

**LESSONS FROM A JOURNEY THROUGH STATE SUBNATIONAL
CONSTITUTIONAL LAW**

*James A. Gardner**

It is a great pleasure to join with you today to honor our friend and colleague Bob Williams. Bob and I have known each other for nearly thirty years now. I'll never forget the day we met. There I was, strolling peacefully through the groves of academe, minding my own business, lost in thought, when a car screeched to a halt beside me. The passenger door flew open. A voice said: "Get in!" It was Bob. I got in.

It has been a hell of a ride. The journey has been intellectual, but also deeply personal. It has been metaphorical, but also joyously literal. Riding along with Bob took me first to places like Albany, Camden, and Detroit; but later to Italy, Greece, and Norway; and even later, after I began to chart my own course a bit, to Spain, Austria, Switzerland, Germany, Argentina, and many other places.

Along the way, I've learned many important lessons. Some I learned directly from Bob; others I learned as a consequence of traveling the road that Bob first showed me. I'd like to take this opportunity to share some of those lessons with you.

LESSON 1: FRIENDSHIP IN THE ACADEMY IS THE GREATEST GIFT

I joined the legal academy in 1988, during what was still the era of the heroic lone wolf scholar. In those days, and especially in my field of constitutional law, the terrain was dominated by a small number of mighty alpha dogs with national reputations, who marked their territory vigilantly, and defended it viciously. The way to make a name for yourself back then—or so we younger scholars were told—was to piss boldly on some other guy's fire hydrant, wait for him to defend it in a snarling counter-attack, and then, in a demonstration of Oedipal vigor, drive him off, retaining the prize.

Consequently, in 1992, as a very young scholar with fewer than three years under my belt, I published a rather cheeky article in the *Michigan Law Review* with the rather cheeky title *The Failed Discourse of State*

* Bridget and Thomas Black SUNY Distinguished Professor of Law and Research Professor of Political Science, University at Buffalo School of Law, State University of New York.

Constitutionalism.¹ This article took on and criticized—in retrospect, far too severely—a small, but at the time quickly growing, body of work produced by Bob and other like-minded authors, including several distinguished state supreme court justices.

If I had written a piece tweaking the nose of someone else, I might have been ostracized, or sent into internal exile in the academic purgatory then occupied by people who dared to invade the territory of the self-appointed leaders of the field. Instead, in a display of professional jiu-jitsu that was as unexpected as it was welcome, Bob offered me not his claws and fangs (if he has any), but his friendship. Instead of treating me as a threat, he insisted upon seeing and treating me as a colleague—indeed, as an ally—who shared his passionate interest in a particularly intriguing and often neglected corner of the field.

But Bob went further: rather than taking steps to minimize my work or refute it into obscurity, he *honored* it by making it the object of further scholarly inquiry. Within a couple of months after the piece came out, Bob had assembled a group of true luminaries to respond to it in a Roundtable in the *Rutgers Law Journal*,² an act of professional and personal generosity that brought the article a great deal of additional attention and truly jump-started my young career.

To be sure, some of the authors that Bob recruited took it upon themselves to administer the customary spanking. The legendary federalism scholar Daniel Elazar had this to say: “The main problem with James Gardner is that he either does not understand federalism or so opposes it that he does not want to.”³ Bob’s colleague Earl Maltz, an early and influential voice in the field, concluded in his response that my argument was “riddled with fundamental misconceptions,” in a way that “further confuses an area of the law already plagued by widespread misunderstanding.”⁴

This kind of criticism was of course uncomfortable for a young professor to endure, but I survived, and indeed, I learned that I could take a punch. More importantly, the Roundtable accomplished exactly what I think Bob was hoping for: he and I became colleagues, allies, and much more importantly, friends.

1. James A. Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761 (1992).

2. Roundtable, *Responses to James A. Gardner, The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761 (1992), 24 RUTGERS L.J. 927 (1993).

3. Daniel J. Elazar, *A Response to Professor Gardner’s The Failed Discourse of State Constitutionalism*, 24 RUTGERS L.J. 975, 975 (1993) (footnote omitted).

4. Earl M. Maltz, *James Gardner and the Idea of State Constitutionalism*, 24 RUTGERS L.J. 1019, 1019 (1993).

LESSON 2: COMMUNITY IS IMMENSELY VALUABLE IN ACADEMIC WORK

For Bob, it's always been more important to assemble and maintain a community of scholars working together toward a common goal than for any individual to be in a position to claim credit. He's pursued this strategy as Director of the Center for State Constitutional Studies; as co-founder of the Subnational Constitutions Research Group of the International Association of Constitutional Law; and most importantly, as the unofficial Queen Bee of an informal network of scholars, judges, and government officials with shared interests and a willingness to goad one another to greater achievement.

The second time Bob jump-started my career was a direct result of the intellectual community he had created. Following the *Michigan Law Review* piece, I continued writing a series of articles critiquing then-current thinking about state constitutionalism and interpretation. Eventually, though, I began to feel that critique was not enough. One who is continually saying how things *shouldn't* be bears, it seemed to me, an obligation eventually to say how things *should* be—to offer, that is to say, a better alternative. I consequently wrote a couple of much more positive articles offering what I believed to be a better view of state constitutions and their role in the federal system, and I eventually followed that up with a book. At that point, I began to feel that I had said everything I had to say on the topic.

I was wrong. An invitation appeared out of the blue from Alan Tarr and Bob inviting me to attend a weeklong workshop on a topic that Alan and Bob essentially imagined: comparative “subnational” constitutional law. The conference, held at the Rockefeller Foundation's luxurious villa in Bellagio, Italy, drew scholars from all over the world, and largely conjured into being a new field, or at the very least a new and fascinating take on an established one.

That workshop changed my career again by showing me that I had not by any means exhausted the topic of state—now recast as “subnational”—constitutional law, and that there was much more to study, to learn, to think about, and to process. It initiated for me a project of comparative federalism on which I am still hard at work, and which has produced more than a half dozen new articles and, with any luck, will culminate in a book. Much of my work in this new domain has been facilitated by community—by the members of the international network of scholars of federalism and subnational constitutionalism that Bob and Alan—themselves a formidable community in their own right—have together diligently cultivated.

LESSON 3: BE HUMBLE—IF YOU DON'T PRACTICE HUMILITY, HUMILITY
WILL BE THRUST UPON YOU

My journey alongside Bob through the terrain of subnational constitutional law taught me humility in many different ways. I learned, for example, that once you publish something, you no longer control its meaning—it means what other people say it means, not what you thought it meant when you wrote it. I learned that the easy work of provocation is much longer remembered—and, sadly, much more frequently cited—than the hard work of positive construction and reconciliation. I learned that, for all our planning and forethought, professional careers are shaped far more often by serendipity, and that a critical aspect of professional success is opening oneself to, and embracing, unexpected opportunities and journeys. I learned that influence—the grand prize of academic work—is almost entirely out of our control; others will or will not pay attention to our work due to factors well beyond our influence. And I learned that in a line of work that appears for all the world to be about the abstract pursuit of timeless learning and universal truth, the real reward, the one to which we should aspire, consists of the smiles and approvals of the friends and companions who accompany us on our journey.

I wish therefore to express my eternal gratitude to Bob Williams, who made it possible for me to learn these things and, I hope, to grow from them.