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Liberal Legal Group Is Following New Administration's Path to Power

By [CHARLIE SAVAGE](#)

WASHINGTON — When [Eric H. Holder Jr.](#) addressed a convention of the American Constitution Society for Law and Policy in June, he urged young lawyers to get involved in the liberal legal network, saying America would soon be “run by progressives.”

“With this new administration that will be taking its place in January of 2009, you know, we are going to be looking for people who share our values,” said Mr. Holder, a member of the society’s board. He added that a “substantial number of those people” would probably be “members of the A.C.S.”

Six months later, Mr. Holder is preparing to take over the Justice Department as President-elect [Barack Obama](#)’s choice for attorney general. And the American Constitution Society, founded in 2001 to be a liberal counterweight to the conservative Federalist Society, is rising to power.

Although Mr. Obama has just started to fill the thousands of politically appointed jobs in his administration, the society’s affiliates are already well positioned to shape legal policy, hiring decisions and judicial nominations for years to come. In addition to Mr. Holder, other prominent officials in the new administration who have ties to the society include Lisa Brown, the White House staff secretary; [Melody Barnes](#), who will direct the Domestic Policy Council; and Ronald Klain, chief of staff to Vice President-elect [Joseph R. Biden Jr.](#)

Three other society board members are on the transition’s agency review team, and observers expect that the Obama team will turn to society members to fill subcabinet positions and judgeships.

“People who are committed enough to a progressive vision of the law to work for and with A.C.S. when progressives are out of office are going to be a natural resource when the electoral winds shift,” said Orin S. Kerr, a conservative-leaning law professor at [George Washington University](#) who has spoken at society events.

But with power comes temptation. Several society leaders said they were mindful that the Bush administration had gotten into trouble by considering applicants’ affiliations with ideological groups like the Federalist Society when hiring for nonpartisan positions.

“That will not be repeated in the Justice Department in the next administration,” vowed Dawn Johnsen, a law professor at [Indiana University](#) who is an American Constitution Society board member and co-chairwoman of the transition’s Justice Department review. “I feel like I can say that with confidence.”

Administrations are permitted to take politics into account when selecting judges and making political appointments. Under President Bush, the Federalist Society flourished; 46 percent of his appeals court judges had connections to the conservative network.

But the Justice Department’s inspector general found that officials also used such affiliations to make hiring decisions for career civil-service jobs, including blocking interviews with American Constitution Society members and soliciting the Federalist Society for recommendations.

In June, Mr. Holder did not specify what jobs he was talking about when he urged lawyers to join the American Constitution Society in the context of putting together the next administration. He did not respond to an interview request.

But this year, Ms. Brown, then the society’s executive director, called the Bush administration’s politicized hiring practices a blight on the “integrity” of the Justice Department, and vowed to work to ensure that “such hiring abuses do not recur.”

The American Constitution Society was started in the 1990s by a professor at Georgetown law school, Peter J. Rubin. Now a Massachusetts judge, Mr. Rubin said in an interview that he was “impressed by the success of the Federalist Society” and saw a need for a similar organization that would allow liberals to network and discuss ideas.

Neither society takes positions on issues, and both invite speakers from across the ideological spectrum. Still, the Federalist Society describes itself as “a group of conservatives and libertarians” and is associated with a philosophy that says judges should leave social change to legislatures and that novel claims of rights should be treated with skepticism.

The American Constitution Society calls itself a “progressive” group that seeks to ensure that “human dignity, individual rights and liberties, genuine equality and access to justice enjoy their rightful, central place in American law.”

With help from a grant by the Hewlett Foundation, the American Constitution Society became a national franchise at a time when liberals were galvanized by the [Supreme Court](#)’s Bush v. Gore decision, which decided the 2000 presidential election.

David Lyle, the society’s acting director, called that a “darker” time for liberals, who believed conservatives had captured all three branches of government. Building up the society was one way liberals sought revitalization. In 2001, the society incorporated and held an inaugural conference at Georgetown. Speakers included [Laurence H. Tribe](#), a [Harvard](#) law professor, and Abner J. Mikva, a former federal judge. Both are now advisers to the society and to Mr. Obama.

Today, the society spends several millions of dollars a year and also has a journal, working groups that produce white papers, and 165 student chapters and 30 city chapters that regularly host symposiums and conferences. It also says it now has about 22,000 affiliates — about half the number claimed by the Federalist Society, which was founded in 1981.

Some law professors privately bemoan the rise of both societies, saying they are helping to polarize the law by making ambitious students think they have to pick sides early — before their thinking may have matured, and in a public way that affects which judges will hire them as clerks.

But Mr. Kerr said the rise of the two societies had a “democratic” upside. Unlike networks based on school or family ties, he said, both societies allow anyone to join.

“Now the networking is more open,” he said.

There remain differences, however, that affect how influential each group is. Many members of the American Constitution Society made their reputations before it existed. But the older Federalist Society has groomed many of its luminaries, through its events and networks, from the start of their careers.

And membership in the Federalist Society is a more singularly important ideological marker for veterans in Republican administrations because liberals have more legal groups to join than conservatives, said Steven M. Teles, author of “The Rise of the Conservative Legal Movement: The Battle for Control of the Law.”

Still, Mr. Teles said, the American Constitution Society could become a “more powerful and effective organization” if [Obama administration](#) officials appeared at its events, just as Reagan administration officials helped build up the Federalist Society.

Excitement is already soaring among student members of the American Constitution Society.

Amanda Shanor, president of the society’s chapter at Yale Law School, said many liberal students were submitting their résumés to the transition team. After long thinking that government was controlled by conservatives and must be curbed, she said, the students “feel like government now can be potentially a huge force for social justice.”

Eugene Meyer, president of the Federalist Society, said that as the American Constitution Society adjusted to being aligned with the White House’s goals, it would have to decide whether to cheerlead or critique its policies.

“To the extent that they do that, they will be contributing something that will not happen unless they do it,” he said. “I would guess there would not be another group on the left that will do any kind of reasonably evenhanded debate over the policies of the new administration.”

Mary Kelly Persyn, a Boston lawyer active in the American Constitution Society, said the group was determined to vigorously debate Obama administration policies and to consider conservative ideas seriously.

“We will espouse progressive values, but that doesn’t mean the debate ends,” she said. “The problems we face require everyone at the table.”