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4-8-2017

### April 8, 2017: The Supreme Court and Politics

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Title: The Supreme Court and Politics

Date: 2017-04-08T10:21:00.003-04:00

4/8/2017—Greetings from Malibu, specifically Pepperdine University School of Law. I am here to speak at the Pepperdine Law Review symposium on Politics and the Supreme Court. Friday's confirmation of Judge Neil Gorsuch, and the abolition of the filibuster for Supreme Court nominations, renders this symposium as timely as it could possibly be. The list of presenters in the plenary sessions, not mine of course, is a who's who of American constitutional law: Michael McConnell, judge Richard Posner, Mark Tushnet, Erwin Chemerinsky and Akhil Amar. The lower card contains less well-known people, like myself, but still a very impressive group, especially the young scholars. The question to be addressed is, what has gone wrong? On my panel, professor Warren Grimes seems to feel that the problem is the judicial activism of the Roberts Court, while professor Stephen Feldman suggests that things have not changed all that much – they were always politicized. There may be a great deal to be said for these two perspectives, but I cannot feel that they answer to the need of the moment. America is facing a catastrophic breakdown of its public life. We are supposed to be a constitutional democracy under the care of the legal profession. So I would say law has failed spectacularly, which means that law professors have failed. Unless that is acknowledged, I cannot see that things can improve. At least I cannot see that law can improve.