



THE **Federalist** PAPER

THE MAGAZINE OF THE FEDERALIST SOCIETY • FEDSOC.ORG

Winter 2020

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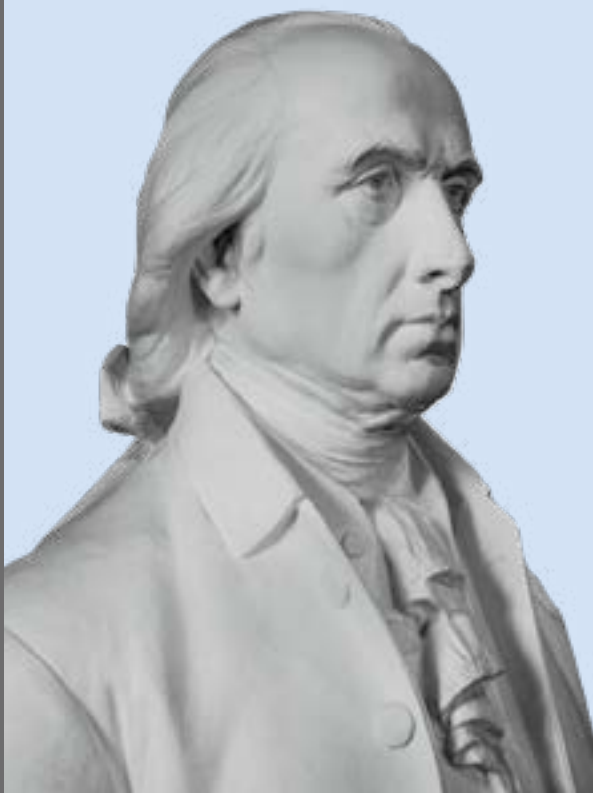
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“The courts must declare the sense of the law; and if they should be disposed to exercise **will** instead of **judgment**, the consequence would equally be the substitution of their pleasure to that of the legislative body.”

EDITOR'S LETTER



Florida Governor Ron DeSantis gives the opening address at the National Lawyers Convention.

Dear Friend,

The Federalist Society's National Lawyers Convention was held in November and, as always, it was a great event. The theme of the convention was Originalism, a subject both timeless and timely. Four Showcase panels sought to define originalism, present reasons for and against adopting it as an interpretive theory, and wrestle with its implications for rights and precedent. The 12th Annual Rosenkranz Debate pitted against each other Professors Philip Hamburger and Michael McConnell on the question of whether the Free Exercise Clause guarantees a constitutional right of religious exemption from general laws when such an exemption would not endanger public peace and good order. Our Practice Groups each planned and hosted a breakout panel.

Several distinguished speakers addressed the convention. Florida Governor Ron DeSantis gave the opening address on Thursday morning, and Secretary of Labor Eugene Scalia gave an address on Friday. Attorney General William Barr delivered the 19th Annual Barbara K. Olson Memorial Lecture, in which he discussed and critiqued the evolving role of the executive in the federal government. Justice Neil Gorsuch was joined by his former clerks and co-authors David Feder and Jane Nitze for the Hon. Robert H. Bork Memorial

Lecture, a discussion moderated by Leonard Leo. Finally, the newest Associate Justice of the United States Supreme Court, Hon. Brett Kavanaugh, addressed the Antonin Scalia Memorial Dinner at Union Station. Visit fedsoc.org to watch videos, listen to audio recordings, and read transcripts of panels and speakers you missed, and join us for the 2020 National Lawyers Convention this fall!

The NLC isn't the only thing Fed Soc has done over the past few months. Inside this issue, you'll see that our Student Division is gearing up for the National Student Symposium, our Lawyers Chapters have hosted several regional conferences and an event with Hon. Nikki Haley, and our Faculty Division held its annual conference. The Article I Initiative and the Regulatory Transparency Project have been active, as has our Digital team. See inside for some of our online resources, all of which are available at fedsoc.org.

We hope you enjoy this issue of the Federalist Paper. Please send any comments to us at info@fedsoc.org. We look forward to hearing from you!

Katie McClendon
Director of Publications

NATIONAL LAWYERS



What is Originalism?

Prof. Jack Balkin, Evan Bernick, Prof. John O. McGinnis, Prof. Christina Mulligan, Prof. Stephen Sachs, Elizabeth Wydra, Hon. Amul Thapar (moderator)



Why, or Why Not, Be an Originalist?

Hon. Amy Coney Barrett, Prof. Michael C. Dorf, Prof. Saikrishna B. Prakash, Prof. Richard H. Pildes, Hon. Thomas Hardiman (moderator)



Does Originalism Protect Unenumerated Rights?

Prof. Stephanie Barclay, Prof. Randy Barnett, Prof. Jamal Greene, Prof. Gary Lawson, Hon. Michael McConnell, Hon. Kevin C. Newsom (moderator)



Opening Address

Florida Governor Ron DeSantis



12th Annual

RESOLVED: The Free Exercise of Religion should not be used to endanger public peace and safety.
Prof. Philip Hamburger



Hon. Robert

Hon. Neil M. Gorsuch, D.C.



ERS CONVENTION



Address
Justice Sotomayor



Rosenkranz Debate

Exercise Clause guarantees a constitutional right of general laws when such an exemption would not be in the public interest and good order.

by Justice Sotomayor & Michael McConnell, Hon. Kyle Duncan (moderator)



H. Bork Memorial Lecture

by David J. Feder, Jane E. Nitzze, Leonard Leo (moderator)



19th Annual Barbara K. Olson Memorial Lecture
Attorney General William Barr



Address

Secretary of Labor Eugene Scalia





2020 National Student Symposium

March 13-14 • Ann Arbor

The Structural Constitution in the 21st Century

hosted by the Federalist Society Student Chapter at



Panels

State Constitutions: Laboratories of Rights?

The Compact Clause

The Proper Role of the Senate

Do Changing Norms Undermine Support for Our System of Government?

Originalism and Interstate Relations

Keynote

The Honorable Paul D. Clement

*Former Solicitor General of the United States
Partner, Kirkland & Ellis LLP*

*Distinguished Lecturer in Law, Georgetown
University Law Center*

Awards

Article I Writing Competition

Joseph Story Award

Feddie Awards

DENT DIVISION



CHAPTER PROFILE University of Illinois College of Law



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 David Salvi, 1L Rep.
 Elizabeth Nielsen, 1L Rep.
 Guy Fricano, 1L Rep.
 Kellen Dykstra, 1L Rep.

New Developments

- Established Fed Soc outline bank
- Revamped social media presence on Twitter and Instagram
- Started community service with the local food bank

Fed Soc has been a source of friendship and support for me, as well as a source of intellectual challenges through our events and debates. Our tight-knit group has consistently produced the best attended events at the College of Law. It has been an honor to be a part of the Federalist Society at the University of Illinois. - Danny McGovern

7 Fall Events Held & **7** Spring Events Planned
 Average Attendance of **117**

Top Event: **Are Feminism & Abortion Intertwined?** with Prof. Teresa Collett & Prof. Helga Varden (105 attendees + 265 livestream viewers)

Other events on healthcare policy, minimum wage policy, the 5th Amendment, affirmative action, stare decisis, and more

Student Volunteers at the NLC

300 students volunteered at the 2019 National Lawyers Convention in Washington, DC.

LAWYERS CHAPT



A Discussion with Hon. Nikki Haley
January 16 • New York City

Western Chapters Conference January 25 • Reagan Library



Panels

The Anti-Federalists at the Founding

Prof. Jud Campbell (Richmond), Prof. Michelle Kundmueller (Old Dominion), Dr. Roger Pilon (Cato), Prof. Michael Rappaport (San Diego), Hon. John Bush (6th Circuit) (moderator)

The Anti-Federalists and Theories of Originalism

Prof. John Baker (LSU, Georgetown), Prof. Aditya Bamzai (Virginia), Prof. Christopher R. Green (Mississippi), Hon. Amul Thapar (6th Circuit) (moderator)

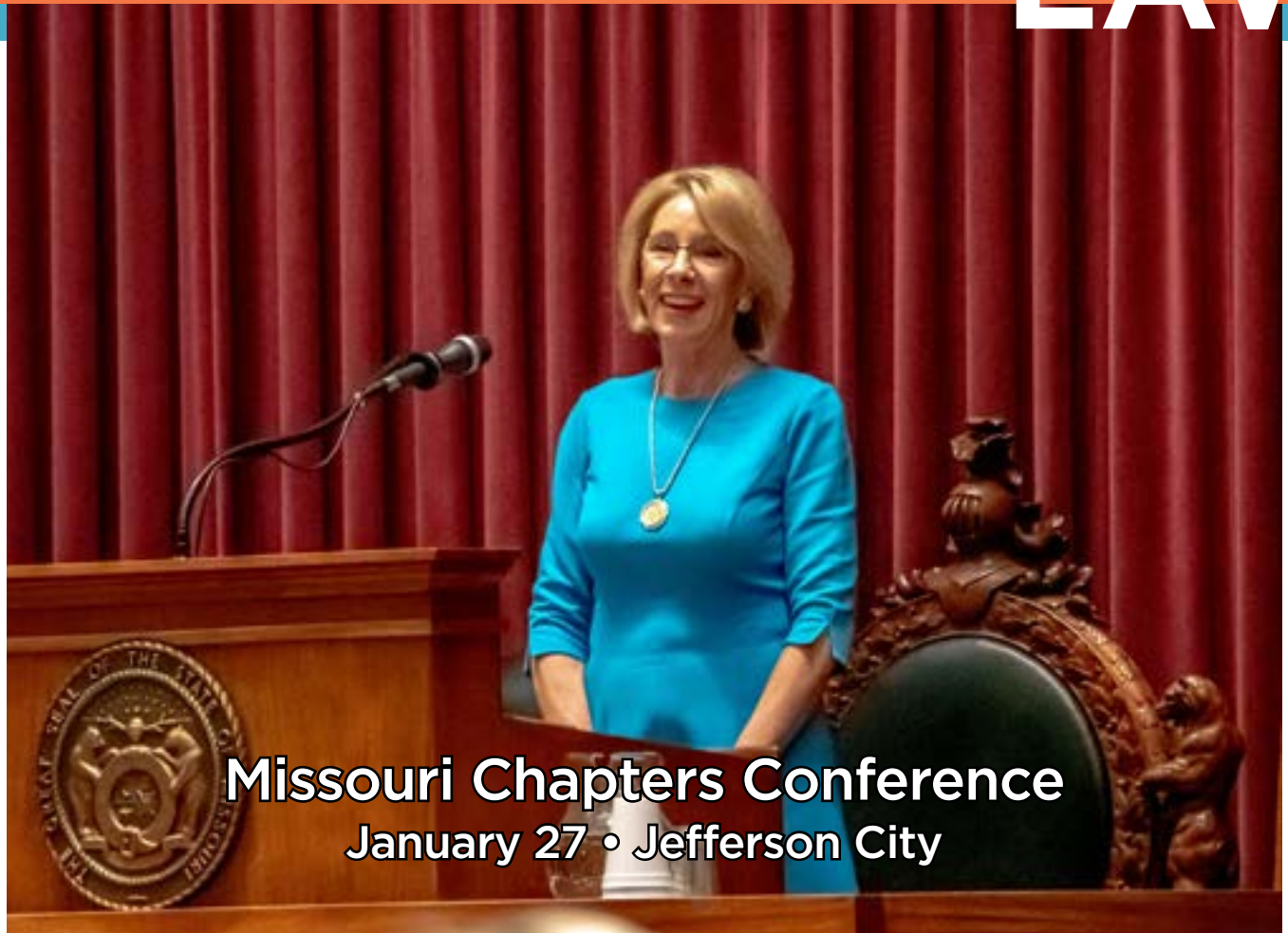
Keynote

Hon. Andrew S. Oldham (5th Circuit)

The Anti-Federalists and the Court

Scott Keller (Baker Botts, Former Texas SG), Erin Murphy (Kirkland & Ellis), Ilya Shapiro (Cato), Hon. Michael Brennan (7th Circuit) (moderator)





Missouri Chapters Conference January 27 • Jefferson City

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Panels

Implicit Bias

Edward Greim (Graves Garrett), Mark Bremer (Shands Elbert), Dale C. Doerhoff (Cook Vetter Doerhoff & Landwehr), Hon. Duane Benton (8th Circuit) (moderator)

Keynote

U.S. Secretary of Education Betsy DeVos

Title IX and Due Process at Universities

Brent Haden (Haden & Colbert), Prof. Ben Trachtenberg (Missouri), Andy Hayes (Asst. V.C. for Civil Rights & Title IX, U. of Missouri), Hon. Stephen R. Clark (E.D. Mo.) (moderator)

School Choice: A Missouri Perspective

Susan Pendergrass (Show Me Institute), George O. Suggs (Schuchat, Cook & Werner), Dr. Douglas Thaman (Missouri Charter Schools Ass'n), Hon. Sarah Pitlyk (E.D. Mo.) (moderator)



YEARS CHAPTERS



Florida Chapters Conference January 31-February 1 • Disney

Panels

Discussion and Q&A

Hon. Donald F. McGahn (Former White House Counsel), Jan Crawford (CBS News)

Revisiting the Anti-Federalists

Prof. John Baker (LSU, Georgetown), Prof. Michelle Kundmueller (Old Dominion), Hon. Andrew S. Oldham (5th Circuit), Hon. Trevor N. McFadden (D.D.C.) (moderator)

Keynote

Hon. Ron DeSantis (Governor of Florida) (intro), Hon. Clarence Thomas (Associate Justice of the U.S. Supreme Court), Hon. Gregory G. Katsas (DC Circuit) (moderator)

Originalism and Textualism in Practice

Sarah Harris (Williams & Connolly), Joe Jacquot (GC, FL Gov.), Hon. William H. Pryor (11th Circuit), Hon. Sarah Warren (GA Sup. Ct.), Jason Gonzalez (Shutts & Bowen) (moderator)

Address

Irving Roth (Director, Holocaust Resource Center—Temple Judea of Manhasset, NY, Holocaust Survivor)

The Law and Policy of Marijuana in Florida

Prof. Zachary Bolitho (Campbell Law), Hon. Jeff Kottkamp (Lt. Gov. of FL), Prof. Bertha Madras (Harvard Med.), Daniel Russell (Dean Mead Law Firm), William Shepherd (Holland & Knight) (moderator)

A Conversation About the Eleventh Circuit

Hon. Lisa Branch (11th Circuit), Hon. Britt Grant (11th Circuit), Hon. Barbara Lagoa (11th Circuit), Hon. Robert Luck (11th Circuit), Hon. Rodolfo Ruiz (S.D. Fla.) (moderator)



FACULTY

22nd Annual Faculty Conference January 3-4 • Washington, DC

Panels

Welcome

Dean Darby Dickerson (UI-John Marshall & AALS)

Originalism & Stare Decisis

Randy E. Barnett (Georgetown)

Randy J. Kozel (Notre Dame)

John O. McGinnis (Northwestern)

Eugene B. Meyer (Fed Soc) (moderator)

Governance by Index: Mutual Fund Involvement in Corporate Governance

Sean J. Griffith (Fordham)

Ann M. Lipton (Tulane)

Adriana Z. Robertson (Toronto)

Jeremy Kidd (Mercer) (moderator)

Debate: The Electoral College Should Be Abrogated

Lawrence Lessig (Harvard)

Stephen Sachs (Duke)

Hon. Neomi Rao, DC Circuit (moderator)

Originalism & the 4th Amendment

William Baude (Chicago)

Jeffrey Bellin (William & Mary)

Laura Donohue (Georgetown)

Orin Kerr (Berkeley) (moderator)

Is Everything Political?

Christian Buset (Notre Dame)

Guy-Uriel Charles (Duke)

Tara Leigh Grove (William & Mary)

Stephen E. Sachs (Duke)

Joshua Kleinfeld (Northwestern) (moderator)



DIVISION

Young Legal Scholars Papers

Commenters

Sean J. Griffith (Fordham)

Philip Hamburger (Columbia)

Tara Leigh Grove (William & Mary) (co-moderator)

Lawrence B. Solum (Georgetown) (co-moderator)

Relativizing the Rule of Law in the Eighteenth-Century British Empire

Christian Burset (Notre Dame)

The Extended Corporate Mind: When Corporations Use AI to Break the Law

Mihailis E. Diamantis (Iowa)

Partisan Gerrymandering and State Constitutions

Michael T. Morley (Florida State)

Lower Court Originalism

Ryan C. Williams (Boston College)

In Search of Prerogative

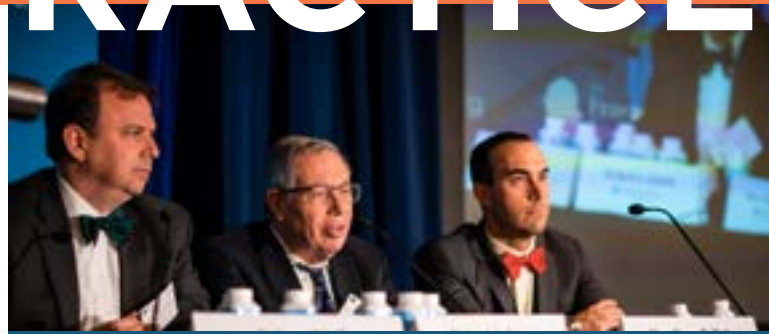
Ilan Wurman (Arizona State)



PRACTICE

Is It Time to End Life Tenure for Federal Judges?

Dr. Norman J. Ornstein, Prof. James E. Pfander, Carrie Severino, Hon. David R. Stras, Stuart Taylor, Jr., Hon. William H. Pryor, Jr. (moderator)



Originalism and Changes in Technology

Anthony J. Dick, Prof. John F. Duffy, Prof. Richard A. Epstein, Prof. F. Scott Kieff, Hon. Ryan T. Holte (moderator)

Horizontal Federalism: May States Project their Sovereignty Beyond Their Borders?

Prof. John S. Baker, Jr., Prof. John Eastman, Prof. Edward Rubin, Ilya Shapiro, Hon. Michael Brennan (moderator)



Nondelegation After *Gundy* — Are We Waiting for Godot?

Hon. Ronald A. Cass, Prof. David Schoenbrod, Prof. Kristin Hickman, Prof. Alan Morrison, Hon. Ryan Nelson (moderator)

The Future of Antitrust: New Challenges to the Consumer Welfare Paradigm & Legislative Proposals

Hon. Makan Debrahim, Prof. Gene Kimmelman, Hon. Maureen Ohlhausen, Dr. Rainer Wessely, Hon. John B. Nalbandian (moderator)



The Wisdom and Legality of Sanctuary Cities

Hon. Stephanos Bibas, Mark Fleming, Christopher Hajec, Hon. Jefferson B. Sessions III, Prof. Ilya Somin, Hon. Kurt D. Engelhardt (moderator)

Arbitration in the #MeToo Era

Hon. Paul D. Clement, Prof. Alexander J.S. Colvin, Deepak Gupta, Andrew Pincus, Hon. Joan Larsen (moderator)



The Future of the Establishment Clause in the Roberts Court

Prof. Stephanie H. Barclay, Luke Goodrich, Prof. Micah J. Schwartzman, Prof. William P. Marshall, Hon. Carlos Bea (moderator)

GROUPS

Money and the Constitution

Dr. Don Kohn, Alex J. Pollock, Dr. Paul Sheard, Prof. Richard E. Sylla, Hon. Paul B. Matey (moderator)



Freedom of Speech and Private Power

Prof. Adam Candeub, Ann Coulter, Prof. Eric Goldman, Prof. Eugene Volokh, Hon. Britt C. Grant (moderator)

The Future of Telecommunications Law and Policy

Jeffrey H. Blum, Dr. Jeffrey A. Eisenach, Angie Kronenberg, Giulia McHenry, Hon. Jeffrey S. Sutton (moderator), Hon. Brendan Carr (remarks)



Economic Law & Policy as a Tool of National Security

Hon. Kristen Silverberg, Prof. John Yoo, Hon. Juan C. Zarate, Hon. Gregory G. Katsas (moderator)

Stare Decisis in Civil Rights Cases

Michael A. Carvin, William S. Consovoy, Prof. William N. Eskridge, Jr., Prof. Neil Kinkopf, Prof. Nelson Lund, Hon. Diane S. Sykes (moderator)



Originalism and Constitutional Property Rights Jurisprudence

Prof. Eric R. Claeys, Prof. Richard Lazarus, Prof. Thomas W. Merrill, Prof. Ilya Somin, Hon. Lisa Branch (moderator)

NLC Practice Group Breakout Sessions

Each of our 15 Practice Groups planned and hosted a panel at the NLC. To watch the videos, listen to the audio recordings, and read the transcripts of these panels, please visit fedsoc.org.



51 Imperfect Solutions for the Ethical Practice of Law

Hon. G. Barry Anderson, Prof. Josh Blackman, Mauricio R. Hernandez, Prof. Thomas D. Morgan, Hon. Jennifer Walker Elrod (moderator)

ARTICLE I

Recent events from the
Article I Initiative

Laboratories of Democracy, Part 2: Can Congress learn from State Legislatures?



September 30: Former Congressman Robert Hurt shares his experiences on the differences between the Virginia state legislature and Congress and what he thinks Congress can learn from state legislative bodies.

Congressional Investigations

December 3: Amanda Neely, General Counsel for Sen. Rob Portman, and Alyssa DaCunha from DC firm WilmerHale discuss congressional investigations from the perspective of a congressional staffer and private counsel representing clients under investigation.



Senator Mike Lee

October 28: Senator Mike Lee addressed students at George Washington University on congressional authority, legislative restraint, and proper constitutional order.



Learn more at articleiinitiative.org: PODCASTS • VIDEOS • EVENTS

New at the Regulatory Transparency Project



Videos



Public Piracy of Private Property?
Allen v. Cooper
Kristen Osenga



Regulatory Sandboxes & Consumer Protection
Scott Astrada, Jackson Mueller, Kate Prochaska



Podcasts

Arizona's Licensing Reform
Jonathan Riches

A Discussion on Current Department of Labor Priorities
Jonathan Berry, Gregory Jacob, Cheryl Stanton

The Green New Deal
Ann Carlson, James Coleman

The Future of Drone Policy: A Discussion with Sen. Mike Lee
Mike Lee, Brent Skorup, Adam Thierer

New Executive Orders Directing Agency Guidance
Susan Dudley, Paul Noe

What's Next for Fannie, Freddie, and Housing Finance Reform?

Mark Calabria, Edward Pinto, Alex Pollock, and Peter Wallison



Papers

Tales of Woe: How Dysfunctional Regulation Has Decimated Entire Sectors of Biotechnology
Henry Miller

Potential Constitutional Conflicts in State and Local Data Privacy Regulations
Jennifer Huddleston, Ian Adams

The Land Use Labyrinth: Problems of Land Use Regulation and the Permitting Process
Dana Berliner, Anastasia Boden, Braden Boucek, Emily Hamilton, Kim Hermann, Clark Neily, Jonathan Riches, Luke Wake



Learn more at regproject.org.

DIGITAL

Seventy-five years ago, the Supreme Court issued its decision in *Korematsu v. United States*. This decision upheld the conviction of Fred Korematsu for refusing to report to an assembly center during the relocation and internment of Japanese Americans during World War II. In this documentary short by **FedSoc Films**, three legal experts—Nadine Strossen, Dean Hashimoto, and Ken Masugi—discuss the events leading up to the relocation and internment, the relevant court cases, and the legacy of *Korematsu*.

The film features dozens of photographs from Dorothea Lange, who was hired by the U.S. government to make a photographic record of the relocation of Japanese-Americans in 1942. According to the National Park Service, Lange's Manzanar photographs "depict the early days of camp when barracks were being constructed, classrooms were still haphazardly arranged, and life for the internees was more uncertain." Lange's black and white photography of the Manzanar Camp "catches the semi-tragic atmosphere of her subjects." In seeing Lange's contrary vision through the lens of her camera, military commanders seized her photographs for the duration of World War II, and the photographs remained hidden in the National Archives until the twenty-first century.

For **KOREMATSU VERSUS US**, FedSoc Films commissioned cinematographer Benjamin Gaskell to record new black and white footage of the Manzanar Camp as it's preserved today. The film also features an original score arranged and performed by Federalist Society employees Daniel T. Richards and Micah Wallen.

Watch **KOREMATSU VERSUS US** and other videos at [youtube.com/TheFederalistSociety](https://www.youtube.com/TheFederalistSociety).



FEDSOC
FILMS



Directed by
Matt Wood

Written by
Nash Maxwell & Matt Wood

Executive Producers
Daniel T. Richards & Matt Wood

Director of Photography
Matt Wood

Edited by
Hyles Shank & Matt Wood

Scriptures by Corey Petric
Manzanar (Cinematography) by Ben Gaskell
Score Performed by Daniel T. Richards
Score Arranged by Daniel T. Richards
Score Mixed & Edited by Matt Wood & Daniel T. Richards
Sound Design by Matt Wood

Line Producer: Alan Gershey
Executive Producers: Alan Gershey & Benjamin Gaskell
Additional Camera Operators: Ben Gaskell, Daniel T. Richards, Claire Galt,
Daniel Lee, Brian Henderson, Sean Petric, Tasha Kanaan, Ray Telesante

KOREMATSU
VERSUS
US

During the relocation and internment, over 100,000 people of Japanese ancestry had to pack up, leave their homes and businesses, and travel by bus and train to assembly centers, often in desolate areas of the Southwest.



RESOURCES

Watch

Documentary

Roe v. Wade: The Power of a Law Review



SCOTUSbrief

New York State Rifle & Pistol Association v. City of New York



POLICYbrief

Dinosaur Bones & Mineral Rights



No. 86

Sovereignty Over the Waterways: Roman v. Modern Views



Visit youtube.com/thefederalistsociety to watch these and other videos, including speeches and panels from events you missed.

Listen

Teleforum Podcasts

Amazon's Case Against President Trump: Did DoD Unfairly give Microsoft the Right to be the JEDI Master?

Courthouse Steps: Espinoza v. Montana Dep't of Revenue

Mass Tort Deals: Backroom Bargaining in MDL?

The Race to 5G and the World Radio Conference



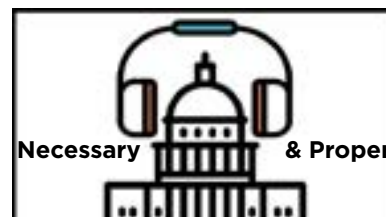
State Regulators and the Gig Economy

Driverless Cars and Artificial Intelligence

Constitutional Concerns about State Privacy Regulation

SCOTUScasts

Kansas v. Garcia - Post-Argument



Can Congress Enforce their Subpoenas?

National Security and Executive Power

Read

FedSoc Blog

Quarles' Conundrum of Bank Supervision

Klein Case Goes Back to Oregon Court

McGahn Subpoena Ruling a Pyrrhic Victory for Congress

The Legal Bases for the Air Strikes Against Qassem Soleimani

Does the Restoring Internet Freedom Order Preempt Conflicting State Laws?

The NLRB and Weaponization of Recusal Motions

Constitutional Vagueness Today

Supreme Court Considers Bailout of Affordable Care Act Insurance Companies in Maine Community Health

Religious Liberty is Not Dead

Federalist Society Review

The TRAP Act's Contribution to Preventing Transnational Repression Through Interpol
Kisor v. Wilkie Makes Auer a Paper Tiger

Credentials Not Required: Why an Employee's Significant Religious Functions Should Suffice to Trigger the Ministerial Exception

An Unconstitutional Attempt to Address Affordable Housing

National Security, Trade, and China: Risks and Responses in the Internet Age

Civility, Courage, Humility: Lessons in Life and Law From a Justice

Read these articles and more at fedsoc.org/commentary/publications.

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**2020
NATIONAL
STUDENT
SYMPOSIUM**

March 13-14
Michigan Law
The Structural Constitution
in the 21st Century

SAVE THE DATE

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