Bogdan Iancu

Legislative Delegation

The Erosion of Normative Limits in Modern Constitutionalism

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Auch heute lebe ich der Ueberzeugung, dass unsere Rechtswissenschaft und unser Rechtsleben nur gedeihen können, wenn der Positivismus es versteht dem Rechtsgedanken die ihm vom Naturrecht erkämpfte Ursprünglichkeit und Selbstständigkeit zu wahren. Jeden Versuch einer Wiederkehrung des Naturrechts zu einem leiblichen Dasein, das nur ein Scheinleben sein kann, halte ich für verfehlt. Aber seine unsterbliche Seele lässt sich nicht tödten. Wird ihr der Einzug in den Körper des positiven Rechts versagt, so flattert sie gespenstisch durch die Räume und droht, sich in einen Vampyr zu verwandeln, der dem Rechtskörper das Blut aussagt. Es gilt, die äussere Erfahrung, dass alles geltende Recht positiv ist, und die innere Erfahrung, dass die lebendige Kraft des Rechtes aus der mit dem Menschen gebornen Rechtsidee stammt, zu einer einheitlichen Grundauffassung zum Wesen des Rechts zu verbinden.[1]

Otto von Gierke, Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien (1880 (Zusätze vom Jahre 1902))

Freiheit, die immer relativ ist, ist nur innerhalb der Gegebenheiten einer festen Ordnung konkretisierbar und der Gewährleistung fähig. Innerhalb dynamischer Prozesse (...) wird Freiheit notwendig zum bloßen Glücksfall.[2]

Ernst Forsthoff, Der Staat der Industriegesellschaft – Dargestellt am Beispiel der Bundesrepublik Deutschland (1971).

[1] I am still convinced that our legal science and practice can thrive only if positivism understands to protect the source and integrity bequeathed by natural law to the idea of law. Any attempt at reviving natural law to its former glory would be certainly amiss. But its soul will not die so easily. If its access to the house of positive legal rules is blocked, natural law will haunt the corridors like a troubled spirit, threatening to turn into a vampire and drain the legal body of its blood. It is thus imperative to merge the external experience that all valid law is a positive enactment with the inner knowledge that the living force of the law is the innate human idea of justice, into a coherent, unitary, foundational conception of law. (Unless otherwise indicated, the translations are mine.)

[2] Freedom, which is always a relative, can only be guaranteed in the actuality of a clearly determined, concrete ordering. Within dynamic processes, freedom becomes necessarily as contingent as a pure stroke of luck.

Preface and Acknowledgements

This manuscript has been underway for the past 11 years. The original text was a doctoral dissertation defended in 2006. Most of it has been rewritten in the meanwhile; the analytical structure and the argument as such are different.

Much of the credit (and, of course, none of the blame) for writing and rewriting it up to this form goes to the people I was fortunate to encounter. Over a decade is a long time in one's life and thus provides ample opportunities to travel academically and meet people. That being said, I was particularly lucky in this respect, to have encountered that rare and ever scarcer breed: genuine scholars, for whom ideas are neither dead and dull nor something trifling to merely toy with.

I owe my former dissertation advisor, Professor András Sajó of the Central European University, a good deal of gratitude for grudgingly pointing me to the right books at the right time. It was also auspicious that András Sajó momentarily broke with his Socratic methodological predispositions at an early stage. He mentioned, namely, that, in an early draft chapter rightly deemed worth discarding, only three words, *self-subverting rationality*, had to do with my topic. The borrowed strength of that early insight awakened and later confirmed my own intuitions. During my doctoral studies, in 2000–2001, I spent a full academic year away from Budapest, doing research at the University of Toronto and the Yale Law School. I am grateful to Professors David Dyzenhaus of Toronto and Jerry L. Mashaw of Yale for their readiness to welcome my work and me. During the 2 years (2002–2004) spent researching and teaching in Montreal, as a Boulton Fellow at McGill University's Faculty of Law, I had interesting conversations with Professors Fabien Gélinas, Roderick Macdonald, Desmond Manderson, Armand de Mestral, and Stephen Scott. They all have my unalloyed appreciation.

When the initial dissertation was written I could not read German and was therefore at the mercy of translations. I will always be in the debt of the Alexander von Humboldt Foundation for awarding me a 4-month language fellowship to study German and a 2-year research fellowship to read and think about this book at leisure. Each new language learnt is another shell for one's intellectual personality but German has revealed a thinking world I had no idea existed. Without immediate access to it my thinking and writing would have been much impoverished. My host

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at the Humboldt University of Berlin, Professor Dieter Grimm, has read the final drafts of the first two parts and commented on them. His writings on the conceptual reliance of constitutionalism on "positivized" natural law categories and on the practical dependence of constitutional law on clear foundational distinctions have influenced my work considerably. Thanks are due to him also for our many talks in Berlin and for his untiring and impeccable courtesy.

Bucharest Bogdan Iancu

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Chapter 1
Introduction

1.1 Delegation: Doctrinal, Metaphorical, and Constitutional-Philosophical Implications

Delegation and its conceptual concomitants (mandate, agency, representation, proxy, etc.) are constitutive of the legal mind. It is the typical trade of the lawyer to inquire into and question the authority by virtue of which a certain power is asserted, whether the title is valid, to what purpose it was conveyed, and how far it extends. This conceptual lens is all the more relevant to modern constitutionalism, whose theoretical justifications presuppose regarding government as a concatenation of confined lines of attribution, and whose practices reside in a systematic probing of the title, purpose, scope, and outer legal limits of each exercise of power. These concerns apply with even more force to the constitutional limitations on legislation. If constitutionalism is the theory and practice of limited government by delegation, then the foremost public power, that of legislating, is limited and derived (i.e., delegated) law-making under the fundamental law.

As the theoretical notion has positive law correspondents, we do not have to remain for long in the realm of purely abstract musings and speculations. With few exceptions, most conspicuously the English constitution, whose descriptive, essentially medieval structure resists normative limitations on the legislature, modern constitutional systems have dealt with this matter expressly. The various relevant provisions either allow the delegation of legislative power under restrictive terms (Germany under the Basic Law), allow delegation by way of exception and within a confined normative domain (the current French and Romanian constitutions, for instance) or even forbid it altogether in express terms (the constitution of the Fourth French Republic). It is indicative for the relevance of this constraint that in the constitutional law of the US, even though a specific limitation was not provided for in the text, the theoretical requirement that the law-making power cannot be delegated became judicially enforceable constitutional law indirectly. At a very early stage, the Supreme Court derived nondelegation as a necessary doctrinal

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corollary from both the economy of the text and the assumptions of limited government behind the textual provisions.[1]

In order to identify the existence of the limitation as a matter of positive fundamental law and thus restrict our object of inquiry, it is of lesser relevance how the legal rule is precisely phrased and whether, for instance, a certain system prohibits "the delegation of legislative power" (the US) or allows it, provided it is sufficiently constrained by a legislative specification of the "content, purpose, and scope" of the delegation (Germany). Where and how the stress falls is, of course, not irrelevant but, for comparative legal purposes and prima facie, it is important only to determine that a constitutional restriction on parliamentary enactments is found in a given system and that the limitation is of a substantive nature or, rather, it is not purely formal.[2] Purely procedural constitutional arrangements, by virtue of which any grant of authority based on a statute, no matter how broad in its terms, is not considered a questionable delegation, are of little practical consequence as constitutional limitations (and will therefore be of no direct interest to this argument). This reservation applies with like force to practically irrelevant principles to the effect, for instance, that parliament can "delegate" but not expressly "abdicate" its power.[3] Furthermore and related to these two observations, the delegation as such by parliaments of the power to make subordinate rules of legislative force and the procedures and checks which apply to it (i.e., the merely technical problematic of delegated legislation) is highly relevant but analytically secondary and incidental to the primary constitutional concern. To restate the issue, a normative limitation on how much law-making the parliament can leave to the decision of other organs or branches of government is a prohibition on or restriction of legislative delegation. Based on such a limitation, judicial review will be expected to curb parliamentary practices exceeding the boundaries of constitutionally permissible statutory authorization.

Consequently, one can now surmise that academic commentary (including the current endeavor) can proceed as a matter of course to the more or less routine task of analyzing, classifying, and comparing terms of validity, tests, and standards of review within and across jurisdictions. This is however the point where the flow of self-evidence must end abruptly. As will be later shown, delegation-related judicial decisions, across constitutional systems, are notoriously hard to reconcile, inconsistent, and erratic. More nebulous yet are the relevant theoretical debates.

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[1] *The Cargo of the Brig Aurora, Burn Side, Claimant, v. The United States*, 11 U.S. (7 Cranch) 382 (1813).

[2] *See*, for instance, *Whitman v. American Trucking Assns.*, 531 U.S. 457 (2001), Stevens (Concurring), arguing that, insofar as safeguards and limitations are provided, the power devolved upon a Congressional agent should be recognized as legislative in nature. This lexical change (from "no delegation permissible" to "some delegation acceptable"), however, will be in itself of little legal import. The stress will simply move from the inquiry into what is not legislative power proper and thus not delegation to an attempt to devise tests distinguishing "good" from "bad delegation." In substance, the difference is minimal to non-existent.

[3] *In Re Gray*, 57 S.C.R. 150 [1918].

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Beginning at the semantic level, one encounters, often with respect to the pertinent literature within the same constitutional jurisdiction, a bewildering terminological diversity. For instance, albeit referring to the same rules, practices, phenomena, and conceptual frameworks, various authors employ indifferently and sometimes interchangeably the terms nondelegation of the legislative "power(s)", "function(s)" or "authority."[4] These words ("power", "function", "authority"), even when used with respect to the same referent, are not fully synonymous, and neither is the plural or singular form of the nouns semantically inconsequential. Since the words we use and the ways in which we use them structure and reveal our thought, this lexical laxity may reflect, already at first sight, a degree of analytical imprecision and epistemological uncertainty. And things appear yet more intractable in strictly substantive terms. Thus, the Danish legal realist scholar Alf Ross observed in a 1958 comparative survey of the extensive literature on the topic that, even though this had been "a subject that has greatly exercised many minds and kept both law and political science occupied," the analytical cacophony was by then already so confusing that one was inclined to think of delegation as a "mystical" and "magical", rather than legal, notion. Ross proposed a thorough advance pruning of the metaphysical–mystical offshoots, in order to give the notion of delegation a workable, narrowing definition, confined by clear, discernable jurisprudential criteria, so that it could be rendered practically serviceable as a legal–technical concept and enforceable rule of public law.[5] Closer to us in time, two American jurists have gone even further in this vein, to argue that the polysemy of delegation reaches the point of conceptual vacuity. Once the metaphysical, rhetorical, and historical layers are peeled off it and progressively discarded as inapposite, redundant, or inconsequential, what remains would be mere "metaphor." Since empty stylistic flamboyance has no practical use in constitutional adjudication and confounds sound theoretical analysis, Eric Posner and Adrian Vermeule have suggested simply discarding the "delegation metaphor" altogether.[6]

One can certainly dismiss most foundational concepts of constitutional theory and law (separation of powers, representation, the rule of law, state neutrality, etc.) in this pragmatic–commonsensical way. Looked at from a "realist" standpoint or read in a dogmatic positivistic key, such concepts may seem ambivalent and ambiguous, surrounded and obfuscated by baroque historical context and philosophical glosses. From a "no-nonsense," "matter-of-fact" perspective, these notions

[4] Providing specific examples would be unnecessary. A text search performed on 02.09.2010 in HeinOnline, restricted to the "Law Journal Library" database, yielded hundreds of relevant hits for each of the mentioned variants (for instance, 164 matches for "delegation of legislative functions"); a LexisNexis or Westlaw search including caselaw would result in additional matches. The uses refer to the same legal issue, the US "nondelegation doctrine" (also referred to as the "delegation doctrine").

[5] Alf Ross, "Delegation of Power-Meaning and Validity of the maxim *delegata potestas non potest delegari*" 7 *Am. J. Comp. L.* 1 (1958).

[6] Eric A. Posner and Adrian Vermeule, "Interring the Nondelegation Doctrine," 69 *U. Chi. L. Rev.* 1721 (2002).

could be therefore regarded to be not properly "legal" and duly done away with. If pushed too far, such clarity would be most likely purchased at a taxing price, trading simplicity of viewpoint and reference order for a simplistic view of the legal world. Nonetheless and caveat aside, this line of critique contains a kernel of highly pertinent truth and its insight applies with particular strength to our topic. Legislative delegation has an inevitably irreducible conceptual structure, insofar as the term can only be explained by means of related constitutional presuppositions and notions attaching to legislation and law-making, whose meanings are assumed and anticipated by the word "delegation." In this respect, the metaphorical connotations are undeniable and inextricable. The term 'carries' or transfers understandings from germane legal concepts, which have to be clarified and whose premises have to be in turn correspondingly stated, before an informed discussion of delegation can occur. Unless one untangles the presuppositional threads, a debate regarding delegation is bound to be carried out at cross purposes. An introductory taxonomical exercise will be useful at this point.

First, the argument that the power to legislate should not be delegated anticipates a rule of law-derived limitation. In this sense, an impermissible delegation is the formal law that, due to its vagueness, gives the individual no or little anticipation with respect to the conduct actually required of him. A vague law deflects the actual normative decision as to the requisite conduct and projects it to the level of enforcement, so that those subject to it are in effect exposed to unfettered executive, administrative, or judicial discretion. What is delegated is discretionary power over people. The concern animating the nondelegation argument, namely the possibility of abuse in the absence of a clear posited rule, resonates with a long line of commentary in political and legal philosophy, ranging from Aristotle to Fuller, about the demands and prerequisites of "a government of laws and not of men." However, the argument for antecedent rules is qualified by the account, of equally venerable lineage, regarding the inflexibility of general rules and the need for equity as a countervailing component of justice. Second, a legislature could be said, from a separation of powers standpoint, to be delegating the power to make laws when and since the vacuity of the legislative prescription aggrandizes the power of another branch. In this context, the concern informing the notion of delegation and delegation-related debates is with the resulting imbalance in the power structure. In a more purist, analytically-oriented form of the separation of powers-related argument, the legislature could be said to be divesting itself of its constitutionally assigned function. This latter formulation of the separation of powers-related delegation argument requires substantive distinctions among the core functions deemed constitutionally proper to the respective branches (legislation, executive action, administration, adjudication). What is being delegated in the logic of this line of arguments is a branch-specific constitutional function; but how the legislative duty is defined in relation to the various provinces of other branches will depend on the particular separation of powers theory one embraces, which will further rest on other assumptions, such as the professed vision of law and of the

state.[7] Third and last, the democratic strain in delegation debates starts from the premise that we elect representatives (as the Lockean phrase goes) "only to make laws, and not to make legislators," that is, they are elected to take the actual decisions that govern our lives. By not making the controlling choice on a given matter at the level of parliamentary enactments, the legislature shoulders off its representative burdens, at the same time eluding or deflecting responsibility and thus electoral accountability. In this sense, the decision as such is said to be delegated, a decision that, by virtue of its constitutionally validated democratic mandate, the parliament would have to take alone. This latter strain of delegation arguments is also not devoid of tensions, resulting from the way in which one defines representative democracy, accountability, legitimacy, and the proper balance of these concerns within a given constitutional order.[8] As can by now be noticed, taxonomy explains to a certain degree the terminological variety, namely, the presuppositions packed, sometimes unselfconsciously, into the various phrasings (authority, power, function) of nondelegation arguments.

At the same time this brief discussion makes apparent the fact that, although distinct as analytical ideal types, the various delegation-related arguments also overlap, as, for instance, separation of powers theories intersect with representative democracy or rule-of-law related accounts. It could surely be opined that the nondelegation doctrine or constitutional provisions restricting delegation are simply legal devices that functionally serve these various constitutional values (rule of law, separation of powers, and representative democracy-related concerns regarding the legitimacy and accountability of legislative enactments). But such an argument would have things in the wrong order. How specific or general, abstract or concrete, rule-, standard-, or presumption-like a particular legislative provision has to be cannot be determined solely on the basis of the notion of delegation or on the wording of a nondelegation proviso. Obversely, the normative cast of a parliamentary enactment and thus the determination regarding its constitutional permissibility cannot be decided without specifying in advance a relevant concern or informing value. But the requirements deriving from various relevant concerns and values are not fully and not always coextensive, since the definitions of legislation deriving from them cannot be perfectly juxtaposed. Rule of law considerations, to give just one example, do not apply with equal degree of persuasiveness to the specificity level of criminal law and to risk- and technology-

[7] *See* Ernst-Wolfgang Böckenförde, *Gesetz und gesetzgebende Gewalt: von den Anfängen der deutschen Staatsrechtslehre bis zur Höhe des staatrechtlichen Positivismus* (Berlin: Duncker & Humbolt, 1958).

[8] On the tensions between and embedded in the concepts of representation and democracy, *see* Ernst-Wolfgang Böckenförde, "Mittelbare/repräsentative Demokratie als eigentliche Form der Demokratie-Bemerkungen zu Begriff und Verwirklichungsproblemen der Demokratie als Staats- und Regierungsform," in Georg Müller et al. (Eds.), *Staatsorganisation und Staatsfunktionen im Wandel-Festschrift für Kurt Eichenberger zum 60. Geburtstag* (Basel/Frankfurt am Main: Helbing & Lichtenhahn, 1982), pp. 301–328.

intensive fields of regulation (environmental legislation, health and safety rules, and the like).

All the assumptions relating to the notion of delegation do converge analytically in the presupposition of a constitutional ideal of legislation; a coherent and consistent constitutional theory of legislation will result in an intelligible theory of delegation. Nonetheless, pursuing further the introductory dissection of the various definitional lines of inquiry (legislation as normative yardstick of conduct, legislation as will, legislation as collective deliberation, legislation as institutional function, legislation as participative act, etc.) would be duplicative at this point, therefore redundant and tediously counterproductive. The exercise above was useful in outlining the conceptual challenges at hand. But it was also of use in laying out the outer explanatory limits of its own pattern: at a certain point in the course of our logical pursuit we seem to be left with a number of notions that, in the abstract, turn to partly diverge and partly feed presuppositions circuitously into each other's definitions. There is no a priori reason to reduce the notion of delegation to any of its major assumptions and no way in which the vicious circle can be rationally broken. One can certainly stipulate a definition of legislation and many theoretical possibilities spring to mind. Knowledge-wise, the gains (coherence and consistency, analytical elegance of the conceptual framework) of this solution would come at the usual price of all closed abstract systems, i.e., that of unduly cramming both reality and conceptual order into a procrustean theoretical bed.

Besides and related, one does not have to fully embrace Holmes's tart dichotomy that the life of law has been experience not logic, in order to agree that constitutional law is also a living, evolving reality. This leads to the observation that further guidance on the matter can derive from looking at the facts themselves. Even assuming a relatively high measure of functional institutional homogeneity across liberal legal systems—as of necessity a comparatist must[9]—and, consequently, a certain degree of synchronicity among exemplary Western legal orders, constitutionally-presupposed understandings and dominant theories of legislation are historically contingent. Discrete constitutional landscapes will produce specific sets of arguments regarding legislation and the advisability of delegating it. Moreover, and more pertinent to our introductory foray, the adoption of specific constitutional provisions often responds directly to particular changes in context. It can therefore be fully understood only by way of coming to grips with the phenomenon.

[9] *But cf.* Mark Tushnet, "The Possibilities of Comparative Constitutional Law," 108 *Yale Law Journal* 1225 (1999), (arguing that the primary use of comparative constitutional law is not a general and objectively epistemological but a reflexive subjective one, namely a means by which we can understand our own system better) and *also cf.* Susanne Baer, "Verfassungsvergleichung und reflexive Methode: Interkulturelle und intersubjektive Kompetenz," 64 *ZaöRV* 735–758 (2004), arguing that the main use of comparative constitutional law is that of helping students find global corporate village jobs. The study of comparative constitutional law instills "intercultural, inter-subjective competence," namely contemplative aptitudes and particularized knowledge of "the other"; in our globalized economy, this competence is a vital "key qualification" on the market, instrumental in the pursuit of an international legal career.

1.2 Delegation as Phenomenon, Slogan, and Constitutional Reaction

Delegation became for the first time a common topic of academic and public debate in all Western political systems as a direct response to the twentieth century crises of the state. As the general story is well-known and many of its strands will be revisited in due detail at a later point, only the contours need to be sketched here.

Starting with the late nineteenth and continuing into the early decades of the twentieth century, the technological, social, and economic pressures of advanced capitalism, together with the increasingly more frequent and urgent demands of concentrating state power in response to emergencies (war, demobilization, economic depression), determined an unprecedented acceleration in the need for government action. This need was met to a large degree by the legal means of formal parliamentary enactments either conferring upon the executive and the administration wider powers of intervention in previously unregulated fields or validating ex post preemptive executive measures. Unsurprisingly, the new governmental reality was from the onset met with hostility by a legal theory largely articulated along different constitutional representations.

As early as 1915, Albert Venn Dicey, the Victorian dean of English constitutional law, became worried by the growing powers of government departments and related statutory discretion. He remarked that such changes would imperil the rule of law and that the public law of England had already begun to evince certain features of the French *droit administratif*.[10] In 1929, the Chief Justice of England himself, Lord Hewart of Bury, published an influential tract in which the new practices were castigated as a bureaucratic cabal, a covert ploy by which the civil service undermined the authority of Parliament and the liberty of the subject. He warned against the tendency of this "new despotism" "to subordinate Parliament, to evade the courts, and to render the will, or the caprice, of the Executive unfettered and supreme."[11] But the Donoughmore Committee, appointed by the Lord Chancellor in the wake of the controversy stirred by the book, to inquire into the merits of Hewart's anti-bureaucratic jeremiad, did not validate his findings. The final report of its investigation concluded with the somewhat offhanded observation that the practice of delegation as such was inevitable: "The truth is that if Parliament were not willing to delegate law-making power, Parliament would be unable to pass the kind and quantity of legislation which modern public opinion requires."[12] Delegated legislation needed only, like all public powers and, indeed, all things human, to be kept in check and under ongoing scrutiny.

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[10] Albert V. Dicey, "The Development of Administrative Law in England", 31 *Law Quarterly Review* 148 (1915).

[11] Lord Hewart of Bury, *The New Despotism* (London: Ernest Benn, Ltd., 1929), p. 17.

[12] *Committee on Ministers' Powers Report*, H.M.S.O. (Cmd. 4060) (1932), at p. 23.

And yet further continental events seemed to confirm and vindicate those early warnings, as parliamentary government fell into disrepute and disarray across Europe. Indeed, Hitler would come to full power precisely by the legal means of executive legislation and parliamentary blanket mandates. Weimar Germany was largely ruled through delegations and Art. 48 emergency decrees, before it finally succumbed to one of the most sweeping, certainly the most ominous examples of enabling legislation. According to the controlling provision of the March 1933 *Ermächtigungsgesetz* (Enabling Law): "Federal legislation (*Reichsgesetze*) can be also adopted by the Government, by way of exception from the common procedures set forth by the Constitution."[13] In 1936, reviewing in a short comparative study the developments up to that date, Carl Schmitt identified three general causes of the phenomenon (planning, emergency, and "the collectivization of international life") and pointed out, with characteristically fine sense of legal tension and theatrical momentum, that such delegations, insofar as they were constitutional, were "always legal bridges; but these bridges can both lead back to an earlier constitutional legality, as well as forth to a completely new constitutional reality. The practice of enabling laws is therefore a litmus test for the entire constitutional development, and it is fully understandable that the constitutionality of enabling legislation has become in recent years a primary topic of all constitutional conflicts."[14] Schmitt concluded tersely, with an equally characteristic sense of personal opportunity, that the failure of Western constitutional systems to rein in delegations presaged the end of liberal notions of law-making framed by nineteenth century conceptions of separated powers. This, he reckoned, would inevitably lead back to an "Aristotelian-Thomistic understanding of law as practical reason," and namely "not that of just any given individual but specifically the practical reason of he who leads and governs the community"[15] The study was to be soon republished in French translation, in a 1938 Festschrift for the famous comparatist Edouard Lambert.[16] It served as a timely omen of the French republican demise. The governments of the French Third Republic had been, particularly after WWI, ever more often mandated to legislate through *décrets-lois*. French liberal democracy fell prey, in July 1940, to the legal means of a *"décret-constituant,"* enabling Marshall Pétain to change the constitution at will.

In the United States alone, the Supreme Court struck down on nondelegation grounds, in a couple of famous 1935 cases, a part of President Roosevelt's New Deal reforms. But this could hardly be seen in retrospect as a triumph of classical constitutionalism. On the one hand, those cases predated the 1937 retraction of the

[13] Gesetz zur Behebung der Not von Volk und Reich (Ermächtigungsgesetz) vom 23.3.1933, Reichsgesetzblatt T. I. (1933), Nr. 25, S. 141.

[14] Carl Schmitt, "Vergleichender Überblick über die neueste Entwicklung des Problems der gesetzgeberischen Ermächtigungen (Legislative Delegationen)", 6 *ZaöRV* 252, at 253 (1936).

[15] *Id*, at 267–268.

[16] "L'évolution récente du problème des délégations législatives" in *Introduction à l'etude du droit comparé-Recueil d'Études en l'honneur d'Édouard Lambert* (Paris: Sirey, 1938), pp. 200–210.

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