored.

WILLIAM MICHAEL TREANOR is Dean and Paul Fuller Professor of Law of Fordham Law School. Dean Treanor, who joined the Fordham Law faculty in 1991, is a constitutional law scholar who specializes in constitutional history, and he has written extensively on the history of constitutional protection of private property and on the original understanding of the Constitution. Dean Treanor has taught a wide range of courses at Fordham, including Constitutional Decision-Making, Criminal Law, Intellectual Property, Land Use, and Property Law. He has also taught as a Visiting Professor at the Sorbonne. In addition to being a teacher and scholar, Dean Treanor has been a familiar face in Washington DC government circles, working with a variety of government agencies since 1979.

During the Reagan and Bush administrations, he worked as associate counsel in the Office of the Iran-Contra Independent Counsel. More recently, during the Clinton Administration, he held the post of Deputy Assistant Attorney General in the United States Department of Justice from 1998 to 2001. He served in the Office of Legal Counsel, the component of the Department of Justice that provides legal advice to the White House, Attorney General, and all executive branch agencies. During his tenure, he focused on issues in criminal law, foreign affairs, international law, intellectual property, and war powers.

FORDHAM LAW SCHOOL
140 West 62nd Street, New York, NY 10023

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