

Fascist 'Feddis' March Through the Institutions

by Jeffrey Steinberg

The same right-wing tax-exempt foundations that are behind the Carl Schmitt revival of the past 20 years, have also bankrolled a "Schmittlerian" "march through the judicial institutions" via the misnomered Federalist Society. Founded in 1982, at the University of Chicago and Yale University law schools, the Federalist Society has promoted the dismantling of all regulatory protection of the General Welfare, while advocating the most draconian police-state excesses, typified by the Patriot Acts and the "torture memos." These have been authored by a team of Federalist Society members and allies inside the Department of Justice Office of Legal Counsel and the White House Office of the General Counsel—under the sponsorship of Vice President Dick Cheney and Cheney's current chief of staff and general counsel, David Addington.

The Federalist Society's *modus operandi*: To hijack the curriculum at major American law schools on behalf of patently anti-American "Conservative Revolution" fascist dogmas, and place a carefully screened and indoctrinated group of ambitious right-wing attorneys in key posts in the Executive Branch, and in Federal regulatory agencies, to overturn the U.S. Constitution. Federalist Society members and fellow-travellers now dominate the Office of the White House General Counsel and the Justice Department's Office of Legal Counsel, and hold a large and growing number of Federal Court judgeships, including on the U.S. Supreme Court. Federalist Society board member C. Boyden Gray, who was White House General Counsel under President George H.W. Bush, employed Federalist Society founder Lee Liberman Otis to head up judicial screening at the Bush 41 White House; she boasted, according to Lawrence Walsh, that not one judicial appointment was made by Bush of a non-Federalist Society member.

When then-First Lady Hillary Clinton denounced a "vast right-wing conspiracy" behind the impeachment of President Bill Clinton, she was, knowingly or not, shining a spotlight on the Federalist Society. Federalist Society booster Judge David Sentelle, Jr. headed the judicial committee that selected Federalist Society member Kenneth Starr to head the White-water probe. Starr selected Federalist Society member Brett Kavanaugh as one of his deputies (Kavanaugh has been a White House Associate Counsel since the Bush 43 inauguration in January 2001). Federalist Society Board of Visitors Co-Chairman Sen. Orrin Hatch (R-Utah) chaired the Senate Judiciary Committee at the time of the Clinton impeachment trial. His son, Brent Hatch, is the Treasurer of the Federalist Society board of directors. Federalist Society Washington, D.C. chapter President Theodore Olson, the recently retired Solicitor General of the United States, ran the "Get Clinton salon" that drew together right-wing media pundits, lawyers, and foundation executives, to drive the propaganda barrage against the Presidency.

For the most part, the Federalist Society has gone out of its way to hide its Schmittlerian roots. To read the Society's glossy literature, one would get the false impression that they are revivalists of the James Madison Federalist tradition. The group's Fiscal Year 2003 Annual Report claimed, "The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities."

Then the Big Lie concludes: "This entails reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also re-



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Robert Bork

Steven Calabresi, one of the founders of the Federalist Society, was a protégé of Robert Bork (shown here). Bork and Scalia were among the first faculty sponsors of the Federalist Society in 1982.



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Antonin Scalia

Many of the Federalist Society members involved in promoting the “unitary executive” scheme, had clerked for Supreme Court Justice Antonin Scalia, or look to him for inspiration.

quires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative intellectual network that extends to all levels of the legal community.”

Many civil rights activists see it quite differently. They characterize the Federalist Society as a network committed to the revival of the “Confederate doctrine of law,” aimed at overturning all of the civil rights advances since Franklin Roosevelt and the New Deal. Indeed, one leading Federalist Society member, University of Chicago Law School professor Richard Epstein, heads a movement called the “Constitution in Exile,” which claims that FDR ripped up the Federal Constitution with his New Deal programs of Social Security and other social-safety-net guarantees—this, despite the fact that the General Welfare Clause of the Constitution’s Preamble explicitly mandates that the Federal government “promote the general welfare” of current and future generations.

Lino A. Graglia, a Federalist Society member and University of Texas law professor, whose Reagan-era nomination to the U.S. 5th Circuit Court of Appeals was pulled when he admitted that he had referred to African Americans as “pickaninnies,” openly asserts, to this day, that blacks and Latinos are inherently inferior to whites. “Blacks and Mexican Americans are not academically competitive with Whites in selective institutions,” he was quoted in a 1999 profile of the Federalist Society, “Hijacking Justice.” “It is,” he elaborated, “primarily of cultural effects. Failure is not looked upon with disgrace.” About the Federalist Society, Graglia acknowledged, “They certainly are unenthusiastic about civil rights laws. Richard Epstein thinks we will be better off if civil rights laws were all repealed. These people do believe, as I believe, that so-called civil rights have gone too far and are

not civil rights at all.”

Lawrence Walsh, the Iran-Contra independent counsel, put it bluntly: “The impression I have is they are trying to return to the 18th Century and undo the work of the Supreme Court since the New Deal. And I think it is wrong to put someone on the court who has a pre-commitment with a political dogma, whether it’s the Ku Klux Klan or the Federalist Society.”

Even James Baker III, who held a variety of Cabinet-level posts in both the Reagan and Bush 41 Administrations, was quoted in the *Washington Post*, referring to Reagan Administration Attorney General Edwin Meese and his deputy Kenneth Cribb as “Big Bigot” and “Baby Bigot,” respectively. Cribb is a director of the Federalist Society, and is also on the board of the Scaife Foundation, a cash spigot to the Society, and to a wide range of right-wing front organizations. The Mellon Scaife foundations almost single-handedly financed the Federalist Society-led impeachment campaign against Bill Clinton. Ed Meese is one of the Federalist Society’s most prominent boosters and frequent conference speakers. He is listed on Federalist Society literature as a member of the group’s Board of Visitors.

But the most on-target diagnosis, to date, of the Federalist Society, was provided by Scott Horton, professor of law at Columbia University Law School and a leading figure in the New York City Bar Association. In a Nov. 5, 2005 commentary on the Bush Administration’s “torture memos,” which had claimed that the President was exempt from the Geneva Conventions and other international laws barring torture, Professor Horton identified Hitler’s “Crown Jurist” Carl Schmitt as the source for John Yoo’s Justice Department arguments. Yoo, a leading Federalist Society booster since his departure from the Justice Department to take up a teaching post at the University of California Law School at Berkeley, was promulgated into prominence by powerful sponsors at the top of the Bush Administration, including Vice President Cheney’s general counsel and current chief of staff, David Addington, and Timothy Flanigan, the recipient of over \$800,000 in Federalist Society consulting fees (paid for him to write an “unauthorized biography” of former Supreme Court Justice Warren Burger, for whom he clerked).

‘Secret Handshakes’

On July 18, 2005, CNN began its coverage of a Federalist Society luncheon in Washington with the following profile: “At a recent Friday luncheon, former Solicitor General Theodore Olson cast his eyes over a hotel ballroom crammed with lawyers and wryly welcomed ‘all of you Federalists who seem to have mastered the secret handshake. For those of you who have stumbled in off the street, it is my duty to advise you that you have stumbled into a right-wing cabal—you will never be the same again,’ the government’s one-time chief courtroom lawyer deadpanned as chortles erupted from members of the Federalist Society.”

Of course CNN went on to acknowledge that the Federalist Society does not have a secret handshake, and its meetings are generally open to the public. But beyond that caveat, the Federalist Society, from its inception, has been, at its essence, a Schmittlerian/Straussian conspiratorial association, aimed at overturning the Constitutional Order.

According to a wide range of public accounts, the Federalist Society was launched by three Yale University undergraduates, who went on to study law at Yale or at the University of Chicago. The three were: Steven Calabresi, Lee Liberman, and David McIntosh. At Yale Law, Calabresi was a protégé of two law school professors who would both be appointed to the Federal bench by Ronald Reagan: Robert H. Bork and Ralph K. Winter. At the University of Chicago Law School, Liberman and McIntosh were mentored by Prof. Antonin Scalia. Bork, Winter, and Scalia would become the first faculty sponsors of the Federalist Society, when it was launched in 1982.

The Federalist Society was initiated at the urging of another Yale Law graduate, Michael Horowitz, who delivered a speech in 1979, calling for the conservatives to move in and take over the public-interest law field. As CNN described it on July 19, 2005: “The Society’s origins can be traced back to 1979—the year before Ronald Reagan’s victory—when a legal scholar named Michael Horowitz published a tract on the public-interest law movement, exhorting conservatives to overturn a half-century of liberal dominance of the legal establishment. This could be done, he wrote, by indoctrinating or winning over succeeding generations of law students, lawyers, and judges. By definition, the campaign had to be rooted in the fertile ground of law schools. To Horowitz’s good fortune, Reagan was elected in 1980, and his administration set to work filling the sails of the Federalist movement.”

The project involved two tracks. The first was steering a large number of right-wing law professors and attorneys into the Federal courts. “The second track,” CNN continued, “was even more forward-looking and involved the apprenticing of a new generation of conservative lawyer-intellectuals-under-30 to the Reagan apparatus. The second track required fresh meat, which is where the Federalist Society came in.”

By the late 1980s, the Federal courts were teeming with clerks hand-picked from the emerging ranks of the Federalist Society. In the October 1988 session alone, a “cabal of 10” Federalist Society members came in as U.S. Supreme Court clerks, according to a book-length account. Michael Horowitz, now at the Hudson Institute, became the General Counsel to the Office of Management and Budget at the start of the Reagan Administration, and he typified Federalist Society members and boosters who dominated the Executive Branch legal postings under both Reagan and George H.W. Bush. After that dozen years of Reagan-Bush, the Federal courts and regulatory agencies were, in effect, taken over by members of “the cabal.”

The current Bush 43 Administration is also loaded with

Federalist Society members, including current and former Cabinet members John Ashcroft, Spencer Abraham, Gail Norton, and Michael Chertoff; and senior political appointees Larry Thompson, John Bolton, C. Boyden Gray, Timothy Flanigan, and Theodore Olson.

The current U.S. Supreme Court includes prominent Federalist Society members and patrons, including Justices Scalia, Clarence Thomas, and the newly installed Chief Justice John Roberts. Nominee Samuel Alito is another Federalist Society member.

The Funding Cabal

The same tightly knit collection of right-wing tax-exempt foundations that have bankrolled the revival of Carl Schmitt at American law schools, has been behind the Federalist Society, from day one. The first substantial grant to the Society was a \$25,000 payout, in 1983, from the Institute for Educational Affairs, to sponsor the first national symposium. IEA was then headed by William Simon, head of the Olin Foundation, and Irving Kristol, the “godfather” of the neo-conservative movement.

By 1998, the Federalist Society was directly raking in \$2.6 million, and that figure has steadily increased since then. Major foundation donors include: Olin, the Mellon Scaife foundations, the Bradley Foundation, the Eli Lilly Endowment, the Richard and Helen DeVos Foundation, the Charles Koch foundations, and the Deer Creek Foundation. Corporate donors include Holland Coors, Verizon, Microsoft, and Daimler-Chrysler.

The Federalist Society, in turn, has spawned an extensive network of religious and secular fronts, all working in concert, to further the Schmittlerian march through the institutions: Federalist Society trustee C. Boyden Gray has his Citizens for a Sound Economy; Federalist Society member Manuel Klausner runs the Individual Rights Foundation; Michael Rosner, an early Federalist Society leader, runs the Center for Individual Rights; Federalist Society figure James Bopp was a long-time top official of the National Right to Life Committee and the Christian Coalition; Roger Clegg runs the Center for Equal Opportunity; Donald Hodel, a leading Federalist Society figure and former Reagan Cabinet secretary, was the long-time President of the Christian Coalition.

Pat Robertson’s Regent University Law School is a major recruiting ground for the Society, and Ave Maria School of Law, founded by Domino’s Pizza magnate Thomas Monaghan, lists Society Co-Chairman Robert Bork on its faculty.

Other Federalist Society affiliates include: the Institute for Justice, the Washington Legal Foundation, the Pacific Legal Foundation, the American Center for Law and Justice at Robertson’s Regent University Law School, the Christian Legal Society, the Rutherford Institute, and the Alliance Defense Fund. The Alliance Defense Fund is a coalition of religious groups, involved in a series of court cases challenging the separation of church and state.