



The Conservative Legal Movement and its Rise in Modern American Politics

Sandra Adams

Present to Dr. Kathryn Perkins and the
Department of Political Science
In fulfillment of the requirements
For the class POSC 439: Senior Seminar; Law, Politics, and Policies.

California State University, Long Beach
Long Beach, California
May 7, 2023

The Conservative Legal Movement (CLM) represents a significant political and ideological shift in American jurisprudence that emerged in the early-to-mid 20th century. It encompasses a diverse coalition of legal scholars, activists, and organizations committed to limiting government power, preserving traditional values, and advocating for a more restrained interpretation of the U.S. Constitution. Born out of opposition to Franklin D. Roosevelt's New Deal, the CLM has evolved over the decades, growing in influence and reshaping America's legal and political landscape (Teles, 2008).

In the decades since its inception, the conservative legal movement has undergone several transformations, adapting to political shifts and emerging issues. It has played a critical role in reshaping the federal judiciary, particularly through the rise of influential institutions like the Federalist Society. As we move into the 21st century, the movement's influence has only increased, especially in the Trump era, where its success in nominating conservative judges has reshaped the Supreme Court and other courts across the country. This paper will explore the origins, evolution, and current state of the conservative legal movement, highlighting the key events and ideas that have shaped its trajectory.

The Conservative Legal Movement (CLM) began to take shape as a reaction to the New Deal. In the 1950s, Robert W. Welch Jr. founded the John Birch Society as a grassroots organization aimed at combating the spread of communism, which he believed was infiltrating American institutions. Welch's extreme rhetoric even extended to accusing President Dwight D. Eisenhower of being a communist sympathizer. Though the John Birch Society was not strictly a legal movement, its ideological influence helped sow the seeds for the broader CLM.

For the CLM to gain traction, it needed to get involved in the legal world, but the question was: how? One of the primary goals of the movement was to establish a presence in public interest law, a field that could position them at the forefront of the political and legal battles of the day (Teles, 2008).

While liberals focused on defending individual rights, ensuring the protection of basic freedoms, and strengthening the government's role based on constitutional principles, conservatives took a different approach. They were skeptical of government power and favored a more traditional worldview, one that valued order, stability, and the preservation of established institutions—like monarchies and state churches. As a result, conservatives were often depicted as

antagonists in the broader ideological struggle, with critics accusing them of promoting a system that entrenched inequality and prejudice.

However, the conservative legal movement faced significant challenges. At the time, conservatives were operating in a relatively new and underdeveloped space within legal activism. Unlike their liberal counterparts, they lacked a robust network of legal scholars, organizations, and political allies. While liberal groups had successfully infiltrated the judiciary and established a firm presence in political circles, conservatives struggled to find their footing in the legal world.

In the late 1970s and early 1980s, the publication of the *Horowitz Report* significantly impacted the trajectory of the conservative legal movement. Written by attorney Michael Horowitz and circulated to conservative donors and activists, the report critically examined the state of the CLM. It highlighted weaknesses within the movement and raised doubts about the effectiveness of the projects they were backing. The *Horowitz Report* ultimately led to a reevaluation of strategies and spurred new approaches among conservative legal activists, shaking the very foundations of the movement at the time.

The *Horowitz Report* had a profound effect on the conservative legal movement (CLM). It bluntly addressed the fact that many young law students were frustrated with the outdated, conventional answers offered by conservative leaders. These students were seeking fresh, innovative approaches to America's legal and political challenges (Teles, 2008).

Although conservatives were initially wary of public interest law, they recognized that its emphasis on higher education could be an avenue to influence the next generation of lawyers. It was at this point that conservatives began to realize that no one was offering young lawyers a vision where they could be intellectual, moral, and ideologically committed—while also being radically opposed to leftist views.

The *Horowitz Report* provided the answers conservatives had been searching for. It gave them a way to reframe their image, positioning themselves not as the “bad guys,” but as intellectual and moral opponents to liberal policies. At the time, conservative activism was primarily at the state level, with a network of small- to medium-sized groups of businessmen. However, to truly compete on the national stage, conservatives needed to build a more robust, influential network that could match the political and legal power of liberal elites.

Despite their growing awareness of these needs, conservatives faced significant hurdles. The very system they sought to dismantle was entrenched in Washington, with policymaking

dominated by the national media and established institutions. To effectively shape public policy, conservatives realized they had to build relationships within Washington's media and political networks. However, they were severely outmatched by the well-established liberal legal networks that had a far greater reach in the courts, media, and political circles.

Additionally, conservatives struggled with insufficient resources and lack of strategic legal tactics. They depended on their business allies for funding, but these businessmen were increasingly vulnerable to attacks from liberal public interest law groups. To survive, business leaders had to adapt, learning how to minimize the impact of government regulations on their bottom lines.

Faced with these challenges, the conservative legal movement needed a transformation. Business leaders, while effective in certain areas, lacked the legal expertise required to navigate the complex world of legal politics. There was a growing recognition that the movement needed to reorganize, finding a balance between business interests and the creation of a robust conservative legal framework that could effectively challenge the liberal establishment.

In the early 1980s, the Conservative Legal Movement reached a major milestone with the creation of the Federalist Society. This organization became the centerpiece of the movement, helping to formalize a network of conservative lawyers, scholars, and activists—an essential development that had been previously lacking within the broader conservative movement.

The Federalist Society was founded with the goal of providing the “public goods” needed to support a conservative legal movement, focusing on law and economics as a new field of legal scholarship. Henry Manne, a prominent figure in law and economics, helped to lay the groundwork for this initiative, which included creating a law-and-economics curriculum at leading law schools.

One of the most important findings of the Conservative Legal Movement (CLM) is that the effective institutionalization of legal change requires not only a demand for reform from voters or interest groups but also the creation of enduring academic and professional institutions capable of sustaining those reforms. The Federalist Society exemplified this approach by not just responding to political pressures but by establishing a robust intellectual infrastructure that emphasized academic rigor and scholarly debate. Through its focus on law and economics, the Society created a platform for conservative legal scholars and students to engage with and advance the principles of originalism and constitutionalism. This academic foundation ensured that the CLM would not

be short-lived or reactionary, but instead would have the intellectual resources to influence legal thinking for generations to come.

The Federalist Society quickly became the focal point of the Conservative Legal Movement, seeking to counterbalance the liberal dominance of the American Bar Association (ABA) and law schools. It positioned itself as a key alternative to the ABA's liberal policies, advocating for originalist and constitutionalist interpretations of the law. This strategic positioning allowed the Federalist Society to reshape the judicial landscape, most notably in its influence over judicial appointments (Teles, 2008).

The impact of the Conservative Legal Movement on American politics cannot be overstated. In the 1970s, 1980s, and 1990s, the movement contributed to a rightward shift in American politics, helping conservatives gain control over key institutions and reshape the nation's political landscape. The decline of the labor movement and the rise of conservative economic policies led to increased wage inequality and a redistribution of political power.

The evolution of the Conservative Legal Movement from a fragmented, business-dominated grassroots effort to a well-organized intellectual and political force culminated in the creation of the Federalist Society. The Society now boasts chapters in law schools, law firms, and legal communities across the country, drawing members from both major political parties. The Federalist Society has become the crown jewel of the CLM, representing its most successful and enduring achievement—one that has left a lasting imprint on American legal and political thought.

The Conservative Legal Movement (CLM) played a pivotal role during the Trump era, especially in defending the integrity of American democracy following the 2020 election. Despite former President Trump's attempts to subvert the results, it was conservative judges and lawyers, many aligned with the CLM, who stood firm in upholding the rule of law and ensuring the peaceful transfer of power.

When 17 state attorneys general joined an amicus brief to support Texas' baseless efforts to challenge the election results, it underscored the deep political divisions within the Republican Party. Yet, despite this pressure, the legal establishment—including many conservatives—rejected the attempt to subvert the election. In this instance, it was the legal professionals within the CLM who preserved the peaceful transition of power, reaffirming their commitment to the Constitution and the democratic process.

Following Trump's exit from office, the broader political landscape suggests that the Conservative Legal Movement has reached a critical crossroads. While conservatives celebrated their most significant victory in decades by cementing control over the U.S. Supreme Court, this success has been accompanied by internal contradictions and challenges that threaten the movement's long-term stability.

The very success of the movement's judicial strategy came at a cost—the rise of Trump, a figure whose leadership and agenda often conflicted with the values of traditional conservatism. Despite conservative efforts to control Trump, his populist, unpredictable brand of politics has had a corrosive effect on the Republican Party, leaving it more polarized and ideologically fractured.

Looking ahead, the future of the CLM—and the broader conservative movement—appears uncertain. In securing a majority on the Supreme Court, conservatives have succeeded in reshaping American legal and political institutions, but they have also made significant compromises in their quest for power. Trump's influence over the party has led to an erosion of the more moderate, principle-driven conservatism that once guided the movement. This shift has alienated many traditional conservatives and made it harder for the party to appeal to younger voters, people of color, and moderates. If conservatism is to endure, it must adapt to these changing demographics and evolving societal values.

The path forward for the Republican Party and the CLM could lie in reembracing a more moderate, pragmatic approach on issues like immigration, civil rights, and economic inequality. Such a strategy might help conservatives reclaim the center ground, attract a broader base of support, and secure their political future. Without such a shift, however, the movement risks becoming further entrenched in its current, more radical form, which may ultimately lead to its decline.

In the end, the question remains: Will conservatism in America continue to serve as a stabilizing force for democratic governance, or will it succumb to the same forces of extremism and division that it once sought to challenge? Only time will tell whether the CLM and the Republican Party can recalibrate to rebuild the consensus necessary for a healthy democracy, or whether they will spiral further into ideological conflict—one that could jeopardize the very foundations of American democracy.