



THE Federalist PAPER

THE MAGAZINE OF THE FEDERALIST SOCIETY • FEDSOC.ORG

Summer 2019

- 4 Lawyers Chapters
- 6 Faculty Division
- 8 Practice Groups
- 10 National Student Symposium
- 12 Student Division
- 14 Article I
- 15 Digital
- 16 New Art
- 17 RTP
- 18 Staff Profile
- 19 Resources

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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.”

Federalist No. 78



Cameron Atkinson, Quinipiac University School of Law, celebrates his chapter winning the Alexander Hamilton Award at the 2019 National Student Symposium.

Dear Friend,

On March 15–16, the Federalist Society student chapter at Arizona State University’s Sandra Day O’Connor College of Law hosted the **38th National Student Symposium** on “The Resurgence of Economic Liberty.” The conference featured opening remarks by Symposium Chair Grant Frazier and Douglas Sylvester, dean of the law school. Prof. Richard A. Epstein then gave a spirited lecture on “*Is Lochner v. New York* Constitutionally Indefensible?” before the first panel on “The Original Understanding of ‘Privileges or Immunities.’” The opening night concluded with the presentation of the Second Annual Article I Writing Contest award to Deion Kathawa, Notre Dame Law School. Read more about his award-winning essay on page 14. Day two of the symposium continued with the theme as students attended panels on economic protectionism, blockchain-backed cryptocurrency, and federalism. The annual banquet featured the presentation of the **Joseph Story Award** to Prof. Samuel Bray, Notre Dame Law School, (learn more on page 6) and a fireside chat with Arizona Governor Doug Ducey and Senator Jon Kyl. Learn more about the Symposium on pages 10 and 11, and watch videos from all the panels and talks at fedsoc.org/symposium. See this year’s **Feddie Award** winners and learn more about other student events on pages 12 and 13.

The Third Annual **Ohio Chapter Conference** occurred on April 5 in Columbus, featuring opening remarks by Hon. Alice Batchelder

and a keynote address by Solicitor General Noel Francisco. Learn more about this great event and other Lawyers Chapter programs on four and five.

The Fifth Annual **Texas Chapters Conference** will take place on September 13-14 in Austin, TX. Sen. Ted Cruz will deliver the Second Annual **Gregory S. Coleman Memorial Lecture**. Registration is now open.

Learn about the latest Faculty and Practice Groups programs on pages 6 through 9, including the Inaugural **Thomas M. Cooley Judicial Lecture** featuring the Hon. Joan Larsen and the Seventh Annual **Executive Branch Review Conference** on “Regulatory Reform ‘Report Card.’” This year’s conference featured an address by Hon. Mick Mulvaney, acting White House Chief of Staff, and keynote remarks by Vice President Mike Pence. You can watch both addresses and all the panels at fedsoc.org/eb7.

Don’t miss other updates from our **Regulatory Transparency Project** (page 17) and **Digital** team (page 15). We hope you enjoy this issue of the *Federalist Paper*. Stay in touch with us on social media, and please send comments to info@fedsoc.org. We look forward to hearing from you!

Katie McClendon
Director of Publications

LAWYERS CHAPTERS

Third Annual Ohio Chapters Conference

April 5 • Westin Columbus

Opening Remarks

- Hon. Alice Batchelder, Sixth Circuit

The Law and Policy of Redistricting Reform

- Kathleen Clyde, Portage County Commissioner
- Hon. Larry Obhof, Ohio Senate Pres., 22nd Dist.
- Misha Tseytlin, Troutman Sanders, Former Solicitor General of Wisconsin
- Hon. Jeffrey S. Sutton, Sixth Circuit (moderator)

Lunch Address

- Hon. Noel Francisco, United States Solicitor General, United States Department of Justice

The Future of Administrative Deference

- Prof. Aditya Bamzai, UVA Law
- Prof. Kristin Hickman, Minnesota Law
- Prof. Christopher J. Walker, Ohio State Law
- Hon. R. Patrick DeWine, Ohio Supreme Court (moderator)

Emerging Religious Liberty Issues in Ohio

- Philip Williamson, Taft Stettinius & Hollister
- Jeremiah Galus, Alliance Defending Freedom
- Holly Gross, VP of Government Relations, Columbus Chamber of Commerce
- Matthew R. Byrne, Jackson Lewis (moderator)

Discussion with Current & Former State Solicitors General

March 6 • DC

Shakespeare and the Law 2019

Belief and the Burden of Proof through the Lens of Six of the Bard's Plays

April 29 • Boston

FACULTY DIVISION

2019 Story Award Winner Prof. Samuel Bray

Professor, Notre Dame Law School

The Joseph Story Award is the successor to the Paul M. Bator Award, and is given annually to a young academic (under 40) who has demonstrated excellence in legal scholarship, a commitment to teaching, a concern for students, and who has made a significant public impact in a manner that advances the rule of law in a free society.

About Prof. Samuel Bray

Prof. Bray is an extraordinarily accomplished and prolific scholar. In the span of three years, he has published eight articles and essays and three coauthored books. These have focused mainly on remedies and the law of equity, but they have also covered constitutional law, jurisprudence, and Biblical translation and hermeneutics. His articles have appeared in leading publications, including the *Harvard Law Review*, the *University of Chicago Law Review*, the *Columbia Law Review*, the *Virginia Law Review*, and the *Oxford Journal of Legal Studies*.

Two former recipients of the predecessor Bator award, Will Baude (University of Chicago) and Josh Kleinfeld (Northwestern), praised Professor Bray's work.

"Bray's scholarship in remedies is superlative, and transcends the usual divide between public and private law," said Baude. Referring to one of Bray's articles, *Multiple Chancellors: Reforming the National Injunction*, Professor Baude added, "This kind of scholarship—intellectually significant, publicly important, and utterly principled—is at the core of what the Story award (and the Bator award before it) are designed to promote."

"Sam is among the leading remedies scholars of his generation," Professor Kleinfeld noted. "His work has played a major role in reviving academic interest in the field, and, relatedly, in the law/equity distinction and in the hotly contested issue of national injunctions. Sam has made contributions in constitutional law and legal theory as well. And he writes like he was born to the pen."

Read more at fedsoc.org/StoryAward2019.

2019 Thomas M. Cooley Judicial Lecture

April 11 • Georgetown Law

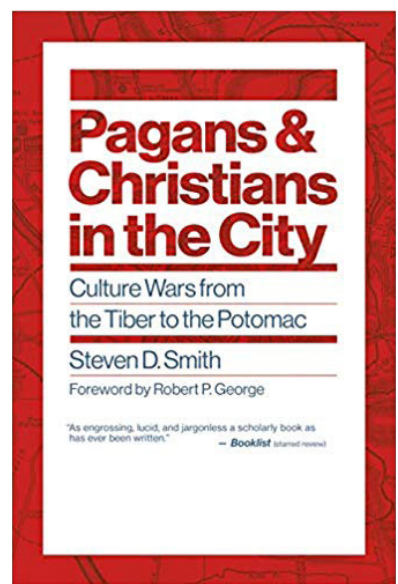
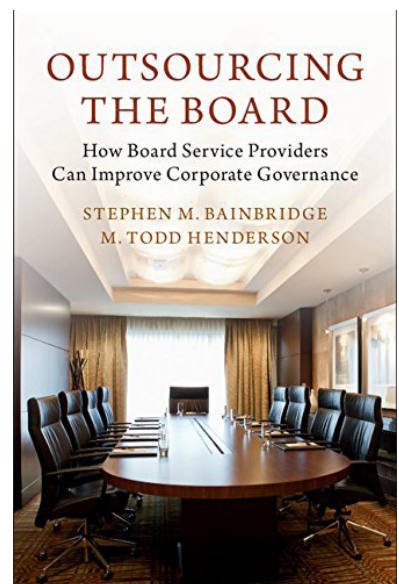
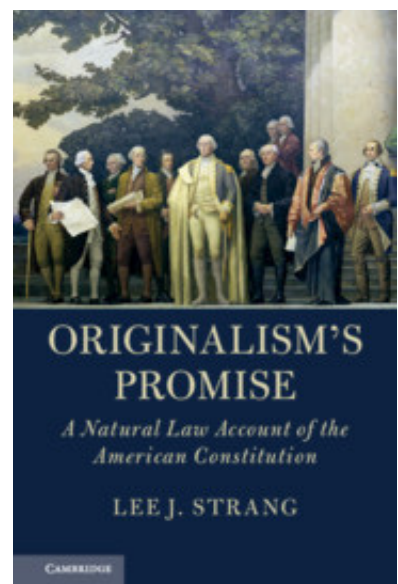
Inaugural Lecturer Judge Joan Larsen

United States Court of Appeals for the Sixth Circuit

Thomas M. Cooley was the longstanding Chief Justice of the Michigan Supreme Court and Dean of the Michigan Law School. Co-sponsored by Georgetown Center for the Constitution, this lecture series aims to honor United States judges who have made significant legal impact as professors and jurists. Before her appointment to the Sixth Circuit, Judge Larsen was a Justice on the Michigan Supreme Court and professor at the University of Michigan Law School.



Don't miss these new books from Fed Soc-affiliated faculty!



Becoming an Academic: A Panel at the National Student Symposium

- Hon. Lee Liberman Otis, Senior VP & Faculty Division Director, The Federalist Society (moderator)
- Prof. John McGinnis, Northwestern Law
 - Prof. Sam Bray, Notre Dame Law
- Prof. Randy Barnett, Georgetown Law
 - Prof. Tessa Dysart, Arizona Law
 - Prof. Richard Epstein, NYU Law



PRACTICE GROUPS

Seventh Annual Executive Branch Review Conference

Regulatory Reform “Report Card”
May 8 • The Mayflower Hotel

*“It’s remarkable to think about what
the Federalist Society has done.”*

— Vice President Michael R. Pence

PANELS & TALKS:

Regulatory Reform Report
Card: Agency General Counsel
Perspective

Address by
Hon. Mick Mulvaney

How the Federal Government
Litigates Cases

Corporate Responsibility:
Maximizing Shareholder
Benefit v. Social Justice

Division of Authority: DOJ
Antitrust; the FTC; the FCC;
USPTO

Revisiting Judicial Deference

Alphabet Soup: EEOC v. OCR
v. DOL OFCCP

The Trump Administration’s
Proposed Redefinition of
“Navigable Waters” – Too
Much, Too Little, or Just Right?

Keynote Address by
Vice President Michael Pence

Watch all the panels and talks at
fedsoc.org/ebr7.



NATIONAL STUDENT SYMPOSIUM



- Prof. Ilan Wurman, ASU O'Connor College of Law
- Prof. Kurt T. Lash, Richmond Law
- Prof. Randy E. Barnett, Georgetown Law
- Prof. Rebecca E. Zietlow, Toledo Law
- Hon. Amul R. Thapar, Sixth Circuit (moderator)



- Dr. Yaron Brook, Ayn Rand Institute
- Prof. Roderick M. Hills, Jr., NYU Law
- Prof. Paul Bender, ASU O'Connor College of Law
- Prof. Todd J. Zywicki, Scalia Law
- Hon. Edith H. Jones, Fifth Circuit (moderator)



- Ms. Christina Sandefur, EVP, Goldwater Institute
- Mr. Peter J. Wallison, Senior Fellow, American Enterprise Institute
- Prof. Beth A. Colgan, UCLA Law
- Prof. Erik Luna, ASU O'Connor College of Law
- Hon. Elizabeth L. Branch, Eleventh Circuit (moderator)



- Prof. Gary Marchant, ASU O'Connor College of Law
- Ms. Mary Beth Buchanan, GC, Kraken Cryptocurrency Exchange
- Prof. John O. McGinnis, Northwestern Law
- Mr. Jim Harper, Former EVP, Competitive Enterprise Institute
- Hon. John B. Nalbandian, Sixth Circuit (moderator)



- Hon. Mark Brnovich, Arizona Attorney General
- Prof. Jonathan H. Adler, Case Western Law
- Ms. Dana Berliner, SVP, Institute for Justice
- Hon. Clint Bolick, Arizona Supreme Court
- Prof. Allan Ides, Loyola Law School, Los Angeles
- Hon. Chad Readler, DOJ (moderator)



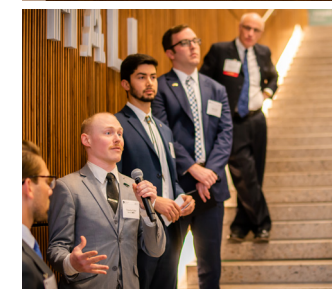
Prof. Richard Epstein delivers the Friday evening keynote address on the question, *Is Lochner v. New York Constitutionally Indefensible?*



The Saturday evening keynote was a fireside chat between Sen. Jon Kyl and Gov. Doug Ducey, both of Arizona.



Prof. Samuel Bray won the Annual Joseph Story Award for outstanding young faculty members.



STUDENT DIVISION

2019 Feddie Award Winners

University of Chicago

James Madison Award for Chapter of the Year

- Average attendance: 102
- Created the chapter's first pro-bono program and completed over 100 hours of pro-bono work



Quinnipiac University

Alexander Hamilton Award for Most Improved Chapter

- Highest event attendance: 160 for "Roe Over-ruled: A Debate" with Professors Stephen Gilles and Linda Meyer
- Chapter nearly doubled attendance from 2017-2018



University of Virginia

Samuel Adams Award for Membership Growth

- Record number registered members: 191
- Developed a 1L mentorship program, bringing together 42 mentor/mentee pairs



Brigham Young University

Thomas Paine Award for Creative Publicity

- Average attendance: 108, 30% of the student body
- Developed a social media presence on Twitter, Instagram, Facebook, and Youtube



Michael Murtha, Judge Amul Thapar, Professor Vincent Muñoz, and Kerry Hunt after the event on "Smith, Scalia, and Religious Free Exercise: Reconsidering the First Amendment's Protection of Religious Liberty."

Events at Notre Dame



Adam Mortara and Krista Perry discuss "Suing Harvard: The Fight for Fair Admissions."

Events at Penn Law



Over 250 people attended an Address by Hon. Jeb Bush.



Third Circuit Judge Stephanos Bibas moderated an event at Penn Law featuring Seventh Circuit Judge Amy Coney Barrett.

Second Annual Article I Writing Contest Winner Deion A. Kathawa University of Notre Dame Law School

Ambition Countering Ambition: Enduring Principle or Failed Experiment?

Abstract: If one assumes along with the founders, particularly Madison, that the separation of powers is indispensable to the preservation of the American people's liberty and the protection of their rights, then Congress's decline is deeply troubling. It is undeniable to even a casual observer that for many decades Congress has been deeply dysfunctional and has abdicated its constitutional duties, duties proper to it as the supreme branch of our tripartite federal government. This essay explores the factors that have conspired to cause and exacerbate Congress's impotence in our constitutional order—polarization, the ratification of the Seventeenth Amendment in 1913, changes to the internal governance of the House in 1975, President Roosevelt's New Deal "constitutional revolution," an underestimation of the Supreme Court's power, and human psychology's relation to authority—to understand how they combined to cause the present constitutional crisis. It then argues that interbranch competition—powered by Madisonian ambition—between the Supreme Court and the other branches, particularly the executive branch's administrative agencies, provides the best vehicle for renewing our historical practice of republican self-governance, or free government by a free people. This is because the current, unexpected asymmetry in power among the branches of the federal government, corrosive as it is to entire constitutional structure with such a weak Congress, is nonetheless powerless to render null the truth that Madison identified in Federalist 51, namely, that ambition counteracting ambition remains the best means for securing and sustaining self-government. That is because, as Madison also observed, ambition is the only mechanism available to constrain a government like ours because there is no overawing Hobbesian power set above it, which means it must self-constrain as it operates. Thankfully, there remains plenty of ambition to harness elsewhere in the system to do just that because ambition is ineradicable, a kind of political-constitutional "energy": It can be neither created nor destroyed, only distributed differently among the branches and thereby transformed in its expression.



A discussion of budget process reform held in the Dirksen Senate Office Building.

- Molly Reynolds, The Brookings Institution
- Steve Redburn, George Washington University
- Anne DeCesaro, Worker and Family Support Subcommittee, Committee on Ways & Means, US House of Representatives

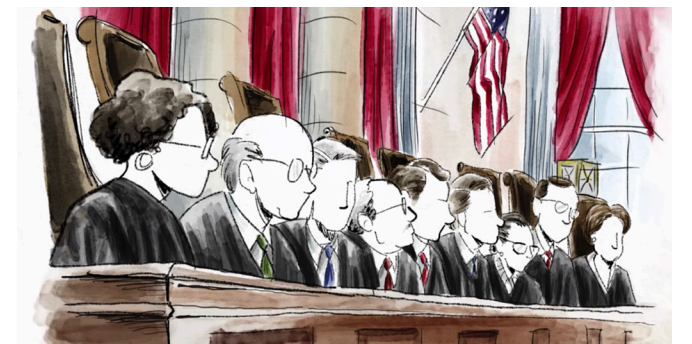
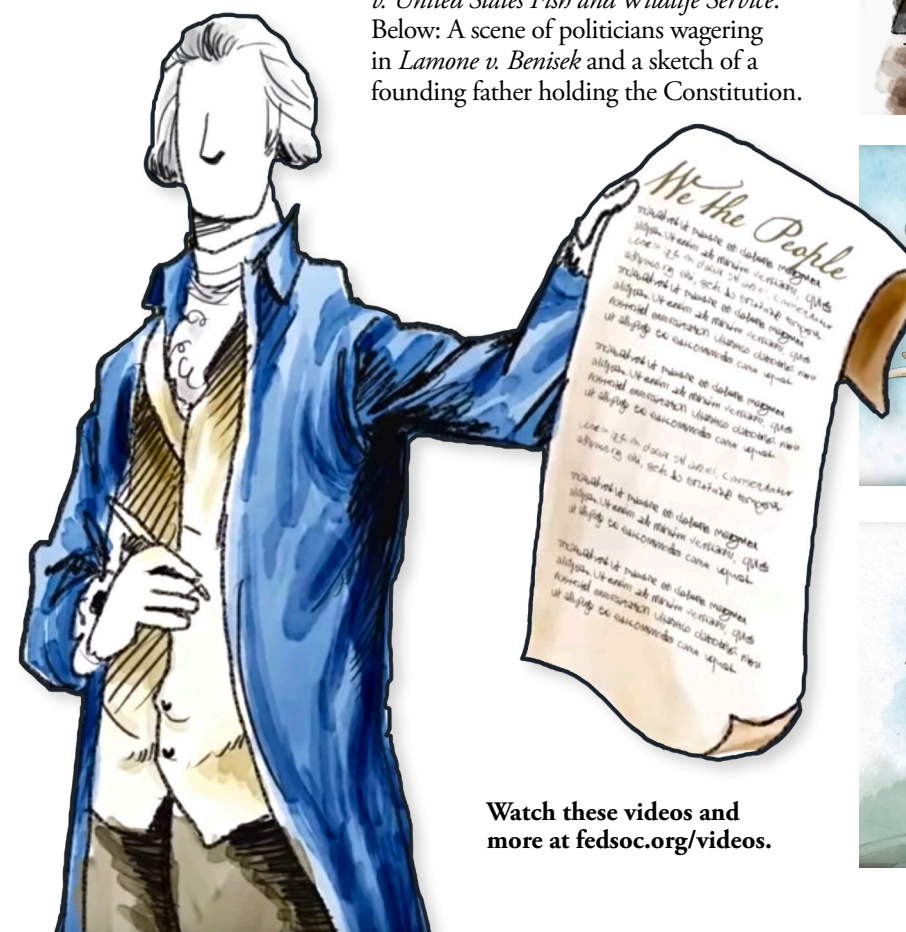
Panel discussion of restoration of Congressional authority among experts. One of a three panel conference on Capitol Hill.

- David Hoppe, Hoppe Strategies
- Sally Katzen, New York University School of Law
- Philip Wallach, R Street Institute
- Peter J. Wallison, AEI
- Thomas G. Hungar, Gibson Dunn

For the best content and upcoming events about restoring Congress visit fedsoc.org/articlei.



This year, our video series on current and landmark Supreme Court cases, SCOTUSbrief, received a visual upgrade. The new graphics are inspired by iconic Supreme Court sketches. Our animators, Coronation Media, create watercolor scenes from oral argument which visualize the history of the case and paint a picture of its background and facts. The top painting is a scene from *Herrera v. Wyoming*. Below that on the right is a scene of the Justices at oral argument, and beneath that the dusky gopher frog and other endangered species from *Weyerhaeuser Company v. United States Fish and Wildlife Service*. Below: A scene of politicians waging in *Lamone v. Benisek* and a sketch of a founding father holding the Constitution.



Watch these videos and more at fedsoc.org/videos.



Dean Henry N. Butler, Greg Wyatt (artist), Prof. Steven G. Calabresi, Leonard A. Leo, and Eugene B. Meyer.

On May 20, the Federalist Society unveiled a new work of art to honor the life and legacy of Justice Antonin Scalia. The bronze statue was donated to the Society by artist Greg Wyatt. It will be on permanent display in our lobby, watching over our glass sculpture of the United States Constitution. From the author:

“Sculptures cast in the noble metal of bronze have a deeply historical tradition, immortalized in the West by the Greeks and Romans of antiquity and practiced by global civilizations including those in Nigeria, Egypt, and China. Bronze sculpture, across all ages and epochs, serve as monumental testaments to the great achievements of humankind. The heroic scale portrait bust of Supreme Court Associate Justice Scalia, permanently placed within the vast and prestigious art collection of the Federalist Society, in conjunction with the full-figure heroic scale monument of Supreme Court Associate Justice Scalia housed in the rotunda of the Antonin Scalia Law School at George Mason University, presents an educational example of the model-to-monument process.”

Greg Wyatt was appointed in 1981 as Sculptor-in-Residence at the Cathedral of St. John the Divine and subsequently as the Director of the Newington-Cropsey Foundation Academy of Art. He has over 40 years of experience with educational apprenticeships and scholarships, awarded to the emerging artists of the NYC-Metro area and on a national and international scale. These pursuits include sculpture and bronze-casting workshops at Brookgreen Gardens in Murrells Inlet, South Carolina, which houses the legacy of Anna Hyatt Huntington, 20th Century American Master of Sculpting, and with the Art Students League of New York where he leads a Model-to-Monument class, an interdisciplinary program that guides students through public policy and art-making, culminating in the installation of a public monument on the Hudson River.

Learn more about the life & legacy of Justice Antonin Scalia



[READ] Judge O'Scannlain's Tribute to Justice Scalia

[READ] Justice Scalia and the Proper Role of a Judge

[READ] The Principled Scalia: A Liberal Friend on Scalia's Liberal Opinions

Watch this video, read these articles, and learn more at fedsoc.org/ScaliaLegacy.

New at the Regulatory Transparency Project



Papers

Give Me A Break: DOL Regulations Need Updating to Afford Workers Desired Flexibility
Gregory Jacob, Michael Lotito, Tammy McCutchen

De-Regulating the Songwriting Business
Adam Mossoff, Kristen Osenga, Mark Schultz, Saurabh Vishnubhakat

Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement
Elyse Dorsey, Geoffrey A. Manne, Jan M. Rybnicek, Kristian Stout, Joshua D. Wright



Free Lunch Podcasts

Department of Interior Considers Rulemaking on the Right to Use Eagle Feathers in Religious Exercise
Joseph Davis

Analyzing the Regulatory Thicket
Brooks Rainwater, Luke A. Wake

Big Tech, Competition, and Antitrust Enforcement
Neil Chilson, Charlotte Slaiman

Emerging Tech and Regulation
William Goodwin, Ryan Hagermann, Gregory S. McNeal, Brooks Rainwater, Caleb Watney

How Should the IRS Handle Cryptocurrencies?
James Foust



Fourth Branch Videos

The Financial Frontier: Financial Freedom, Payday Lending, & "Operation Choke Point"
Jamie Fulmer, Brian Knight, Chris Peterson

Here to Stay: The Modern World of Hospitality
Pete Clarke, Matthew Feeney, Gwendolyn Smith

Resolute: Navigating the Regulatory Thicket
Cary Coglianese, Lois & Caleb Cook, Luke A. Wake



RTP co-sponsored Pepperdine Law Review's 2019 Symposium.

Stills from the RTP's latest Fourth Branch videos. Watch on YouTube or at regproject.org.



Learn more at regproject.org.

STAFF

PROFILE: Kamron Kompani



Deputy Director,
Student Division,
The Federalist Society

JD
University of Illinois
College of Law
BS, Political Science
Arizona State University

Chapter President,
University of Illinois
College of Law

First language:
Farsi (Persian)

LEARN MORE

Learn more about Kamron, Student Division programs, and other staff at fedsoc.org.

What is your background, and what brought you to work at the Federalist Society?

I was born and raised in Arizona. Though I love my home state, I moved to the Illinois cornfields for law school, where I could experience a different part of the country. Being a Federalist Society chapter president was my favorite part of those three years. My law school's chapter went from being virtually nonexistent my 1L year to being one of the best in the country. I saw the difference that this organization makes in changing the campus culture by fostering free and open debate and introducing new ideas to students. I was also impressed by the network and sense of community I found when attending the national events. I jumped on the opportunity to be part of the team after I graduated.

What is your role in the Student Division?

I am the Deputy Director of the division. We begin each academic year with the Student Leadership Conference, where we teach over 200 student leaders how to successfully run a chapter. From that point on, I work with all our chapters on their programming to ensure that we are organizing high-quality debates and panels, and I help students overcome any challenges that they face on their campuses.

What sparked your interest in law?

I simply wanted to find a way to use my education to help others. Various factors led to me studying law, but one experience stands out: I went to a conference a few months after I graduated from college, and I met attorneys from the Goldwater Institute—where I would later work as a law clerk—and the Pacific Legal Foundation. They were discussing their lawsuits challenging Obamacare. I had a chance to speak to the attorneys about some of their other work, and after doing more research on public interest legal organizations, I realized that earning a law degree would provide a great opportunity to fight for freedom.

What advice do you have for law students?

Relax. Ignore the outside noise. You deserve to be where you are, but the key to being successful is finding a way to manage your stress. Schedule time for yourself, find a hobby, exercise, and most importantly: stay away from the law library the last few weeks before finals. And while you are scheduling time for yourself, I recommend attending the National Lawyers Convention and the National Student Symposium. You will meet some of your best friends at these events.

What are your favorite things to do outside of work?

Most of my free time is spent lifting weights and eating, and I am always searching for the best restaurants everywhere I go. I am also relearning Farsi (Persian), which was my first language.

RESOURCES

Watch

Documentary

Antitrust & Big Tech: A conversation about the history of antitrust law, the consumer welfare standard, and the tech giants.



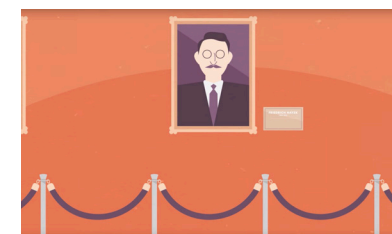
SCOTUSbrief

The American Legion v. American Humanist Association



POLICYbrief

Was Friedrich Hayek an Originalist?



No. 86

Approaches to Studying Roman Law
Featuring Richard A. Epstein



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

Listen

Teleforum Podcasts

Litigation Update: *Love Terminal Partners v. United States*

Does Legalizing Uber and Lyft "Take" The Property Of Taxi Companies?

Roundup Weedkiller Litigation



Loan Shark Prevention Act

Department of Interior Considers Rulemaking on the Right to Use Eagle Feathers in Religious Exercise

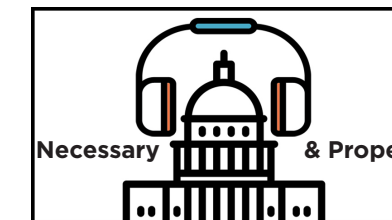
Emerging Tech and Regulation

SCOTUScasts

Emulex Corp v. Varjabedian

Virginia House of Delegates v. Bethune-Hill

The Dutra Group v. Batterton



John Yoo and John Malcolm on Executive Privilege and Congressional Oversight

An Address by Congressman Andy Barr

Read

FedSoc Blog

Security Clearances - Executive Discretion or Executive Overreach?

What Does the Fed Know that Nobody Else Knows?

Baldwin v. U.S.: Will the Chevron Doctrine Be Refined or Overruled?

The Flaws in the Latest Proposal to Break Up Big Tech

A Bargaining Model v. Reality in *FTC v. Qualcomm*: A Reply to Kattan & Muris

Deputy Assistant AG Roger Alford on Antitrust Regulation and Enforcement

Federalist Society Review

The Ministerial Exception After *Hosanna-Tabor*: Firmly Founded, Increasingly Refined

Is It Time to Revisit the Constitutionality of Unauthorized Practice of Law Rules?

Can a New Establishment Clause Jurisprudence Succeed in Protecting Religious Minorities Where *Lemon* Has Failed?

From Orange Groves to Cryptocurrency: How Will the SEC Apply Longstanding Tests to New Technologies?

The Tenacity of Transformation Theory, and Why Constitutional History Deserves Better

Protecting Individual Liberty Through State Constitutional Law: Judge Sutton's Plea for Federalism in Judicial Decisionmaking

You can find all of our great articles from 2018 together in Volume 19 at fedsoc.org.

The Federalist Society
for Law and Public Policy Studies

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2019 NATIONAL LAWYERS CONVENTION

November 14-16
The Mayflower Hotel
Washington, DC

SAVE THE DATE

REGISTRATION
COMING SOON

IF YOU ARE NOT RECEIVING OUR WEEKLY EMAILS, PLEASE CONTACT MEMBERSHIP@FEDSOC.ORG.