

# THE Federalist PAPER

THE MAGAZINE OF THE FEDERALIST SOCIETY • FEDSOC.ORG



PROF ROBERT P. GEORGE



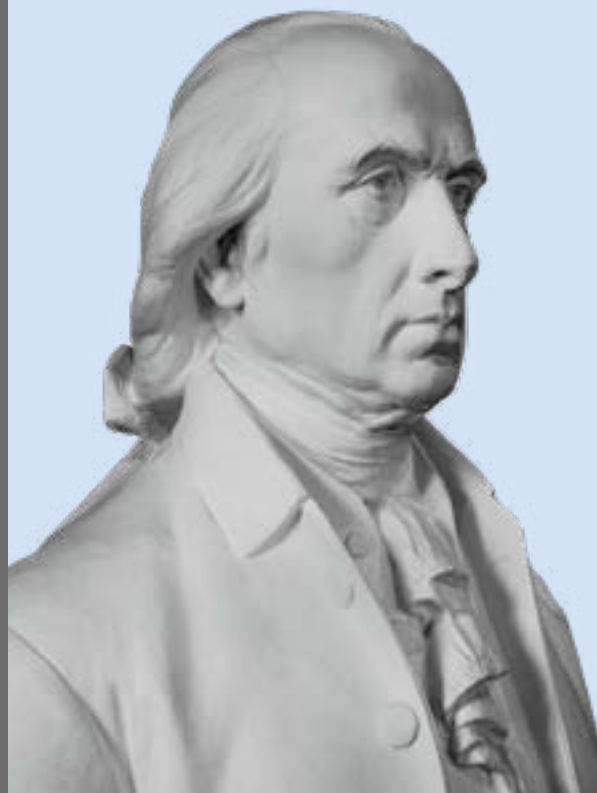
PROF CORNEL WEST

Winter 2021



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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**

# EDITOR'S LETTER



## 2020 NATIONAL LAWYERS CONVENTION

*Dear  
Friend,*

The 2020 National Lawyers Convention was unlike any we've ever had. It was a week long, 100% virtual, and it reached our largest audience ever. Viewers and listeners joined us from all across the country without ever setting foot in Washington, DC, and all told, more than 2 million people watched at least one event, either live or as a recording. Fed Soc staff and volunteers leaders put a ton of work into making the event great, and by all accounts they succeeded!

Not everything was different about the NLC. Our 15 Practice Groups each put on a great breakout panel, a Supreme Court Justice gave a Thursday evening address, sparks flew in heated debates, and a wide range of views was presented thoughtfully and respectfully. If you missed any or all of the NLC, please visit [fedsoc.org](https://fedsoc.org) or [youtube.com/thefederalistsociety](https://youtube.com/thefederalistsociety) to watch. And please save the date for the 2021 NLC, which will be back at the Mayflower Hotel November 11-13!

Our Student and Lawyers Chapters have been working hard, and they've hosted some wonderful virtual events over the past few months. Several completed and upcoming events are highlighted in this issue, and there is an interview with an exemplary Student Chapter president too. The 23rd Annual Faculty Conference took place in early January and featured excellent presentations, as always; that event was also virtual, which gave many more people the opportunity to attend and hear from established and up-and-coming scholars. Our Digital, RTP, and Article I teams are releasing new videos and podcasts all the time, all of which are worth checking out. Visit [fedsoc.org](https://fedsoc.org) to watch and listen, or connect via social media.

We hope you enjoy this issue of the **Federalist Paper**. Please send any comments to us at [info@fedsoc.org](mailto:info@fedsoc.org). We look forward to hearing from you, and to seeing you at the next NLC!

*Sincerely,*

*Katie McClendon  
Director of Publications*

# STUDENT DIVISION



Our student chapters have been very active during this unusual school year! They have hosted or scheduled 565 events so far (mostly virtual), with an average attendance of 110 students.

They have also had to be creative in order to host occasional live events. Above, the Notre Dame chapter hosted a Supreme Court Roundup featuring Professors Rick Garnett and Jeffrey Pojanowski in the fall. The event took place outside, and 92 students attended.

## National Student Symposium

Date: March 19-20, 2021

Host: Penn Law

Theme: International Law & U.S. Foreign Policy  
Virtual

## Duke Law Q&A

### Interview with Meredith Criner, President of the Duke Law Student Chapter

How has the Duke Student Chapter dealt with COVID-19 and the associated restrictions?

Although we were unable to meet in person as a chapter, we have met several times over Zoom (see examples at left). Despite having limited availability to meet due to our condensed schedule and virtual format, we had several meetings with new 1L members, social Zooms, and an awesome slate of lunch-time speaker events. Overall, we held thirty-five events this semester. To help build connections among our members while facing COVID-19-related restrictions, we relied on our mentorship program. Mentors reach out to their 1L mentees regularly about classes, events, job applications, and more. This has been a great way to maintain our chapter camaraderie and help connect our 2L and 3L members with the new 1L members they have not met in person.

What has been the hardest thing about law school in 2020-21?

The hardest thing about law school in 2020, for me, has been missing the Duke community. Our lack of in-person interactions has created challenges in maintaining our usually congenial community. It seems as though heightened political tensions within the community around the presidential election and the Supreme Court nomination made students struggling with their work feel more isolated. With this, my goal for the spring is to continue building relationships with other student organizations on campus, continue our outreach to 1L students in general and our 1L chapter members specifically, and maintain our Federalist Society chapter's tight-knit community.

Have there been any unexpected silver linings to the pandemic for your chapter?

The ease of hosting and participating in Zoom events allowed us to host many speakers from across the country. We also hosted several smaller networking conversations with our chapter board and Federalist Society speakers to discuss their scholarship or 1L job opportunities at places like the Institute for Justice and the Goldwater Institute. In addition, we were able to plan events with other student chapters, attend other chapters' speaker events, and participate in the NLC, all without missing classes. The Federalist Society has been a real home for me during a very isolating period for so many.

What is your favorite event your chapter has put on recently?

My favorite recent event was called "Was *Erie* Correctly Decided?" and was a debate between our official and unofficial Duke Federalist Society advisors, Professors Ernest Young and Stephen Sachs, moderated by the beloved Professor Marin Levy. The event featured an intense debate between two excellent professors who agree on nearly everything else law related, and it was just really fun. All the professors made the event an interesting and entertaining academic debate, and it was one of our most successful events so far this year.

What events do you have planned for the Spring semester?

For our Spring semester, we usually have the new 1L board members plan several of the events. This year, we split up our over twenty 1L board members into five teams, and they each are planning an event from the ground up—choosing the topic, inviting the speakers, and completing all the final details. We are also planning to host a few judges and are hoping to host an event on civil discourse on campus and in society more broadly. While the event is subject to change, so far, this event is planned to feature Professor Nadine Strossen, the John Marshall Harlan II Professor of Law at New York Law School and first woman to ever lead the American Civil Liberties Union, and Duke Law's own Professor Nicole Ligon, a Lecturing fellow and the Supervising Attorney for the First Amendment Clinic.



# LAWYERS CHAPTERS

Despite the many obstacles of 2020, our Federalist Society lawyers chapters were still able to put together successful hybrid conferences for their members. During the first week of September, the **Wisconsin** Lawyers Chapters hosted their annual conference via online webinars followed by a reception and keynote address from Wisconsin Senator Ron Johnson. The event featured panels on election law and nationwide injunctions, and can now be found on the FedSoc YouTube page.



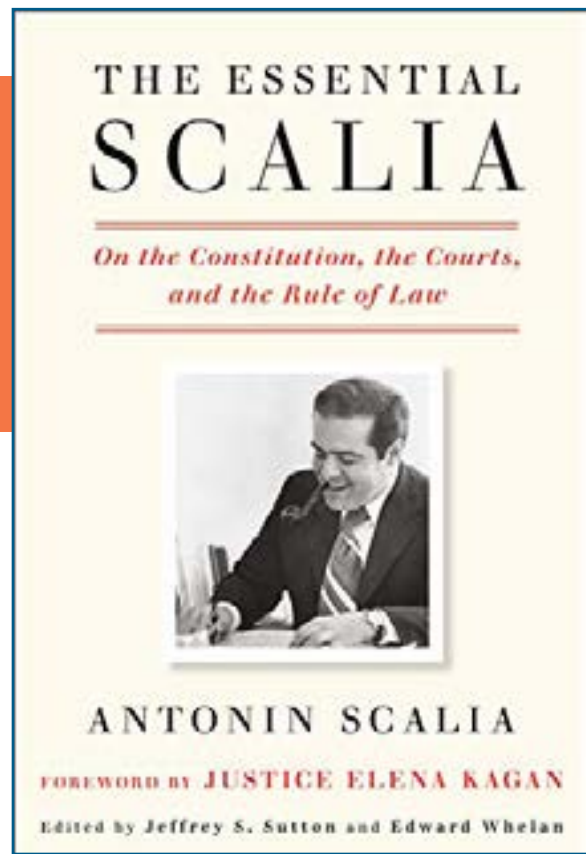
On October 14-15th, the **Kentucky** Lawyers Chapters hosted their annual conference via online webinars followed by a reception and keynote address from the Honorable Justin Walker. The event featured opening remarks by Attorney General Daniel Cameron, and panels on election law and COVID-19 and constitutional law. Videos can be found on the FedSoc YouTube page.

Only a week after President Donald Trump nominated then-Judge Amy Coney Barrett to the Supreme Court, the **Wisconsin** Lawyers Chapters hosted a panel with three people who know the Judge well: two former law clerks and a former student. The event had over 80 live participants and more than 8,000 people have since viewed the conversation on YouTube.



On October 27th, the **Tallahassee** Lawyers Chapter hosted a discussion with distinguished guest Jeb Bush. The chapter discussed the status of school choice with the former Governor and Chairman of Excellence in Education. Over 130 members were in attendance via Zoom.

This September, the Honorable Jeffrey S. Sutton and Edward Whelan released their newest book on the jurisprudential legacy of Antonin Scalia, entitled **The Essential Scalia: On the Constitution, the Courts, and the Rule of Law**. The two went on a book tour, sharing personal stories about the late justice and details from the book. They spoke to lawyers chapters in **Philadelphia, Charleston, Charlotte, Triangle, Missouri, Memphis, Chattanooga, Montgomery, Portland, Seattle, Columbus, Chicago, Minnesota, and Boston**.



## Save the Date(s)! Texas Chapters Conference

The 6th Annual Texas Chapters Conference will take place February 20 at the Houstonian Hotel. Hon. Edith Jones of the 5th Circuit will deliver the Gregory S. Coleman Memorial Lecture. Register soon.

Please also save the date for the 7th Annual Texas Chapters Conference. The event will take place on September 18 at the George W. Bush Presidential Center in Dallas.

# FACULTY DIVISION

23rd Annual  
**Faculty Conference**  
January 6-8 • Zoom

## Resolved: *Employment Division v. Smith* Should be Overruled

Eugene Volokh (UCLA)  
Richard Garnett (Notre Dame) (moderator)  
Michael McConnell (Stanford)

## Police Powers & the Pandemic

John Harrison (Virginia) (moderator)  
Julia Mahoney (Virginia)  
Daniel Rodriguez (Northwestern)  
Ilan Wurman (Arizona State)  
David Bernstein (George Mason)



## Originalism & Its Discontents

John McGinnis (Northwestern) (moderator)  
Marc DeGirolami (St. John's)  
Jesse Merriam (Patrick Henry)  
Randy Barnett (Georgetown)  
Joshua Kleinfeld (Northwestern)  
Christina Mulligan (Brooklyn)



## Corporate Social Responsibility Revisited

Elizabeth Pollman (Penn)  
Todd Henderson (Chicago)  
Stephen Bainbridge (UCLA)



## Freedom of Thought

Eugene Volokh (UCLA)  
Janice Rogers Brown (Berkeley)  
Joshua Kleinfeld (Northwestern) (moderator)

The conference also featured young legal scholars paper presentations and presentations of works in progress. Visit [fedsoc.org](https://fedsoc.org) for more information and to watch videos of these panels!

*Above, panelists are listed clockwise from top left.*

# DIGITAL

# THE

# PHILOSOPHERS

# BEHIND THE FOUNDERS

*“We cannot understand the foundations of our form of government without studying Locke and we cannot understand the shape our government takes without studying Montesquieu.”*

*-Paul A. Raeburn*

Who were the two most important philosophers that inspired the founding of America? In our latest short film, **Locke & Montesquieu: The Philosophers Behind the Founders**, professors of law, history, and government explore the ideas at the heart of the American founding as found in the writings of John Locke and Baron de Montesquieu.

John Locke (1632-1704), an English philosopher and one of the most influential of the Enlightenment thinkers, “helped shape how American colonists understood what government is supposed to do,” according to Prof. Eric Claeys of Antonin Scalia Law School.

Baron de Montesquieu (1689-1755) was a French political philosopher, writer, and judge. One of Montesquieu’s most notable ideas is the separation of powers into three branches: executive, legislative, and judicial. “Locke fires up the Americans,” Prof. Paul Carrese of Arizona State University states in the film, “but we live in Montesquieu’s world.”

Watch the documentary short at [YouTube.com/thefederalistsociety](https://www.youtube.com/thefederalistsociety).



FEDSOCIETY  
FILMS

*“Locke’s influence reached a certain kind of peak at the time of the American Revolution,” and Locke’s most influential thoughts are “very visible in the Declaration of Independence.”*

*-Michael Zuckert*

LOCKE

17th century, England



MONTESQUIEU

18th century, France



# NATIONAL LAWYERS

The week of November 9-13, the first virtual National Lawyers Convention brought together a record number of attendees to discuss the theme of “The Rule of Law and the Current Crisis” through numerous panels, addresses, and debates. The NLC featured 21 separate events organized largely by the Practice Groups and featuring almost 100 speakers. Convention highlights were held throughout the day on Thursday November 12.

- Address by Justice Samuel Alito
- Address by Judge Janice Rogers Brown
- Address by Secretary of Labor Eugene Scalia
- A Discussion with Professors Robert George & Cornel West on Freedom of Speech, Freedom of Thought, the Black Lives Matter Movement, and the Cancel Culture
- Showcase Panel I: Law, Social Justice, Wokeness and the Protests: Where Do We Go From Here?
- Showcase Panel II: The Presidency and the Rule of Law

The 15 Practice Group breakout panels drew between 400-1,300 live viewers, with an average of 950 live viewers for all events. Even our lowest attended virtual panel would have filled our largest room at the Mayflower to near capacity. Our highest attended panels would have over-filled all seven event rooms at the Mayflower combined.

Visit [fedsoc.org](https://fedsoc.org) or [youtube.com/thefederalistsociety](https://youtube.com/thefederalistsociety) to watch panels you missed!

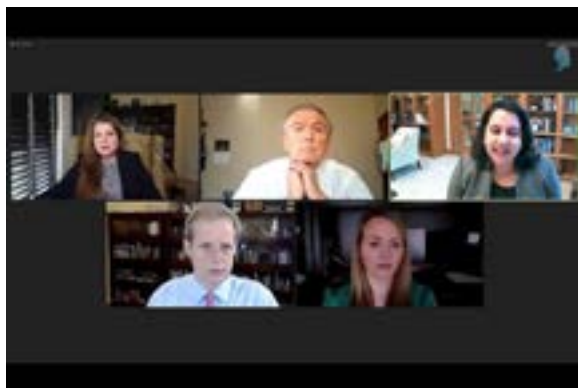
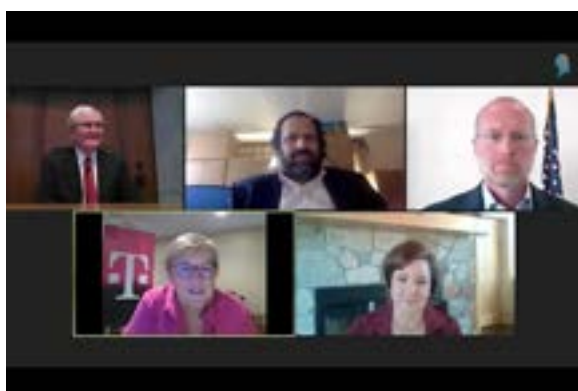
## Practice Group Breakout Panels:

Religious Liberties: Religious Liberty & the New Court  
Environmental Law & Property Rights: EPA Turns 50: A Debate on Environmental Progress and Regulatory Overreach  
Criminal Law & Procedure: Prosecutorial Discretion, Partisanship, & the Rule of Law  
Administrative Law & Regulation: Regulatory Practice & Oversight in 2021 & Beyond  
Free Speech & Election Law: Rule of Law, or Just Making it Up? First Amendment Tiered Scrutiny  
Professional Responsibility & Legal Education: Freedom of Association in the Legal Profession  
Corporations, Securities & Antitrust and Telecommunications & Electronic Media: Regulating Social Media  
Litigation: Are MDL Judges Too Powerful?  
International & National Security Law: The Law, China, & the Possible New Cold War  
Labor & Employment Law: Agency Leaders on Labor Policy  
Intellectual Property: Intellectual Property Rights & Rule of Law  
Civil Rights: Modern Quandaries of Law Enforcement  
Special Session: The Future of the Second Amendment's Right to Keep and Bear Arms  
Financial Services & E-Commerce: Cryptocurrency, Blockchain, & the Evolution of a Central Bank Digital Currency  
Federalism & Separation of Powers: Emergency Powers & the Rule of Law





# CONVENTION



New at the  
Regulatory Transparency Project

## Videos



## Events

Fireside Chat w/ FTC Commissioner Noah Phillips: The House Judiciary Antitrust Staff Report  
*Svetlana Gans, Noah Phillips, Koren Wong-Ervin*

It Can Be Done Live: The Future of Our Earth  
*James W. Coleman, David Doniger, Susan Dudley, Charles Hernick, Andrew Wheeler*



## Podcasts

COVID-19 Vaccine Approval and Distribution  
*Joel Zinberg*

Regulating Business in the Age of COVID-19

*Brian Kabateck, Clark Neily, Luke A. Wake*

The State of State Data Privacy Laws Post-2020 Election

*Matthew R.A. Heiman, Jennifer Huddleston, Joseph Jerome*



# ARTICLE I



## Blog Series

Article I has organized informational programming and is tracking closely the work of the House Select Committee on Modernization during the 116th and 117th Congresses. In conjunction with the committee's work to study and propose reforms to the legislative branch, we have created a blog series to discuss modernization.

To learn more and contribute, visit the **FedSoc Blog**.

## Webinars

The Penn and Temple Student Chapters of the Federalist Society hosted former office-mates and leading scholars on executive power, Prof. John Yoo and Prof. Saikrishna Prakash for an interesting and timely debate titled, **The True Extent of Presidential Power**. The discussion was moderated by Temple Law's Prof. Craig Green.

You can view this program at [articleiinitiative.org](http://articleiinitiative.org)



## Podcasts

- The Rutgers Law School chapter of the Federalist Society recently hosted Dr. Colleen Sheehan, one of the nation's leading Madison scholars, to discuss the constitutional thought of James Madison and his role as the **Father of the Constitution**.
- In December, National Review Online Senior Writer Dan McLaughlin joined the Little Rock Lawyers Chapter for an interesting discussion on recent **Supreme Court Nominations and Court-Packing**.
- Listen to this new content on Episodes 57 and 60, respectively, of the **Necessary and Proper** podcast.



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The Federalist Society  
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A promotional graphic for the National Student Symposium 2021. The background is a blue-tinted image of a grand, classical building interior with large columns and a high, vaulted ceiling. The text is overlaid in white and red. The year '2021' is prominently displayed in large, bold, red numerals. The title 'National Student Symposium' is in a white serif font. Below the title, the dates 'March 19 & 20' and the event details 'Hosted by Penn Law • Virtual' are in a smaller white font. The theme 'INTERNATIONAL LAW & U.S. FOREIGN POLICY' is in a bold, white, all-caps sans-serif font. The website 'fedsoc.org/symposium' and the hashtag '#fedsocevents' are in a red sans-serif font. At the bottom, the text 'Register soon at fedsoc.org.' is in a white sans-serif font.

*National Student Symposium*

March 19 & 20 • Hosted by Penn Law • Virtual

**"INTERNATIONAL LAW & U.S. FOREIGN POLICY"**

[fedsoc.org/symposium](https://fedsoc.org/symposium)

[#fedsocevents](https://twitter.com/fedsocevents)

Register soon at [fedsoc.org](https://fedsoc.org).

IF YOU ARE NOT RECEIVING OUR WEEKLY EMAILS, PLEASE CONTACT [MEMBERSHIP@FEDSOC.ORG](mailto:MEMBERSHIP@FEDSOC.ORG).