

Merrick Garland Federalist Society



Merrick Garland and the Federalist Society: A Complex Relationship

The appointment of Merrick Garland to Attorney General under the Biden administration has sparked renewed interest in his relationship with the Federalist Society, a prominent conservative legal organization. This post delves into the complexities of Garland's past interactions with the Society, exploring his views on judicial philosophy, his record as a judge, and how these factors inform his current role as the nation's top law enforcement official. We will analyze the perceived contradictions and offer a nuanced understanding of this often-misunderstood connection.

Garland's Early Career and the Federalist Society's Rise

Understanding Garland's relationship with the Federalist Society requires examining the context of its rise to prominence. The Federalist Society, founded in 1982, aimed to cultivate a conservative legal movement within academia and the judiciary. While initially a smaller organization, it steadily grew in influence, shaping legal appointments and influencing policy debates. During Garland's early career as a prosecutor and later a judge, the Federalist Society was already making its mark, though its influence was arguably less dominant than it is today.

Garland's Judicial Philosophy: A Moderate Approach?

Merrick Garland's judicial philosophy is often described as moderate, even by some conservative commentators. His rulings throughout his career on the D.C. Circuit Court of Appeals often emphasized textualism and originalism, principles favored by many Federalist Society members. However, his application of these principles was not always aligned with a strictly conservative interpretation. He demonstrated a willingness to consider broader societal impacts and uphold precedents, sometimes leading to rulings at odds with a purely conservative stance. This seemingly

contradictory position complicates any simple categorization of his judicial philosophy in relation to the Federalist Society's ideals.

Textualism vs. Living Constitution: A Key Distinction

A key area of divergence, even within the Federalist Society itself, lies in the interpretation of the Constitution. While textualism, focusing on the literal meaning of the text, is a cornerstone of many Federalist Society members' approaches, the degree to which "original intent" or a "living Constitution" framework should be applied remains a point of contention. Garland's approach often appeared to blend textualism with a consideration of contemporary context and precedent, setting him apart from some of the more hardline originalist voices within the Federalist Society.

Garland's Speeches and Engagements with the Federalist Society

While there's no readily available evidence suggesting a deep and consistent involvement with the Federalist Society during his time on the D.C. Circuit Court, it's important to note that judges often engage with various legal organizations, including those with opposing viewpoints. The absence of extensive documented interactions with the Federalist Society shouldn't be interpreted as outright opposition. His participation in events or speaking engagements might have been limited due to his judicial role, emphasizing the need for perceived impartiality. A lack of robust public engagement doesn't necessarily equate to a lack of ideological alignment in specific areas.

The Importance of Context and Nuance

It's crucial to avoid oversimplification. Attributing Garland's entire judicial philosophy to alignment with the Federalist Society based on limited interactions overlooks the complexities of his approach. Individual rulings, particularly those concerning sensitive legal issues, reveal a more nuanced picture than broad ideological labels would suggest.

Garland's Attorney General Role and the Federalist Society's Influence

Garland's appointment as Attorney General under the Biden administration, a Democratic President, presents an interesting dynamic. Given the significant differences in political orientation between the Biden administration and the Federalist Society, his role requires balancing his own judicial philosophy with the administration's policy priorities. Analyzing his actions as Attorney General provides another lens through which to evaluate the extent of any lingering influence from his past engagements, or lack thereof, with the Federalist Society. His actions demonstrate his independence and commitment to upholding the rule of law, irrespective of his past interactions with any single legal organization.

Conclusion

The relationship between Merrick Garland and the Federalist Society is not easily defined. While he shares some common ground with the Society in his approach to legal interpretation, his judicial record showcases a nuanced perspective that doesn't neatly align with a strictly conservative ideology. His current role as Attorney General further complicates any simplistic analysis. Understanding this complexity requires considering his entire career, including his judicial rulings, his limited documented interactions with the Federalist Society, and his actions within the Biden administration. A comprehensive understanding necessitates avoiding simplistic labels and focusing on a deeper analysis of his legal philosophy and decisions.

FAQs

1. Did Merrick Garland ever officially join the Federalist Society? There's no public record indicating Merrick Garland ever formally joined the Federalist Society as a member.
2. How often did Garland speak at Federalist Society events? Information on the frequency of his speaking engagements with the Federalist Society is limited, suggesting infrequent or minimal interaction.
3. Does Garland's judicial philosophy fully align with the Federalist Society's platform? No, while Garland shares some common ground with the Federalist Society on certain aspects of legal interpretation (such as textualism), his overall approach has shown a more moderate and nuanced position.
4. Has Garland's relationship with the Federalist Society affected his actions as Attorney General? There's no evidence to suggest that his past interactions, or lack thereof, with the Federalist Society have unduly influenced his decisions as Attorney General. His actions demonstrate adherence to the rule of law and the administration's policy objectives.
5. Is it accurate to label Garland a "Federalist Society judge"? Labeling Garland solely as a "Federalist Society judge" is an oversimplification and inaccurate. His judicial philosophy is more complex and nuanced than such a label suggests.

merrick garland federalist society: *Supreme Ambition* Ruth Marcus, 2020-11-17 The Washington Post journalist and legal expert Ruth Marcus goes behind the scenes to document the inside story of the Brett Kavanaugh confirmation battle and the Republican plot to take over the Supreme Court—thirty years in the making—in this “impressively reported, highly insightful, and rollicking good read” (The New York Times Book Review). In the summer of 2018 the Kavanaugh drama unfolded so fast it seemed to come out of nowhere. With the power of the #MeToo movement behind her, a terrified but composed Christine Blasey Ford walked into a Senate hearing room to accuse Kavanaugh of sexual assault. This unleashed unprecedented fury from a Supreme Court nominee who accused Democrats of a “calculated and orchestrated political hit.” But behind this showdown was a much bigger one. The Washington Post journalist and legal expert Ruth Marcus

documents the thirty-year mission by conservatives to win a majority on the Supreme Court and the lifelong ambition of Brett Kavanaugh to secure his place in that victory. The reporting in *Supreme Ambition* is full of revealing and weighty headlines, as Marcus answers the most pressing questions surrounding this historical moment: How did Kavanaugh get the nomination? Was Blasey Ford's testimony credible? What does his confirmation mean for the future of the court? Were the Democrats outgunned from the start? On the way, she uncovers secret White House meetings, intense lobbying efforts, private confrontations on Capitol Hill, and lives forever upended on both coasts. This "extraordinarily detailed" (*The Washington Post*) page-turner traces how Brett Kavanaugh deftly maneuvered to become the nominee and how he quashed resistance from Republicans and from a president reluctant to reward a George W. Bush loyalist. It shows a Republican party that had concluded Kavanaugh was too big to fail, with senators and the FBI ignoring potentially devastating evidence against him. And it paints a picture of Democratic leaders unwilling to engage in the no-holds-barred partisan warfare that might have defeated the nominee. In the tradition of *The Brethren* and *The Power Broker*, *Supreme Ambition* is the definitive account of a pivotal moment in modern history, one that will shape the judicial system of America for generations to come.

merrick garland federalist society: Justice on the Brink Linda Greenhouse, 2022-10-04 The gripping story of the Supreme Court's transformation from a measured institution of law and justice into a highly politicized body dominated by a right-wing supermajority, told through the dramatic lens of its most transformative year, by the Pulitzer Prize-winning law columnist for *The New York Times*—with a new preface by the author "A dazzling feat . . . meaty, often scintillating and sometimes scary . . . Greenhouse is a virtuoso of SCOTUS analysis."—*The Washington Post* In *Justice on the Brink*, legendary journalist Linda Greenhouse gives us unique insight into a court under stress, providing the context and brilliant analysis readers of her work in *The New York Times* have come to expect. In a page-turning narrative, she recounts the twelve months when the court turned its back on its legacy and traditions, abandoning any effort to stay above and separate from politics. With remarkable clarity and deep institutional knowledge, Greenhouse shows the seeds being planted for the court's eventual overturning of *Roe v. Wade*, expansion of access to guns, and unprecedented elevation of religious rights in American society. Both a chronicle and a requiem, *Justice on the Brink* depicts the struggle for the soul of the Supreme Court, and points to the future that awaits all of us.

merrick garland federalist society: The Federalist Society Michael Avery, Danielle McLaughlin, 2021-04-30 Over the last thirty years, the Federalist Society for Law and Public Policy Studies has grown from a small group of disaffected conservative law students into an organization with extraordinary influence over American law and politics. Although the organization is unknown to the average citizen, this group of intellectuals has managed to monopolize the selection of federal judges, take over the Department of Justice, and control legal policy in the White House. Today the Society claims that 45,000 conservative lawyers and law students are involved in its activities. Four Supreme Court Justices--Antonin Scalia, Clarence Thomas, John Roberts, and Samuel Alito--are current or former members. Every single federal judge appointed in the two Bush presidencies was either a Society member or approved by members. During the Bush years, young Federalist Society lawyers dominated the legal staffs of the Justice Department and other important government agencies. The Society has lawyer chapters in every major city in the United States and student chapters in every accredited law school. Its membership includes economic conservatives, social conservatives, Christian conservatives, and libertarians, who differ with each other on significant issues, but who cooperate in advancing a broad conservative agenda. How did this happen? How did this group of conservatives succeed in moving their theories into the mainstream of legal thought? What is the range of positions of those associated with the Federalist Society in areas of legal and political controversy? The authors survey these stances in separate chapters on • regulation of business and private property • race and gender discrimination and affirmative action • personal sexual autonomy, including abortion and gay rights • American exceptionalism and international law

merrick garland federalist society: Supreme Disorder Ilya Shapiro, 2020-09-22 NAMED ONE OF THE BEST BOOKS OF 2021: POLITICS BY THE WALL STREET JOURNAL A must-read for anyone interested in the Supreme Court.—MIKE LEE, Republican senator from Utah Politics have always intruded on Supreme Court appointments. But although the Framers would recognize the way justices are nominated and confirmed today, something is different. Why have appointments to the high court become one of the most explosive features of our system of government? As Ilya Shapiro makes clear in *Supreme Disorder*, this problem is part of a larger phenomenon. As government has grown, its laws reaching even further into our lives, the courts that interpret those laws have become enormously powerful. If we fight over each new appointment as though everything were at stake, it's because it is. When decades of constitutional corruption have left us subject to an all-powerful tribunal, passions are sure to flare on the infrequent occasions when the political system has an opportunity to shape it. And so we find the process of judicial appointments verging on dysfunction. Shapiro weighs the many proposals for reform, from the modest (term limits) to the radical (court-packing), but shows that there can be no quick fix for a judicial system suffering a crisis of legitimacy. And in the end, the only measure of the Court's legitimacy that matters is the extent to which it maintains, or rebalances, our constitutional order.

merrick garland federalist society: *Ideas with Consequences* Amanda Hollis-Brusky, 2015 Many of these questions—including the powers of the federal government, the individual right to bear arms, and the parameters of corporate political speech—had long been considered settled. But the Federalist Society was able to upend the existing conventional wisdom, promoting constitutional theories that had previously been dismissed as ludicrously radical. Hollis-Brusky argues that the Federalist Society offers several of the crucial ingredients needed to accomplish this constitutional revolution. It serves as a credentialing institution for conservative lawyers and judges, legitimizes novel interpretations of the constitution through a conservative framework, and provides a judicial audience of like-minded peers, which prevents the well-documented phenomenon of conservative judges turning moderate after years on the bench. Through these functions, it is able to exercise enormous influence on important cases at every level.

merrick garland federalist society: *Confirmation Bias* Carl Hulse, 2020-06-16 This account of the machinations following Justice Antonin Scalia's death, and their damaging effects, is "a gripping tale of insider Washington" (The Boston Globe). In this book, the Chief Washington Correspondent for the New York Times provides a richly detailed, news-breaking, and conversation-changing look at the unprecedented political fight to fill the Supreme Court seat made vacant by Antonin Scalia's death—using it to explain the paralyzing and all but irreversible dysfunction across all three branches in the nation's capital. The embodiment of American conservative jurisprudence, Scalia cast an expansive shadow over the Court for three decades. His unexpected death in February 2016 created a vacancy that precipitated a pitched political fight that would change not only the tilt of the court, but the course of American history. It would help decide a presidential election, fundamentally alter longstanding protocols of the Senate, and transform the Supreme Court—which has long held itself as a neutral arbiter above politics—into another branch of the federal government riven by partisanship. In an unheard-of development, Senate Majority Leader Mitch McConnell refused to give Democratic President Barack Obama's nominee, Merrick Garland, a confirmation hearing. Not one Republican in the Senate would meet with him. Scalia's seat would be held open until Donald Trump's nominee, Neil M. Gorsuch, was confirmed in April 2017. Hulse tells the story of this battle to control the Court through exclusive interviews with McConnell, Harry Reid, Chuck Schumer, and other top officials, Trump campaign operatives, court activists, and legal scholars, as well as never-before-reported details. *Confirmation Bias* provides much-needed context, revisiting the judicial wars of recent decades to show how they led to our current polarization. He examines the politicization of the federal bench and the implications for public confidence in the courts, and takes us behind the scenes to explore how many long-held democratic norms and entrenched bipartisan procedures have been erased across all three branches of government. Includes a new afterword "An absorbing, if dispiriting, look at the maneuverings of

inside players like McConnell and Donald McGahn, Trump's first White House counsel, and outside advocates like Leonard Leo of the Federalist Society, who appears to have steered judicial selection as much as anyone in the White House." —The Washington Post

merrick garland federalist society: Justice on Trial Mollie Hemingway, Carrie Severino, 2019-07-09 #1 NATIONAL BESTSELLER! Justice Anthony Kennedy slipped out of the Supreme Court building on June 27, 2018, and traveled incognito to the White House to inform President Donald Trump that he was retiring, setting in motion a political process that his successor, Brett Kavanaugh, would denounce three months later as a "national disgrace" and a "circus." Justice on Trial, the definitive insider's account of Kavanaugh's appointment to the Supreme Court, is based on extraordinary access to more than one hundred key figures—including the president, justices, and senators—in that ferocious political drama. The Trump presidency opened with the appointment of Neil Gorsuch to succeed the late Antonin Scalia on the Supreme Court. But the following year, when Trump drew from the same list of candidates for his nomination of Brett Kavanaugh, the justice being replaced was the swing vote on abortion, and all hell broke loose. The judicial confirmation process, on the point of breakdown for thirty years, now proved utterly dysfunctional. Unverified accusations of sexual assault became weapons in a ruthless campaign of personal destruction, culminating in the melodramatic hearings in which Kavanaugh's impassioned defense resuscitated a nomination that seemed beyond saving. The Supreme Court has become the arbiter of our nation's most vexing and divisive disputes. With the stakes of each vacancy incalculably high, the incentive to destroy a nominee is nearly irresistible. The next time a nomination promises to change the balance of the Court, Hemingway and Severino warn, the confirmation fight will be even uglier than Kavanaugh's. A good person might accept that nomination in the naïve belief that what happened to Kavanaugh won't happen to him because he is a good person. But it can happen, it does happen, and it just happened. The question is whether America will let it happen again.

merrick garland federalist society: The Chief Joan Biskupic, 2019-03-26 An incisive biography of the Supreme Court's enigmatic Chief Justice, taking us inside the momentous legal decisions of his tenure so far. John Roberts was named to the Supreme Court in 2005 claiming he would act as a neutral umpire in deciding cases. His critics argue he has been anything but, pointing to his conservative victories on voting rights and campaign finance. Yet he broke from orthodoxy in his decision to preserve Obamacare. How are we to understand the motives of the most powerful judge in the land? In *The Chief*, award-winning journalist Joan Biskupic contends that Roberts is torn between two, often divergent, priorities: to carry out a conservative agenda, and to protect the Court's image and his place in history. Biskupic shows how Roberts's dual commitments have fostered distrust among his colleagues, with major consequences for the law. Trenchant and authoritative, *The Chief* reveals the making of a justice and the drama on this nation's highest court.

merrick garland federalist society: Hamilton and the Law Lisa A. Tucker, 2020-10-15 Since its Broadway debut, *Hamilton: An American Musical* has infused itself into the American experience: who shapes it, who owns it, who can rap it best. Lawyers and legal scholars, recognizing the way the musical speaks to some of our most complicated constitutional issues, have embraced Alexander Hamilton as the trendiest historical face in American civics. *Hamilton and the Law* offers a revealing look into the legal community's response to the musical, which continues to resonate in a country still deeply divided about the reach of the law. A star-powered cast of legal minds—from two former U.S. solicitors general to leading commentators on culture and society—contribute brief and engaging magazine-style articles to this lively book. Intellectual property scholars share their thoughts on Hamilton's inventive use of other sources, while family law scholars explore domestic violence. Critical race experts consider how *Hamilton* furthers our understanding of law and race, while authorities on the Second Amendment discuss the language of the Constitution's most contested passage. Legal scholars moonlighting as musicians discuss how the musical lifts history and law out of dusty archives and onto the public stage. This collection of minds, inspired by the phenomenon of the musical and the Constitutional Convention of 1787, urges us to heed Lin-Manuel Miranda and the Founding Fathers and to create something new, daring, and different.

merrick garland federalist society: Captured Sheldon Whitehouse, 2017-02-21 A U.S. senator, leading the fight against money in politics, chronicles the long shadow corporate power has cast over our democracy In Captured, U.S. Senator and former federal prosecutor Sheldon Whitehouse offers an eye-opening take on what corporate influence looks like today from the Senate Floor, adding a first-hand perspective to Jane Mayer's Dark Money. Americans know something is wrong in their government. Senator Whitehouse combines history, legal scholarship, and personal experiences to provide the first hands-on, comprehensive explanation of what's gone wrong, exposing multiple avenues through which our government has been infiltrated and disabled by corporate powers. Captured reveals an original oversight by the Founders, and shows how and why corporate power has exploited that vulnerability: to strike fear in elected representatives who don't "get right" by threatening million-dollar dark money election attacks (a threat more effective and less expensive than the actual attack); to stack the judiciary—even the Supreme Court—in business-friendly ways; to capture" the administrative agencies meant to regulate corporate behavior; to undermine the civil jury, the Constitution's last bastion for ordinary citizens; and to create a corporate alternate reality on public health and safety issues like climate change. Captured shows that in this centuries-long struggle between corporate power and individual liberty, we can and must take our American government back into our own hands.

merrick garland federalist society: The Schoolhouse Gate Justin Driver, 2019-08-06 A Washington Post Notable Book of the Year A New York Times Book Review Editors' Choice An award-winning constitutional law scholar at the University of Chicago (who clerked for Judge Merrick B. Garland, Justice Stephen Breyer, and Justice Sandra Day O'Connor) gives us an engaging and alarming book that aims to vindicate the rights of public school students, which have so often been undermined by the Supreme Court in recent decades. Judicial decisions assessing the constitutional rights of students in the nation's public schools have consistently generated bitter controversy. From racial segregation to unauthorized immigration, from antiwar protests to compulsory flag salutes, from economic inequality to teacher-led prayer—these are but a few of the cultural anxieties dividing American society that the Supreme Court has addressed in elementary and secondary schools. The Schoolhouse Gate gives a fresh, lucid, and provocative account of the historic legal battles waged over education and illuminates contemporary disputes that continue to fracture the nation. Justin Driver maintains that since the 1970s the Supreme Court has regularly abdicated its responsibility for protecting students' constitutional rights and risked transforming public schools into Constitution-free zones. Students deriving lessons about citizenship from the Court's decisions in recent decades would conclude that the following actions taken by educators pass constitutional muster: inflicting severe corporal punishment on students without any procedural protections, searching students and their possessions without probable cause in bids to uncover violations of school rules, random drug testing of students who are not suspected of wrongdoing, and suppressing student speech for the viewpoint it espouses. Taking their cue from such decisions, lower courts have upheld a wide array of dubious school actions, including degrading strip searches, repressive dress codes, draconian "zero tolerance" disciplinary policies, and severe restrictions on off-campus speech. Driver surveys this legal landscape with eloquence, highlights the gripping personal narratives behind landmark clashes, and warns that the repeated failure to honor students' rights threatens our basic constitutional order. This magisterial book will make it impossible to view American schools—or America itself—in the same way again.

merrick garland federalist society: **Supreme Court Confirmation Hearings and Constitutional Change** Paul M. Collins, Lori A. Ringhand, 2013-06-24 This book demonstrates that the hearings to confirm Supreme Court nominees are in fact a democratic forum for the discussion and ratification of constitutional change.

merrick garland federalist society: **Supreme Inequality** Adam Cohen, 2021-02-23 "With Supreme Inequality, Adam Cohen has built, brick by brick, an airtight case against the Supreme Court of the last half-century...Cohen's book is a closing statement in the case against an institution tasked with protecting the vulnerable, which has emboldened the rich and powerful instead."

—Dahlia Lithwick, senior editor, *Slate* A revelatory examination of the conservative direction of the Supreme Court over the last fifty years. In *Supreme Inequality*, bestselling author Adam Cohen surveys the most significant Supreme Court rulings since the Nixon era and exposes how, contrary to what Americans like to believe, the Supreme Court does little to protect the rights of the poor and disadvantaged; in fact, it has not been on their side for fifty years. Cohen proves beyond doubt that the modern Court has been one of the leading forces behind the nation's soaring level of economic inequality, and that an institution revered as a source of fairness has been systematically making America less fair. A triumph of American legal, political, and social history, *Supreme Inequality* holds to account the highest court in the land and shows how much damage it has done to America's ideals of equality, democracy, and justice for all.

merrick garland federalist society: *Antitrust Counseling and Litigation Techniques* ,

merrick garland federalist society: *51 Imperfect Solutions* Judge Jeffrey S. Sutton, 2018-05-07 When we think of constitutional law, we invariably think of the United States Supreme Court and the federal court system. Yet much of our constitutional law is not made at the federal level. In *51 Imperfect Solutions*, U.S. Court of Appeals Judge Jeffrey S. Sutton argues that American Constitutional Law should account for the role of the state courts and state constitutions, together with the federal courts and the federal constitution, in protecting individual liberties. The book tells four stories that arise in four different areas of constitutional law: equal protection; criminal procedure; privacy; and free speech and free exercise of religion. Traditional accounts of these bedrock debates about the relationship of the individual to the state focus on decisions of the United States Supreme Court. But these explanations tell just part of the story. The book corrects this omission by looking at each issue-and some others as well-through the lens of many constitutions, not one constitution; of many courts, not one court; and of all American judges, not federal or state judges. Taken together, the stories reveal a remarkably complex, nuanced, ever-changing federalist system, one that ought to make lawyers and litigants pause before reflexively assuming that the United States Supreme Court alone has all of the answers to the most vexing constitutional questions. If there is a central conviction of the book, it's that an underappreciation of state constitutional law has hurt state and federal law and has undermined the appropriate balance between state and federal courts in protecting individual liberty. In trying to correct this imbalance, the book also offers several ideas for reform.

merrick garland federalist society: *United States Attorneys' Manual* United States. Department of Justice, 1985

merrick garland federalist society: *The Rise of the Conservative Legal Movement* Steven Michael Teles, 2008-01-01 Starting in the 1970s, conservatives learned that electoral victory did not easily convert into a reversal of important liberal accomplishments, especially in the law. As a result, conservatives' mobilizing efforts increasingly turned to law schools, professional networks, public interest groups, and the judiciary--areas traditionally controlled by liberals. Drawing from internal documents, as well as interviews with key conservative figures, *The Rise of the Conservative Legal Movement* examines this sometimes fitful, and still only partially successful, conservative challenge to liberal domination of the law and American legal institutions. Unlike accounts that depict the conservatives as fiendishly skilled, *The Rise of the Conservative Legal Movement* reveals the formidable challenges that conservatives faced in competing with legal liberalism. Steven Teles explores how conservative mobilization was shaped by the legal profession, the legacy of the liberal movement, and the difficulties in matching strategic opportunities with effective organizational responses. He explains how foundations and groups promoting conservative ideas built a network designed to dislodge legal liberalism from American elite institutions. And he portrays the reality, not of a grand strategy masterfully pursued, but of individuals and political entrepreneurs learning from trial and error. Using previously unavailable materials from the Olin Foundation, Federalist Society, Center for Individual Rights, Institute for Justice, and Law and Economics Center, *The Rise of the Conservative Legal Movement* provides an unprecedented look at the inner life of the conservative movement. Lawyers, historians, sociologists, political scientists, and activists seeking to

learn from the conservative experience in the law will find it compelling reading.

merrick garland federalist society: *The Living Constitution* David A. Strauss, 2010-05-19 Supreme Court Justice Antonin Scalia once remarked that the theory of an evolving, living Constitution effectively rendered the Constitution useless. He wanted a dead Constitution, he joked, arguing it must be interpreted as the framers originally understood it. In *The Living Constitution*, leading constitutional scholar David Strauss forcefully argues against the claims of Scalia, Clarence Thomas, Robert Bork, and other originalists, explaining in clear, jargon-free English how the Constitution can sensibly evolve, without falling into the anything-goes flexibility caricatured by opponents. The living Constitution is not an out-of-touch liberal theory, Strauss further shows, but a mainstream tradition of American jurisprudence--a common-law approach to the Constitution, rooted in the written document but also based on precedent. Each generation has contributed precedents that guide and confine judicial rulings, yet allow us to meet the demands of today, not force us to follow the commands of the long-dead Founders. Strauss explores how judicial decisions adapted the Constitution's text (and contradicted original intent) to produce some of our most profound accomplishments: the end of racial segregation, the expansion of women's rights, and the freedom of speech. By contrast, originalism suffers from fatal flaws: the impossibility of truly divining original intent, the difficulty of adapting eighteenth-century understandings to the modern world, and the pointlessness of chaining ourselves to decisions made centuries ago. David Strauss is one of our leading authorities on Constitutional law--one with practical knowledge as well, having served as Assistant Solicitor General of the United States and argued eighteen cases before the United States Supreme Court. Now he offers a profound new understanding of how the Constitution can remain vital to life in the twenty-first century.

merrick garland federalist society: *Hatchet Man* Elie Honig, 2022-05-03 NATIONAL BESTSELLER "Elie Honig has written much more than a compelling takedown of an unfit attorney general; he also offers a blueprint for how impartial and apolitical justice should be administered in America."—Preet Bharara "An essential analysis for anyone committed to understanding the abuses of the Trump administration so we can ensure they never happen again."—Joyce White Vance "Essential reading for all who cherish the rule of law in America."—George Conway Written with all the color and pacing of a legal thriller.—Variety CNN Senior Legal Analyst Elie Honig exposes William Barr as the most corrupt attorney general in modern U.S. history, with stunning new scandals bubbling to the surface even after Barr's departure from office. In *Hatchet Man*, former federal prosecutor Elie Honig uncovers Barr's unprecedented abuse of power as Attorney General and the lasting structural damage done to the Justice Department. Honig uses his own experience as a prosecutor at DOJ to show how, as America's top law enforcement official, Barr repeatedly violated the Department's written rules, and those vital, unwritten norms and principles that comprise the "prosecutor's code." Barr was corrupt from the beginning. His first act as AG was to distort the findings of Special Counsel Robert Mueller, earning a public rebuke for his dishonesty from Mueller himself and, later, from a federal judge. Then, Barr tried to manipulate the law to squash a whistleblower's complaint about Trump's dealings with Ukraine—the report that eventually led to Trump's first impeachment. Barr later intervened in an unprecedented manner to undermine his own DOJ prosecutors on the cases of Michael Flynn and Roger Stone, both political allies of the President. And then Barr fired the U.S. Attorney for the Southern District of New York under false pretenses. Finally, Barr amplified baseless theories about massive mail-in ballot fraud, pouring gasoline on the dumpster fire battle over the 2020 election results and contributing to the January 6 insurrection that led to Trump's second impeachment. In *Hatchet Man*, Honig proves that Barr trampled the two core virtues that have long defined the department and its mission: credibility and independence – ultimately in service of his own deeply-rooted, extremist legal and personal beliefs. Honig shows how Barr corrupted the Justice Department and explains what we must do to prevent this from ever happening again.

merrick garland federalist society: *Our Republican Constitution* Randy E. Barnett, 2016-04-19 A concise history of the long struggle between two fundamentally opposing

constitutional traditions, from one of the nation's leading constitutional scholars—a manifesto for renewing our constitutional republic. The Constitution of the United States begins with the words: "We the People." But from the earliest days of the American republic, there have been two competing notions of "the People," which lead to two very different visions of the Constitution. Those who view "We the People" collectively think popular sovereignty resides in the people as a group, which leads them to favor a "democratic" constitution that allows the "will of the people" to be expressed by majority rule. In contrast, those who think popular sovereignty resides in the people as individuals contend that a "republican" constitution is needed to secure the pre-existing inalienable rights of "We the People," each and every one, against abuses by the majority. In *Our Republican Constitution*, renowned legal scholar Randy E. Barnett tells the fascinating story of how this debate arose shortly after the Revolution, leading to the adoption of a new and innovative "republican" constitution; and how the struggle over slavery led to its completion by a newly formed Republican Party. Yet soon thereafter, progressive academics and activists urged the courts to remake our Republican Constitution into a democratic one by ignoring key passages of its text. Eventually, the courts complied. Drawing from his deep knowledge of constitutional law and history, as well as his experience litigating on behalf of medical marijuana and against Obamacare, Barnett explains why "We the People" would greatly benefit from the renewal of our Republican Constitution, and how this can be accomplished in the courts and the political arena.

merrick garland federalist society: *The Cynic* Alec MacGillis, 2014-12-23 From a dogged political reporter, an investigation into the political education of Mitch McConnell and an argument that this powerful Senator embodies much of this country's political dysfunction. Based on interviews with more than seventy-five people who have worked alongside Mitch McConnell or otherwise interacted with him over the course of his career, *The Cynic* is both a comprehensive biography of one of this country's most powerful politicians and a damning diagnosis of this country's eroding political will. Tracing his rise from a pragmatic local official in Kentucky to the leader of the Republican opposition in Washington, the book tracks McConnell's transformation from a moderate Republican who supported abortion rights and public employee unions to the embodiment of partisan obstructionism and conservative orthodoxy on Capitol Hill. Driven less by a shift in ideological conviction than by a desire to win elections and stay in power at all costs, McConnell's transformation exemplifies the "permanent campaign" mindset that has come to dominate American government. From his first race for local office in 1977—when the ad crew working on it nicknamed McConnell "love-me-love-me" for his insecurity and desire to please—to his fraught accommodation of the Tea Party, McConnell's political career is a story of ideological calcification and a vital mirror for understanding this country's own political development and what is wrought when politicians serve not at the behest of country, but at the behest of party and personal aggrandizement.

merrick garland federalist society: *Scorpions* Noah Feldman, 2011-01-26 A history of the careers and constitutional visions of four U.S. Supreme Court Justices appointed by Franklin Roosevelt. A tiny, ebullient Jew who started as America's leading liberal and ended as its most famous judicial conservative. A Klansman who became an absolutist advocate of free speech and civil rights. A backcountry lawyer who started off trying cases about cows and went on to conduct the most important international trial ever. A self-invented, tall-tale Westerner who narrowly missed the presidency but expanded individual freedom beyond what anyone before had dreamed. Four more different men could hardly be imagined. Yet they had certain things in common. Each was a self-made man who came from humble beginnings on the edge of poverty. Each had driving ambition and a will to succeed. Each was, in his own way, a genius. Hugo Black, William O. Douglas, Felix Frankfurter, and Robert Jackson began as close allies and friends of FDR. But the quest to shape a new Constitution led them to competition and sometimes outright warfare. *Scorpions* tells the story of these four great justices: their relationship with Roosevelt, with each other, and with the turbulent world of the Great Depression, World War II, and the Cold War. It also serves as a history of the modern Constitution itself. Praise for *Scorpions* "Smart and engaging." —New York Times

Book Review "Full of high-stakes intellectual drama." —Washington Post "A first-rate work of narrative history that succeeds in bringing the intellectual and political battles of the post-Roosevelt Court vividly to life." —Publishers Weekly

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Trump explain Trump's rise and the danger his administration poses to our free institutions. They also offer encouragement to the millions of Americans now experiencing a new sense of citizenship and engagement and argue that our nation needs a unifying alternative to Trump's dark and divisive brand of politics—an alternative rooted in a New Economy, a New Patriotism, a New Civil Society, and a New Democracy. *One Nation After Trump* is the essential book for our era, an unsparing assessment of the perils facing the United States and an inspiring roadmap for how we can reclaim the future.

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laws that prevent companies from committing fraud. He also reminds us that conservatives consider the private sector to be superior to the government in most areas. And the relatively little-discussed intersection of those two beliefs is where the benefits of class action lawsuits become clear: when corporations commit misdeeds, class action lawsuits enlist the private sector to intervene, resulting in a smaller role for the government, lower taxes, and, ultimately, more effective solutions. Offering a novel argument that will surprise partisans on all sides, *The Conservative Case for Class Actions* is sure to breathe new life into this long-running debate.

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