

**2019 NATIONAL STUDENT SYMPOSIUM –  
“THE RESURGENCE OF ECONOMIC LIBERTY”**

<http://fedsoc.org/symposium>

**SANDRA DAY O’CONNOR COLLEGE OF LAW AT ARIZONA STATE UNIVERSITY**  
111 E. TAYLOR ST.  
PHOENIX, AZ 85004

FRIDAY, MARCH 15 – SATURDAY, MARCH 16, 2019



ASU Law’s Federalist Society Student Chapter will host the 38<sup>th</sup> National Student Symposium on March 15-16, 2019. The topic of the Symposium is “The Resurgence of Economic Liberty.”

**Theme:**

Arizona has long been at the forefront of promoting economic liberty and free market ideals, and this year’s symposium reflects this commitment by focusing on “**The Resurgence of**

**Economic Liberty.”** The theme is inspired by Frédéric Bastiat’s maxim: “Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.”

The story of the American founding is inextricably linked with a quest for economic liberty. From restrictions on trade to heavy taxes, tyranny in the economic sphere is one of the most commonly cited abuses of governmental power that sparked the American Revolution. Economic theories played a central role in the debates leading to the Constitution’s ratification. In discussing factions, relations among the states, congressional powers, and other fundamental constitutional themes, the Founders recognized the critical ways in which the ideas of liberty, justice, and equality could only be realized through an understanding of markets and related economic interests.

Indeed, the “American Dream” itself can be characterized in terms of economic self-determination, including the right to choose a profession, earn a livelihood, and buy and sell on the same terms as fellow citizens. The twentieth century witnessed a vast expansion of governmental power and the administrative state, which some scholars have argued has distorted the Framers’ original constitutional design—all with a profound impact on economic liberty and welfare, and thus the way of life for millions of Americans.

Today, Americans remain deeply divided over the meaning and importance of economic liberty, and, as a result, the topic often animates social discourse and decision-making at all levels of government. The question of how much the government ought to intrude into the economic realm is a fundamental fault line that divides not only American conservatives and liberals, but also conservatives and libertarians, as well as adherents to various schools of thought within each of those political philosophies. As a matter of constitutional interpretation, even staunch originalists disagree with one another over the extent to which the nation’s charter protects economic liberty.

The Symposium’s panels will focus on the legal and philosophical roots of economic liberty and explore how those roots should inform jurisprudence and political thought in addressing contemporary issues. The panels will delve deeply into first principles underlying our constitutional scheme as well as explore their application to cutting-edge technologies, regulatory schemes, and business models. We will challenge attendees to deepen their understanding of the relationship between economic liberty and legal rights, and to test personal economic beliefs against commitments to originalism and the rule of law.

#### **Keynote Address:**

The Keynote will be a “fireside” chat moderated by Senator Jon Kyl (AZ)—former member of the U.S. House of Representatives (AZ) (1987–1995), Senate Minority Whip (2007–2013), Chairman of the Republican Policy Committee (2003–2007) and Republican Conference (2007). The speaker will be announced in the next Symposium announcement.



Speaker #1: To be announced soon



Moderator: Sen. Jon Kyl (AZ)  
Photo credit: U.S. Senate Photographic Studio

**FRIDAY, MARCH 15, 2019**

**Panel 1: The Original Understanding of “Privileges or Immunities”**

5:45 p.m. - 7:30 p.m.

*W.P. Carey Great Hall, Beus Center for Law and Society (ASU Law)*

- **Moderator: Judge Amul R. Thapar** (6th Circuit)
- **Prof. Randy E. Barnett**, Carmack Waterhouse Professor of Legal Theory, Georgetown Law
- **Prof. Michael Kent Curtis**, Judge Donald L. Smith Professor in Constitutional and Public Law, Wake Forest University School of Law
- **Prof. Kurt T. Lash**, E. Claiborne Robins Distinguished Chair in Law, University of Richmond School of Law
- **Prof. Ian Wurman**, Fellow and Lecturer-in-Law, ASU Sandra Day O'Connor College of Law

Scholars contest the original meaning of the Fourteenth Amendment. In 1873, the Supreme Court rejected a challenge to state economic regulations under the Privileges or Immunities Clause of the Fourteenth Amendment in the *Slaughter-House Cases*. Since then, the Privileges or Immunities Clause has been best known as a “practical nullity.” However, Justice Thomas provided a strong challenge to this interpretation in his *McDonald v. City of Chicago* concurrence.

This panel explores whether the Fourteenth Amendment was principally concerned with equality, guaranteeing fundamental rights, or both. If the Fourteenth Amendment does guarantee fundamental rights, does it merely incorporate the bill of rights against the states, or does it do more and provide protections for economic liberty? And was the Amendment intended to accomplish these purposes through a substantive notion of “due process” or through the Privileges or Immunities Clause? Is the fundamental-rights view inconsistent with judicial restraint? This panel will discuss these fundamental questions concerning the Fourteenth Amendment’s original meaning, and whether maintaining an expansive notion of substantive due process or resurrecting the Privileges or Immunities Clause would be an ill-conceived invitation to judicial activism.

**Cocktail Reception – Snell & Wilmer LLP Plaza**, 111 E Taylor St., *Phoenix, AZ 85004*  
8:00 p.m. - 10:00 p.m.

### **SATURDAY, MARCH 16, 2019**

#### **Panel 2: Is Economic Protectionism a Legitimate State Interest?**

9:00 a.m. - 10:45 a.m.

*W.P. Carey Great Hall, Beus Center for Law and Society (ASU Law)*

- **Moderator: Judge Edith H. Jones** (5th Circuit)
- **Prof. Paul Bender**, Dean Emeritus and Professor of Law, ASU Sandra Day O'Connor College of Law
- **Dr. Yaron Brook**, Chairman of the Board, Ayn Rand Institute
- **Prof. Roderick M. Hills, Jr.**, William T. Comfort, III Professor of Law, NYU Law
- **Prof. Todd J. Zywicki**, George Mason University Foundation Professor of Law, Antonin Scalia Law School

The Tenth Circuit held in *Powers v. Harris* that “intra-state economic protectionism, absent a violation of a specific federal statutory or constitutional provision, is a legitimate state interest.” The

Second Circuit agrees. In contrast, the Fifth and Sixth Circuits have struck down laws aimed at protecting local economic actors as unjustified by state police power. Does a state violate the Equal Protection Clause when it restricts economic liberty for the sole purpose of economic protectionism? For example, is the Equal Protection Clause violated when a state doesn't make an activity or ownership of a certain type of property per se illegal, but the state employs economic "checkpoints" to significantly discourage the activity or specified property ownership (i.e., guns, pornography, etc.).

This panel will also explore the impact of cronyism on emerging technologies and federalism. For example, had Uber and Lyft not been so successful in expeditiously building themselves up before being taken seriously by regulators and traditional industry competitors (i.e., taxi companies), the taxi companies likely could have, and would have, lobbied to pass legislation and create regulations making ridesharing companies like Uber and Lyft illegal, or so cost prohibitive as to preclude the ridesharing industry from ever being financially viable.

### **Panel 3: Economic Liberty in Criminal Justice: Business Crimes and Economic Sanctions**

11:00 a.m. - 12:45 p.m.

*W.P. Carey Great Hall, Beus Center for Law and Society (ASU Law)*

- **Moderator: TBD**
- **Prof. Beth A. Colgan**, Assistant Professor of Law, UCLA Law
- **Prof. Erik Luna**, Amelia D. Lewis Professor of Constitutional and Criminal Law, ASU Sandra Day O'Connor College of Law
- **Ms. Christina Sandefur**, Executive Vice President, Goldwater Institute
- **TBD**

Although criminal justice is often associated with non-economic issues—such as those raised by violent crimes and long prison sentences—the system regularly implicates individual economic liberty, as can be seen in the prohibition and prosecution of certain commercial and financial interactions. Sometimes individuals are held strictly liable for their actions even in the absence of force, fraud, or direct harm. In turn, the government may impose a variety of economic sanctions for purported wrongdoing, with fines, fees, and forfeitures levied in legal processes which often seem bereft of basic procedural protections. This panel will explore these and other criminal justice issues and the implications for individual economic liberty.

### **Lunch break**

12:45 p.m. – 2:00 p.m.

*Room TBD*

*Room TBD*

*Room TBD*

### **Panel 4: Blockchain-Backed Cryptocurrencies: Order Without Law in the Digital Age**

2:00 p.m. - 3:45 p.m.

*W.P. Carey Great Hall, Beus Center for Law and Society (ASU Law)*

- **Moderator: TBD**

- **Prof. G. Marcus Cole**, William F. Baxter-Visa International Professor of Law, Stanford Law School
- **Mr. Jim Harper**, Former Executive Vice President, Competitive Enterprise Institute
- **Prof. Gary Marchant**, Regent's Professor of Law and Director for the Center for Law, Science and Innovation, ASU Sandra Day O'Connor College of Law
- **Prof. John O. McGinnis**, George C. Dix Professor in Constitutional Law, Northwestern Pritzker School of Law

In the wake of skyrocketing Bitcoin and other cryptocurrency prices, the SEC has argued that cryptocurrencies should be regulated as securities. Yet, many of those responsible for developing cryptocurrencies view them as an efficient, reliable way of storing and exchanging value without government interference or regulation. This panel will discuss the likelihood that cryptocurrencies will play a meaningful role in the global economy, and if and how they should be regulated.

### **Roundtable: Federalism's Contribution to Economic Liberty: Catalyzing Technological Advancement and Economic Growth**

4:00 p.m. - 5:45 p.m.

*W.P. Carey Great Hall, Beus Center for Law and Society (ASU Law)*

- **Moderator: Hon. Chad A. Readler**, Principal Deputy Assistant Attorney General, United States Department of Justice, Civil Division
- **Prof. Jonathan H. Adler**, Johan Verheij Memorial Professor of Law and Director of the Center for Business Law & Regulation, Case Western Reserve University School of Law
- **Ms. Dana Berliner**, Senior Vice President and Litigation Director, Institute for Justice
- **Justice Clint Bolick** (Arizona Supreme Court)
- **Hon. Mark Brnovich**, Arizona Attorney General
- **Prof. Allan Ides**, Professor of Law and Christopher N. May Chair, Loyola Law School, Los Angeles
- **Prof. Kimberly J. Robinson**, Austin E. Owen Research Scholar & Professor of Law, Richmond School of Law

Does the Fourteenth Amendment guarantee economic liberty? If not, what role might states play in advancing economic liberty? Frustrated with the federal government's inability or unwillingness to solve regulatory or competition-based problems, some states have taken matters into their own hands. This panel will address how states have been, and still can be, laboratories of democracy when it comes to regulation and catalyzing economic growth. It will also address how federal regulators can work with, not against, states to accomplish these goals.

Using case studies ranging from emerging technologies to marijuana deregulation, the panel will explore the state's role in our modern federal system, with special attention paid to modern interpretations of both the Fourteenth Amendment and the Commerce Clause.

Discussion will focus on demonstrating the ways in which states can remain flexible in fostering innovation—both technological and regarding social policy—while ensuring that consumers are adequately protected from dangerous product or service testing or other offerings.

This flexibility enables states to attract, test, and encourage competition in emerging and innovative technologies, as well as long-existing technologies with lowered barriers to entry.

### **Cocktail Reception**

6:00 p.m. – 7:00 p.m.

*Sheraton Grand Phoenix Hotel, Valley of the Sun Ballroom - 340 N 3rd St, Phoenix, AZ 85004*

### **Banquet Dinner & Presentation of the Annual Joseph Story Award and Freddie Awards**

7:00 p.m. – 10:00 p.m.

*Sheraton Grand Phoenix Hotel, Valley of the Sun Ballroom - 340 N 3rd St., Phoenix, AZ 85004*

- **Keynote moderator: Sen. Jon Kyl (AZ)**
- **Keynote: To be announced soon**

### **SYMPOSIUM REGISTRATION:**

Student Symposium Registration **ONLY** (includes all events **except** the Saturday night cocktail reception and banquet.):

- \$10 (student members)
- \$100 (non-student members)

Banquet and Saturday night cocktail reception (This does not include Student Symposium registration. You must also register for the Student Symposium Registration as well if you'd like to attend the panels/lunch.):

- \$55 (student members)
- \$200 (non-student members)

### **TRAVEL SCHOLARSHIP**

50% TRAVEL SCHOLARSHIP (TRAVEL ONLY—does not include lodging) FOR DUES-PAYING STUDENT MEMBERS.

### **REIMBURSEMENT FORM:**

<https://fedsoc.org/travelscholarship>

**JOIN OR RENEW YOUR STUDENT MEMBERSHIP (\$5):**

<https://fedsoc.org/join>

### **HOTEL:**

Rather than reserve a block of rooms at a predetermined hotel, ASU Law has embraced the symposium theme of economic liberty and provided Symposium attendees with a link through which you can access all ASU-wide hotel special hotel rates in the Phoenix area. This optimizes consumer choice, and hopefully will lead to more efficient outcomes. That said, ***Phoenix hotels book very quickly during March*** with great weather and lots of Baseball Spring Training going on in the area. **Make sure to book your hotel rooms early!**

**ASU Law discount lodging link:**

<https://visit.asu.edu/travel>

The hotel where most non-panel events will be held is the Sheraton Grand Phoenix Hotel, located directly across the street from ASU Law at: 340 N 3rd St., Phoenix, AZ 85004.