

THE FEDERALISTS VS. THE ANTI-FEDERALISTS:

Revisiting the Founding Debates



March 4-5, 2022
University of Virginia School of Law
Charlottesville, VA

Symposium Team

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2022 National Student Symposium

Overview

FRIDAY

Welcome & Opening Remarks

5:30 PM-5:45 PM | *Caplin Auditorium*

Keynote Address by Governor Glenn Youngkin

5:45 PM-6:45 PM | *Caplin Auditorium*

Were the Founders Themselves Originalists?

6:45 PM-8:15 PM | *Caplin Auditorium*

Presentation of the Article I Award

8:15 PM-8:20 PM | *Caplin Auditorium*

Cocktail Reception

8:20 PM-9:30 PM | *Caplin Pavilion*

SATURDAY

The Anti-Federalists: Planting Seeds of American Populism

9:00 AM-10:45 AM | *Caplin Auditorium*

Book Signing with Prof. Akhil Reed Amar

10:45 AM-11:00 AM | *Caplin Auditorium Lobby*

21st Century Federalism: A View from the States

11:00 AM-12:45 PM | *Caplin Auditorium*

Lunch Service

12:45 PM-2:00 PM | *Caplin Pavilion*

Breakout Session A: Introduction to the Lawyers Division

12:45 PM-2:00 PM | *Brown 126*

Breakout Session B: Becoming an Academic

12:45 PM-2:00 PM | *Brown 128*

Resolved: The Federalists Designed a Constitution of Plenary Federal Power

2:00 PM-3:15 PM | *Caplin Auditorium*

Modern Debates, Old Insights: Federalists, Anti-Federalists, & Executive Power

3:30 PM-5:15 PM | *Caplin Auditorium*

Cocktail Reception

6:00 PM-7:00 PM | *Omni Charlottesville Hotel*

Banquet, Founders & Foes (An Exchange), & Awards Presentation

7:00 PM-10:00 PM | *Omni Charlottesville Hotel*

Friday, March 4, 2022

Registration

3:30 p.m. – 7:00 p.m. | Clay Hall

Welcome & Opening Remarks

5:30 p.m. – 5:45 p.m. | Caplin Auditorium

- **Welcome:** **Jessica Mann**, *Symposium Chair, University of Virginia School of Law*
- **Opening Remarks:** **Dean Risa L. Goluboff**, *Arnold H. Leon Professor of Law, University of Virginia School of Law*

Address by the Governor

5:45 p.m. – 6:45 p.m. | Caplin Auditorium

- **Gov. Glenn Youngkin**, *74th Governor, Commonwealth of Virginia*

Were the Founders Themselves Originalists? (Panel)

6:45 p.m. – 8:15 p.m. | Caplin Auditorium

Theories of originalism and living constitutionalism currently vie for approval in the courts. Originalists find that popular sovereignty can only come from ratification and legislation. Living constitutionalists fear binding the living by the votes of the dead. What would Jefferson, Madison, or Hamilton think of this debate? Did the founding era public expect the original public meaning to control interpretive debates? Were the American Founders themselves originalists? In a related question, the panel will also explore the usefulness of The Federalist Papers and the Anti-Federalist essays as interpretive tools for identifying the original public meaning of the Bill of Rights. Just how persuasive are the Anti-Federalist concerns considering their position was ultimately lost and the Constitution was ratified? How much did the “losing” arguments contribute to the original public meaning and what light do the founding era debates shed on the proper tools for constitutional interpretation?

- **Prof. Akhil Reed Amar**, *Sterling Professor of Law and Political Science, Yale University*
- **Prof. John O. McGinnis**, *George C. Dix Professor in Constitutional Law, Northwestern Pritzker School of Law*
- **Moderator: Hon. William H. Pryor**, *U.S. Court of Appeals for the Eleventh Circuit*

Presentation of the Article I Award

8:15 p.m. – 8:20 p.m. | Caplin Auditorium

Please join us for a cocktail reception with hors d'oeuvres to follow the presentation of the Article I Award.

Cocktail Reception

8:20 p.m. – 9:30 p.m. | Caplin Pavilion

Saturday, March 5, 2022

Registration

8:00 a.m. – 12:30 p.m. | Clay Hall

Continental Breakfast

8:00 a.m. – 9:00 a.m. | Caplin Pavillion

The Anti-Federalists: Planting Seeds of American Populism (Panel)

9:00 a.m. – 10:45 a.m. | Caplin Auditorium

There is a folk wisdom that connects the American War of Independence’s “no taxation without representation” with today’s skepticism of Washington, D.C., and centralized power. The Anti-Federalists were a broad coalition, but most Anti-Federalists shared a dislike of a strong centralized government and believed that many small republics would best protect the individual. Some Anti-Federalists argued that without a bill of rights the Constitution would not be able to sufficiently protect the rights of individuals and the states. Even after ratification, some Founders, such as Jefferson, Mason, and Henry, maintained that the Federalists had in fact “betrayed” the “popular Revolutionary Spirit of ’76” and its desire for “general and individual liberty.” However, once the Jefferson-led Democrat-Republicans—primarily made up of and appealing to the old Anti-Federalist coalition—took office they did not seek to abolish, or significantly alter, this new form of governance. Why not? Did the Anti-Federalists plant the seeds, and prefer to nurture the growth of populism in America?

- **Prof. Akhil Reed Amar**, *Sterling Professor of Law and Political Science, Yale University*
- **Prof. Michelle Kundmueller**, *Assistant Professor of Political Science, Old Dominion University*
- **Prof. G. Edward White**, *David and Mary Harrison Distinguished Professor of Law, University of Virginia School of Law*
- **Moderator: Hon. Lisa Branch**, *U.S. Court of Appeals for the Eleventh Circuit*

Book Signing: The Words That Made Us: America’s Constitutional Conversation, 1760-1840 by Prof. Akhil Reed Amar/Break

10:45 a.m. – 11:00 a.m. | Caplin Auditorium Lobby

- **Prof. Akhil Reed Amar**, *Sterling Professor of Law and Political Science, Yale University*

21st Century Federalism: A View from the States (Roundtable)

11:00 a.m. – 12:45 p.m. | Caplin Auditorium

This panel will explore the role of the states in our constitutional order, focusing on states’ highest courts and their role in promoting individual rights and the development of the law. The roundtable will also explore both the historical and contemporary relationship between the state and federal courts and some of the pivotal moments that produced our modern balance of power. Speakers suggest ways that judges in each level of government, along with legislators and lawyers, might improve the balance of power between states and the federal government.

Panelists will also discuss the relationship between states and their municipalities. The question of localism was central to the Federalists’ and Anti-Federalists’ debates about the role of government. It was especially significant in respect to the competing interests of agrarian and urban citizens that motivated much ideological conflict in the period. Speakers will discuss how Anti-Federalist preferences for localism and Federalist preferences for nationalization helped produce our modern balance of governmental powers and legal culture. The roundtable will debate whether they see a return to localism soon and, if so, what implications this might have for constitutional governance.

- **Hon. Joan L. Larsen**, *U.S. Court of Appeals for the Sixth Circuit*
- **Hon. Goodwin H. Liu**, *Associate Justice, Supreme Court of California*
- **Prof. Julia D. Mahoney**, *John S. Battle Professor of Law, University of Virginia School of Law*
- **Hon. Jeffrey S. Sutton**, *U.S. Court of Appeals for the Sixth Circuit*
- **Moderator: Hon. Neomi Rao**, *U.S. Court of Appeals for the District of Columbia Circuit*

Lunch

12:45 p.m. – 2:00 p.m. | Caplin Pavilion

Breakout Session A: Introduction to the Lawyers Division

12:45 p.m. – 2:00 p.m. | Brown 126

- **Jack Lund**, *Associate, Covington & Burling LLP*
- **Amanda Salz**, *Associate, Morgan, Lewis & Bockius LLP*
- **Corinne Snow**, *Counsel, Vinson & Elkins LLP*
- **Chad Squitieri**, *Associate, Gibson, Dunn & Crutcher LLP*
- **Moderator: Lisa Ezell**, *Vice President & Director, Lawyers Chapters, The Federalist Society*

Breakout Session B: Becoming an Academic

12:45 p.m. – 2:00 p.m. | Brown 128

- **Prof. Julia D. Mahoney**, *John S. Battle Professor of Law, University of Virginia School of Law*
- **Prof. Paul G. Mahoney**, *David and Mary Harrison Distinguished Professor of Law, University of Virginia School of Law*
- **Prof. Michael W. McConnell**, *Richard and Frances Mallery Professor and Director of the Constitutional Law Center, Stanford Law School*
- **Prof. John O. McGinnis**, *George C. Dix Professor in Constitutional Law, Northwestern Pritzker School of Law*
- **Prof. Christopher J. Walker**, *John W. Bricker Professor of Law, The Ohio State University Moritz College of Law*
- **Moderator: Hon. Lee Liberman Otis**, *Senior Vice President & Director, Faculty Division, The Federalist Society*

Resolved: The Federalists Designed a Constitution of Plenary Federal Power (Debate)

2:00 p.m. – 3:15 p.m. | Caplin Auditorium

One of the principal disagreements between the Federalists and Anti-Federalists surrounded the role of the new Constitution in relation to state authority.

Federalists argued that the Constitution would make the federal Constitution plenary only in certain areas while preserving the role of the states. The Anti-Federalists feared that the federal Constitution would result in a nationalized government where states would play no role and the federal government would overwhelm any semblance of state authority. Panelists will debate what the Federalists meant when they argued for a plenary, but limited federal Constitution, the different views they held, and whether the Federalists or Anti-Federalists were correct.

- **Prof. Michael W. McConnell**, *Richard and Frances Mallery Professor and Director, Constitutional Law Center, Stanford Law School*
- **Prof. John Mikhail**, *Carroll Professor of Jurisprudence, Georgetown University Law Center*
- **Moderator: Hon. Trevor N. McFadden**, *U.S. District Court for the District of Columbia*

FedSoc Films Screening of Short Documentary

3:15 p.m. – 3:30 p.m. | Caplin Auditorium

Stay seated and join us during the break for a special screening of the new FedSoc Films short documentary: *Madison and the Fight for the Constitution*. Discover the story of James Madison, the Founding Father who gave us the Constitution and the Bill of Rights. Learn how he wrote a new nation into existence and unified the people behind ideals that would change the course of history.

Break

3:15 p.m. – 3:30 p.m.

Modern Debates, Old Insights: The Federalists, Anti-Federalists, and Executive Power (Panel)

3:30 p.m. – 5:15 p.m. | Caplin Auditorium

In the contemporary debates over the nature of executive power, two ideas are perennially prominent and intractably controversial: the unitary executive theory and nondelegation doctrine. While many prominent lawyers and judges have advocated a unitary model of the executive, it is still controversial whether the Constitution requires that the President sit at the top of the executive pyramid. And while the Court has refused to seriously revitalize the nondelegation doctrine in recent cases, voices on and off the bench persist in calling for limits on the executive's ability to exercise lawmaking power.

What did the Federalists and Anti-Federalists have to say about these topics? How did their debates compare to ours? How do their discussions shed light on our modern arguments?

- **Prof. Jennifer Mascott**, *Assistant Professor of Law and Co-Executive Director, The C. Boyden Gray Center for the Study of the Administrative State, Antonin Scalia Law School, George Mason University*
- **Prof. Julian Davis Mortenson**, *James G. Phillipp Professor of Law, University of Michigan Law School*
- **Prof. Saikrishna Prakash**, *James Monroe Distinguished Professor of Law—Albert Clark Tate, Jr., Professor of Law, University of Virginia School of Law*
- **Prof. Michael Rappaport**, *Hugh and Hazel Darling Foundation Professor of Law; Director, Center for the Study of Constitutional Originalism, University of San Diego School of Law*
- **Moderator: Hon. Paul B. Matey**, *U.S. Court of Appeals for the Third Circuit*

Break

5:15 p.m. – 6:00 p.m.

Note: For those who have purchased an additional ticket for the cocktail reception and banquet, a shuttle will be available to these events from UVA Law School and the hotels as listed on the bus schedule.

Cocktail Reception*

6:00 p.m. – 7:00 p.m. | The Omni Charlottesville

Banquet & Presentation of the Annual Joseph Story Award and Feddie Awards*

7:00 p.m. | The Omni Charlottesville

Many originalists are well-versed in The Federalist Papers. They rely on these documents to better understand the original meaning of the Constitution. But reading The Federalist Papers alone provides an incomplete understanding of the original debates about meaning of the Constitution. The Anti-Federalists are the other half of the story, and, when it comes to the Bill of Rights, they may be almost the whole story. The Symposium will conclude with a discussion about the Anti-Federalists—who they were, why they were called “Anti-Federalists,” and why originalists should read their essays today.

- **Hon. Andrew S. Oldham**, *U.S. Court of Appeals for the Fifth Circuit*
- **Hon. Amul R. Thapar**, *U.S. Court of Appeals for the Sixth Circuit*

***Denotes event that will require purchase of a separate ticket**

Bus Schedule

The Federalist Society will be providing a continuous shuttle service via chartered buses according to the following schedule:

FRIDAY

3:00 PM-10:00 PM | *Shuttling between the three selected hotels* to the law school and back*

SATURDAY

7:40 AM-5:40 PM | *Shuttling between the three selected hotels* to the law school and back*

5:45 PM | *Shuttle from the law school to Omni Hotel Banquet*

5:40 PM - 6:40 PM | *Shuttling from the three selected hotels to Omni Hotel Banquet*

8:30 PM - 10:30 PM | *Shuttling from the Omni Hotel Banquet to the three selected hotels*

***The three selected hotels are: The Draftsman, Homewood Suites Charlottesville, Country Inn & Suites Charlottesville**

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1. Connect to the UVA Guest WiFi network.
2. A pop-up window should open automatically (if the page doesn't appear, open a browser & visit in.virginia.edu/guest).
3. Click Connect Now to agree to the Terms & get WiFi.

VIEW THE BUS SCHEDULE

Please visit fedsocsymposium.org/travel for a timetable of pick-up and drop-off times.

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