

Boston University School of Law

Scholarly Commons at Boston University School of Law

Faculty Scholarship

Summer 1999

Delegation and the Constitution

Gary S. Lawson

Boston University School of Law

Follow this and additional works at: https://scholarship.law.bu.edu/faculty_scholarship



Part of the [Constitutional Law Commons](#)

Recommended Citation

Gary S. Lawson, *Delegation and the Constitution*, in 22 Regulation 23 (1999).

Available at: https://scholarship.law.bu.edu/faculty_scholarship/2574

This Article is brought to you for free and open access by Scholarly Commons at Boston University School of Law. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarly Commons at Boston University School of Law. For more information, please contact lawlessa@bu.edu.



The nondelegation principle is there to be found, by those who care to look

Delegation and the Constitution

By Gary Lawson

herein granted shall be vested in a Congress of the United States.” A little more than a hundred years later, in 1892, the Supreme Court declared in *Field v. Clark*: “That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.”

In 1989, nearly a century after *Field v. Clark*, the Supreme Court in *Mistretta v. United States* upheld an essentially unconstrained grant of power enabling an administrative agency to set guidelines for federal criminal sentences, offering the stark observation that “our jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives.”

Mistretta’s pronouncement accurately summarizes the modern Court’s abject retreat from the principles that had been expressed by Locke, the American Constitution, and the Supreme Court itself over three centuries. It is today routine for administrative agencies to make law under general grants of authority that essentially instruct the agencies to go forth and do good.

Many of the architects of the modern administrative state were well aware of the constitutional implications of

in 1690, John Locke wrote that legislators “can have no power to transfer their authority of making laws and place it in other hands.” A century later, in 1789, the federal Constitution provided that “all legislative Powers

their handiwork. For example, James Landis, one of the principal intellectual figures of the New Deal, wrote in 1938 that the administrative state “springs from the inadequacy of a simple tripartite form of government to deal with modern problems.” Modern government, concluded Landis, “vests the necessary powers with the administrative authority it creates, not too greatly concerned with the extent to which such action does violence to the traditional tripartite theory of governmental organization.” In other words, if the needs of a modern bureaucracy come into conflict with the Constitution, too bad for the Constitution.

Landis’s candid comments still ring true: No one seriously doubts the outcome of a showdown, in any authoritative forum, between the Constitution and the modern state. Quite simply, the nation has chosen administrative governance over a Constitution that was designed precisely to prevent any such outcome.

THE PROPOSITIONS ANALYZED HERE

it would take a better philosopher than I to show that as a matter of normative political theory the

nation is wrong and the Constitution is right. My task in this essay is more modest. I aim to establish two propositions: first, that the Constitution prohibits the kind of delegation of legislative authority that is at the heart of modern administrative governance and, second, that courts, legislators, and presidents are capable of identifying unconstitutional delegations if they put their minds to the task.

If these propositions seem trivial, that appearance is deceptive. The first proposition is a subject of considerable academic controversy, and even those who assert the existence of a nondelegation principle typically have a hard time identifying the constitutional source and contours of that principle. As for the sec-

legislative, executive, and judicial powers in three distinct institutions with different constituencies and tenures. It contains provisions about such matters as the formalities of legislation, the making of treaties, the appointment of unelected government officials, and the impeachment of executive and judicial officers. But there is no provision that expressly forbids the delegation of legislative power. Indeed, unlike some contemporaneous state constitutions, the federal Constitution does not even contain a residual “separation of powers” clause. The words “delegation” and “separation of powers” appear nowhere in the Constitution.

The absence of such clauses is often taken as an argument against a strong nondelegation principle; even some of the nondelegation doctrine’s most articulate champions seem bothered by the absence of a nondelegation provision. But the search for a nondelegation clause is fundamentally misguided because the federal government is a government of limited and enumerated powers. The proper inquiry is whether the Constitution *affirmatively grants power to a particular institution of the federal government*

The search for a nondelegation clause is fundamentally misguided. The proper inquiry is whether the Constitution affirmatively grants power to a particular institution of the federal government.

ond proposition, it is close to an article of faith among academics and judges that even if a nondelegation principle exists in theory, there is no practicable way to apply it. That consensus is broad enough to include Justice Scalia, who is generally one of the foremost champions of adherence to the Constitution’s separation of powers scheme.

Justice Scalia dissented in *Mistretta*, but on a technical ground that cannot be generalized to most settings. He agreed with the majority’s basic conclusion that courts should not try to police the extent to which Congress vests discretion in administrative agencies, reasoning that “while the doctrine of unconstitutional delegation is unquestionably a fundamental element of our constitutional system, it is not an element readily enforceable by the courts.” Clearly, there is work to be done.

Of course, to show that a practice is identifiably unconstitutional is not to show, as a matter of political theory, that it ought to be abandoned. After all, the normative force of the Constitution is hardly self-evident. But neither is it self-evident that the Constitution should be irrelevant to modern concerns. Even those who doubt the binding force of the Constitution ignore at their peril the wisdom of the founding generation. At a minimum, if we are going to cast the Constitution aside, we at least ought to know what we have rejected.

DELEGATION AND ENUMERATED POWERS

the constitution contains many provisions that deal with the separation of powers. The Constitution vests

to perform the act in question.

The Constitution nowhere grants power to “the federal government” as a unitary entity. Instead, it grants specific powers to the specific institutions that collectively compose the federal government. Each discrete governmental actor must defend its actions by finding an authorizing grant of power to that actor and by showing that the terms of the grant encompass the act in question. Only if such a grant is found would one need to see if there is a provision that affirmatively prohibits the government from acting in the particular case. In the context of the nondelegation doctrine, the relevant question is whether the delegating institution has the enumerated power to execute the delegation and the receiving institution has the enumerated power to exercise the assigned authority.

Because most delegation issues concern attempts by Congress to empower executive actors, I will focus on that aspect of delegation, although I will put aside for the moment problems posed by Congress’s attempts to give administrative agencies power that is beyond the control of the president. Such attempts raise constitutional issues beyond the scope of this essay. Suffice it to say that the Constitution, properly understood, requires the president to control all exercises of executive power, regardless of where Congress tries to vest that power. Although the practice of government is often inconsistent with that understanding, I will assume here, primarily for ease of exposition, that all attempted delegations are directly to the president.

EXECUTION VERSUS LAWMAKING

under the principle of enumerated powers, any action by the president must fall (either directly or by implication) within a grant of power to the president in the Constitution. The Constitution grants to the president a number of specific powers, such as the power to sign or veto legislation, to make treaties and appointments subject to Senate approval, and to adjourn Congress when the House and Senate cannot agree on a time of adjournment. The opening sentence of Article II further provides: “The executive Power shall be vested in a President of the United States of America.” It is clear (though many academics work hard to resist the obvious) that the sentence is a grant of power. But exactly what power does it grant? The Constitution does not tell us.

The Constitution identifies three distinct governmental powers—legislative, executive, and judicial—but never defines them or their respective boundaries. The Founders were fully aware that they did not precisely define the legislative, executive, and judicial powers because they knew they could not. As James Madison candidly wrote in *The Federalist*:

Experience has instructed us that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces—the legislative, executive, and judiciary.... Questions daily occur in the course of practice which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science.

The absence (or impossibility) of a precise definition of executive power does not mean that there are no boundaries between the three governmental powers. The Constitution plainly assumes such boundaries by vesting different powers in the different institutions. And Madison showed elsewhere in *The Federalist* that he did not regard the difficulty of drawing boundaries as a reason for avoiding the task altogether.

The fact that the executive power granted by the first sentence of Article II is general does not make it limitless or undefinable. It is clear, for instance, that the executive power does not include the power to adjudicate the guilt of a criminal defendant and impose a sentence. No one in 1789 would have had any trouble placing that task squarely outside any plausible understanding of “executive power.” Nor does the executive power include the power to enact a tax code in the absence of congressional action or the power to regulate a sphere of activity without statutory authorization.

Although the precise contours of the executive power remain a mystery even today, we can say with some con-

fidence that the essence of the executive power is carrying into effect—executing, if you will—the laws of the nation. The Constitution grants the president the power to execute the laws but not to make or enact a law.

The problem is defining where execution ends and enactment begins. Execution is not a mechanical task. It involves more than a dotting of “i”s and a crossing of “t”s. Execution requires judgment in the allocation of resources, in the choice of means, and in the interpretation of laws that can never be entirely without ambiguity. In 1789, not every exercise of discretion by the president would have been considered an unconstitutional exercise of legislative power. The meaning of “executive power” is broad enough to include some measure of dis-

Whenever the president claims to be exercising executive power, the question is whether he is executing the law or engaging in some other activity that is not within the meaning of “executive power.”

cretion—and even some measure of interpretative freedom in the face of statutes of less than perfect clarity.

Thus, whenever the president claims to be acting under the general grant of executive power, the question is, quite simply, whether he is executing the law or engaging in some other activity that is not encompassed within the meaning of “executive power.”

ARE THERE LIMITS ON WHAT CONGRESS MAY DELEGATE?

the principle of enumerated powers generally prevents the president from acting unilaterally without congressional authorization. But suppose Congress gives such authorization. Is there a limit to the authority that Congress can properly vest in the president by statute? That, in a nutshell, is the nondelegation problem.

Suppose, for example, Congress enacts a statute stating “The president is empowered to promulgate rules concerning the regulation of commerce among the several states.” The imaginary statute further provides penalties for violations of presidential rules issued pursuant to the statute but does not limit the content (as opposed to the subject matter) of the president’s rules. Is the statute constitutional?

There would seem to be no problem from the president’s perspective. The essence of the executive power is the execution of the laws, and our imaginary law specifically authorizes the president to promulgate rules as he sees fit. Presidential rulemaking in this case would thus seem to be a plain instance of executing a clear congres-

sional directive. What could be more consistent with the Constitution's formal scheme of separated powers than presidential implementation of a duly enacted congressional statute?

It is certain, however, that in 1789 everyone would have regarded such unconstrained presidential rulemaking as unconstitutional. It is equally clear that no constitutional provision expressly governs the form of congressional statutes. The scheme of enumerated powers limits the range of subjects within the competence of Congress, and Article I, section 7, prescribes the procedure that lawmaking must follow. But if a statute is enacted in compliance with the necessary procedural formalities and its subject matter is limited to the range of subjects placed

which gives Congress power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Presidential rulemaking is a means of implementing or executing the congressional commerce power; it is not a direct exercise of that power.

THE SWEEPING CLAUSE LIMITS CONGRESS'S POWER TO DELEGATE

The Clause Has Limited Breadth Does the sweeping clause sweep broadly enough to permit Congress to grant broad rulemaking power to the president? The answer is unequivocally "no." The sweeping clause permits Congress to enact implementing (or executory) laws only if those laws are "necessary and proper" for effectuating federal powers. Whether or not our imaginary statute is "necessary," as the Constitution uses that term, it is clear that such a statute would not be "proper."

Although the word "proper" in the sweeping clause was largely ignored for more than two cen-

turies, a careful study of the term in its constitutional context shows that congressional statutes under the sweeping clause must conform to background norms of federalism, separation of powers, and individual rights. I have elsewhere developed that argument at length, in collaboration with Patricia B. Granger, and in 1997 the Supreme Court endorsed the argument, in the context of federalism (*Printz v. United States*).

The understanding that congressional statutes under the sweeping clause must conform to certain background norms has broad ramifications. For instance, in 1789—even before the ratification of the Bill of Rights—it would not have been "proper" for Congress to authorize enforcement of the tax laws through the issuance of general warrants, the imposition of prior restraints on anti-tax protests, and the commencement of criminal proceedings on information rather than indictment. (The Bill of Rights mainly *confirmed* the limitations on governmental power inherent in the Constitution's scheme of enumerated powers.) Similarly, Congress could not, and cannot, implement its enumerated powers in ways that exceed the "proper" bounds of federalism and the separation of powers. In 1789, two things would have been plain: A law that simply authorized the president to promulgate rules without any further structure would not be "proper"; thus such a law would not be among the enumerated powers of Congress.

Problems Solved Identifying the sweeping clause (and the principle of enumerated powers) as the source of the

Congress could not, and cannot, implement its enumerated powers in ways that exceed the "proper" bounds of federalism and the separation of powers.

within Congress's jurisdiction, what is the constitutional problem? It is one thing to invoke the intentions of the framing generation. It is quite another thing to show that those intentions were in fact realized through a textually embodied mechanism.

The framing generation did indeed codify the non-delegation principle in the Constitution, but it did so through a mechanism that has gone largely unnoticed for two centuries. We must always remember to ask the right question: What is the source of Congress's power to pass a statute?

Our imaginary statute authorizing the president to promulgate rules regulating commerce *could not properly be authorized* by the clause in the Constitution giving Congress the power to "regulate Commerce... among the several States." The statute is not a regulation of commerce and, therefore, is not an exercise of the congressional power to regulate commerce. If Congress passed a statute that, for example, limited the ability of one state to exclude from its borders the goods of other states, that act would constitute a regulation of interstate commerce. But a bare authorization to the president to promulgate such rules is not itself a statute regulating commerce within the meaning of the commerce clause—no more than is a statute appropriating funds to the United States Marshal Service for the execution of judgments in cases involving commercial regulations.

Rather, such laws must be justified by reference to the so-called "sweeping clause" (or, as we have come to mislabel it, the "necessary and proper clause") of Article I,

Constitution's nondelegation principle solves at least two problems that have plagued delegation theorists. First, it becomes clear that the nondelegation doctrine is textual-ly grounded. It is not impossible, of course, for a principle as important as the nondelegation doctrine to exist solely as an implied background norm, but it is more comforting to find it in the constitutional text.

Second, the source of the nondelegation doctrine points to limits on the doctrine. In some contexts, Congress is free to act as a general legislature, without regard to the Constitution's normal rules of enumerated powers. For instance, when Congress is managing federal property or administering federal territories or the District of Columbia, the Constitution grants Congress, within those limited spheres, general legislative authority. That is, when it legislates on such subjects, Congress need not rely on the authority of the sweeping clause to pass implementing legislation; the relevant grants of power directly authorize necessary congressional action.

The preceding analysis explains how Congress, from the time of the founding, could create territorial legislatures rather than govern territories directly. Advocates of the nondelegation doctrine would otherwise be led inexorably to the conclusion that territorial legislatures are unconstitutional, which is an awkward and improbable (even if not completely impossible) conclusion. Moreover, Congress traditionally has given the executive very broad discretion to manage federal property. The idea that the Constitution requires Congress to micromanage the one-third of the nation's land mass that is owned by the federal government is highly improbable. Because Congress does not need the sweeping clause to legislate about federal property, it is simply not bound by the nondelegation doctrine's constraints in that sphere.

The Sweeping Clause and "Executive Power" All of which leaves the big question: Given that the sweeping clause, with its requirement that executory laws be "proper," limits the form and content of congressional statutes that seek to implement the various powers granted to federal actors, what are those limits? Here our understanding of the executive power can help.

An 18th Century audience would have understood the substantive difference between legislative and executive power. A statute whose formal "execution" by the executive would effectively make the executive a lawmaker would have been understood as an "improper" allocation of authority between the legislative and executive departments, an allocation unauthorized by the sweeping clause. But it is clear from our analysis of the executive power that some measure of executive discretion is entire-

ly consistent with a "proper" allocation of governmental powers as that would have been understood in 1789. How can we tell when a statute vests so much discretion in the president that it crosses the line between a "proper" means of implementing a federal power and an "improper" delegation of legislative authority?

IDENTIFYING DELEGATIONS

Line-Drawing Problems The word "proper" may seem a slight foundation for a constitutional doctrine. How much executive discretion is too much? Is it a function purely of the degree of discretion? Or does the kind of discretion enter into the picture? Can "too much" discretion in the context of one statute be "just enough" discretion in

A statute whose formal "execution" by the executive would make the executive a lawmaker would be an "improper" allocation of authority between the legislative and executive departments.

the context of another statute? These and similar problems have prompted most observers, including Justice Scalia, to conclude that even if the Constitution contains a nondelegation doctrine, there is no principled way to give it content, and it must therefore go unenforced.

Line-drawing problems, however, are ubiquitous in constitutional law. Such problems have not, in other contexts, deterred line drawing by either court or academy. Neither should we abandon the enterprise of fashioning a nondelegation doctrine without a little effort.

I will not canvas here the Supreme Court's efforts over two centuries to wrestle with the nondelegation problem, but it is instructive to look at the Court's first extended treatment of the subject. Chief Justice John Marshall, writing in 1825 in *Wayman v. Southard*, observed in a lengthy dictum on the nondelegation doctrine:

The line has not been exactly drawn which separates those important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions to fill up the details.

Chief Justice Marshall's formulation of the nondelegation principle seems to send us in a circle: The Constitution requires Congress to make whatever decisions are important enough in the statutory context at issue so that the Constitution requires Congress to make them. A distinction between subjects that are "important" and those that are of "less interest" does not seem much of an

improvement over the word “proper.” Perhaps we need to look a bit further.

A TALE OF THREE FORMULATIONS

three modern scholars have proposed formulations for a judicially manageable nondelegation principle.

Professor David Schoenbrod’s principle is that a statute’s constitutionality generally depends on its ability to resolve cases brought under it. As Professor Schoenbrod states it,

a person interested in knowing whether the statute prohibits any given conduct will, in most cases, get a clear answer from the statute that states the law, but may well get no answer, for any particular case, from a statute that delegates.

Professor Schoenbrod’s formulation may not seem precise, but it captures a central truth about delegations: A statute that does not itself establish rules of law but simply provides a mechanism by which some other entity can establish rules of law is probably an unconstitutional delegation.

But is a statute’s case-resolving power the proper focus? Do we care only about the *number* of cases resolved under a statute or do we also care about the *kind* or *character* of the cases that a statute resolves? If a statute handles many details with precision but leaves (let us say) the two most important policy questions for the executive to resolve, is it really a “proper” law? Perhaps it is less permissible for Congress to pass the buck on “important” matters than on matters of “less interest”—which sends us right back to Chief Justice Marshall’s 1825 answer.

Professor Martin Redish has proposed a thoughtful and powerful test for delegations, which he calls the “political commitment principle.” As Professor Redish explains it,

accountability for lawmakers constitutes the sine qua non of a representative democracy. It therefore seems reasonable to demand as the prerequisite for legislative action some meaningful level of normative political commitment by the enacting legislators, thus enabling the electorate to judge its representatives.... A reviewing court will be able to determine whether the necessary political commitment has been made by deciding whether the voters would be better informed about their representatives’ positions by learning how their representatives voted on the statute.

Professor Redish’s test, unlike Professor Schoenbrod’s, explicitly focuses on the *significance* of the issues involved. Professor Redish’s nondelegation doctrine does

not address every choice conceivably embodied in a statute but only those choices that bear closely on the types of political responsibility contemplated by our scheme of representative government. How can we tell whether an issue bears enough on expectations of accountability in our representative scheme to require congressional resolution? Presumably, issues that meet the requirement will pertain to matters that are “important” to an informed electorate under the statute rather than matters of “less interest”—which sends us back again to Chief Justice Marshall’s formulation.

Or, at least, it sends us to a corollary of Marshall’s formulation. For Professor Redish, the importance of an issue is determined by reference to its capacity to inform voters about their representatives’ positions. Chief Justice Marshall did not tell us what he meant by “important

A statute that entrusts to the president so much discretion in an important matter that the statute itself does not resolve the matter is not a “proper” statute and is therefore unconstitutional.

subjects,” but his meaning probably had more to do with the type of subject than with the electorate’s perceptions of it. In practice, Professor Redish’s and Chief Justice Marshall’s tests are likely to converge in most (important?) cases, and both tests in turn will overlap considerably with Professor Schoenbrod’s.

RESOLVING THE NONDELEGATION PUZZLE

I have previously proposed a third formulation for the Constitution’s nondelegation principle: “Congress must make whatever policy decisions are sufficiently important to the statutory scheme at issue so that Congress must make them.” In other words, to save us the trouble of reaching Chief Justice Marshall’s test indirectly, I simply leap to it directly.

Marshall was right. The propriety of a delegation in a specific issue depends on the degree of discretion granted the president and the importance of the issue to the statutory scheme. Congress must make the central, fundamental decisions in each statutory scheme, but Congress can leave the details to others (be it the president or the courts) to fill in. Whether an issue is central or fundamental must be determined in the context of each specific statutory scheme. A statute that entrusts to the president so much discretion in an important matter that the statute itself does not resolve the matter is not a “proper” statute for carrying into effect federal powers and is therefore unconstitutional.

Of course, in applying the last test one is well advised to draw on the insights of Professors Redish and Schoenbrod, as well, because all of the tests converge over a broad range of cases.

We are still left with the central question: How do we tell in any given case whether there is too much discretion on too important a subject? Chief Justice Marshall again had the answer:

The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law; but the maker of the law may commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry.

In other words, that is why judges get paid. Bright-line rules are nice, but the Constitution does not always cooperate by prescribing them. Line-drawing without algorithmic guidance is an inescapable feature of the law. One could write a book chapter (and I am planning one) on the resulting hard cases. But one could also write a book chapter (and I am planning one) on the easy kills that dot the pages of the United States Code.

The Communications Act instructs the Federal Communications Commission to grant broadcast licenses “if public convenience, interest, or necessity will be served thereby.” The statute grants nearly absolute discretion about a subject that is absolutely central to the regulation of broadcasting. (Easy kill number 1.) The Motor Vehicle Safety Act states that “the Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.” Again, the statute says nothing; the agency’s discretion is nearly absolute and the statute makes no decision except to have a scheme of motor vehicle safety standards. (Easy kill number 2.)

CONCLUSION

one could proliferate these examples ad nauseam; a random walk through the organic statutes of the modern administrative state would be a constitutional ambulance-chaser’s dream. The point is only that the degree of executive discretion and the importance of the issue to the statute at hand are not concepts without boundaries. If one sets out to make fun of them, one can do so. But that is true of almost every key concept in constitutional law.

If one instead sets out conscientiously to determine whether a law is a “proper” exercise of Congress’s authority under the sweeping clause, applying the nondelegation doctrine becomes no less manageable a task than determining when a state’s procedures comply with “due process of law.” The latter inquiry is not easy, but one does not hear bench, bar, and academy clamoring that it is so hard we should abandon it.

A good percentage of the key statutes in the modern administrative state flagrantly violate the Constitution’s nondelegation principle. In our political culture, that is not a decisive normative argument against them. But it ought to count for something.

readings

ORIGINAL SOURCES

- *Constitution of the United States*
- James Madison. Numbers 37 and 48 in *The Federalist Papers*. Edited by Clinton Rossiter. New York: Mentor, 1961.

CASES

- *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1 (1825).
- *Field v. Clark*, 143 U.S. 649 (1892).
- *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935).
- *Mistretta v. United States*, 488 U.S. 361 (1989).
- *Printz v. United States*, 117 S. Ct. 2365 (1997).

BOOKS AND ARTICLES

- Steven G. Calabresi. “The Vesting Clauses As Power Grants.” *Northwestern University Law Review* 88 (1994): 1377.
- Steven G. Calabresi and Saikrishna B. Prakash. “The President’s Power to Execute the Laws.” *Yale Law Journal* 104 (1994): 541.
- Steven G. Calabresi and Kevin H. Rhodes. “The Structural Constitution: Unitary Executive, Plural Judiciary.” *Harvard Law Review* 105 (1992): 1153.
- James McCauley Landis, *The Administrative Process*. New Haven, Conn.: Yale University Press, 1938.
- Gary Lawson. “The Rise and Rise of the Administrative State.” *Harvard Law Review* 107 (1994): 1231.
- Gary Lawson. “Who Legislates?” *Public Interest Law Review* (1995): 147.
- Gary Lawson. *Federal Administrative Law*. Saint Paul, Minn.: West Publishing Company, 1998.
- Gary Lawson. “The Bill of Rights As an Exclamation Point.” *University of Richmond Law Review* 33 (1999, forthcoming).
- Gary Lawson and Patricia B. Granger. “The ‘Proper’ Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause.” *Duke Law Journal* 43 (1993): 267.
- Gary Lawson and Christopher D. Moore. “The Executive Power of Constitutional Interpretation.” *Iowa Law Review* 81 (1996): 1267.
- Martin H. Redish. *The Constitution as Political Structure*. New York: Oxford University Press, 1995.
- David Schoenbrod. *Power without Responsibility: How Congress Abuses the People through Delegation*. New Haven, Conn.: Yale University Press, 1993.