



Roger Pilon

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Roger Pilon is—by far—the Federalist Society Student Division’s most prolific speaker. Over nearly 30 years, he has spoken at over a thousand student chapter events at nearly every law school in the country. Students love to invite him to talk about constitutional theory, judicial engagement, property rights, economic liberty, and more. He prefers debating professors to giving solo speeches because the sparks that follow, he says, are what the students most enjoy. He kindly agreed to answer a few questions for us.

How did you originally get involved with Fed Soc?

In the olden days, when all was dark and there was no Federalist Society, I was doing battle outside of any such institution. So when Fed Soc first came to Washington in 1983—early in 1981 I had joined the Reagan administration—I saw the potential for more civil discourse and joined the club. And I’ve never looked back. It’s been a great ride.

How did your career path lead you to your present role with the Cato Institute?

My career path, charitably put, was checked. You can read about the early years in an interview I did with David Meyer-Lindenberg at Mimesis Law last year, and I included some autobiographical information in my 2013 *Chapman Law Review* article on the origins of the libertarian legal movement. As an older libertarian undergraduate at Columbia, driving a taxi to support myself, I had little patience for SDS campus take-overs. Those battles served me well as a graduate student at Chicago, where I earned my third degree in philosophy, and later in the hostile academic world. All this time I was refining the ideas that I would present to Cato, at the end of the Reagan years, in a proposal to create a Center to advance the idea that the sterile debate over judicial activism v. restraint missed the point. We needed instead to focus on Madison’s Constitution as corrected by the Civil War Amendments and corrupted by the New Deal constitutional revolution. In 1983, I outlined Cato’s 1984 conference on Economic Liberties and the Judiciary, featuring the famous Scalia-Epstein debate. Fed Soc did a conference on that subject in 1987. That was progress. Still, in 1988, only Cato was receptive to such a proposal. So I created the Center, and the rest is history.

What was your most controversial Student Chapter presentation?

Where to begin? I debated *Gratz* and *Grutter* at Rutgers-Newark a month before they were argued.

In his welcoming remarks before a standing room only audience, the dean turned to me and said, “And you’re just plain wrong, Mr. Pilon”—before I’d said a word. I complimented his class act. But the zinger came from the first question in Q&A. A 1L stood up two seats behind the dean and said, “Mr. Pilon, I want to apologize to you for what the dean said. He doesn’t speak for all of us here at Rutgers.” Fed Soc at its best! Then there was CUNY, where leftists protested the creation of a Fed Soc chapter, ran an event opposite me—the chapter’s first speaker—and lobbied the faculty to boycott my event. I challenged the entire student body to come, and they showed up. No one went to the opposing event. I have many tales, but limited space.

What is the biggest error in legal education?

Too little common law. Too much clause-bound constitutional analysis. You cannot understand the Constitution correctly unless you understand the theory behind it, and that comes from the Declaration, the common law, and Lockean state-of-nature theory as refined through the Federalist Papers and the debates over the Civil War Amendments.

How has law school improved over the years?

With notable exceptions, law schools are far more open to a range of ideas than they were a few decades ago, and most of the credit for that goes to the Federalist Society. It’s a remarkable story, not only of how ideas matter, but of the importance of institutions.

What is your favorite thing about speaking at law schools?

Students coming up afterward to thank me for coming, often saying they’ve never heard any of that in their classes. But also, years later, some of the same students at the National Lawyers Convention—now lawyers, professors, and even judges—saying, “You changed my mind.” And there are the lunches and dinners afterward—often better than the events themselves! What was Bob Hope’s song?