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What Is Political Development? A Constitutional Perspective

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Abstract: Development approaches to the study of politics, precisely because they focus on movement through time, seem uniquely positioned to illuminate the logic and experience of the polity in a manner that cannot be captured by more conventional political science methods. And yet, political development has come to be seen as whatever historical change happens to a regime, neglecting the normative nature of the polity. The result is an "a-constitutional" approach to political development. This paper argues that political science can and should examine development in normative terms and that attempts to fit political development more securely within value-free social science threaten to rob it of its promise.

American Political Development (APD) continues to be plagued by the question of what, precisely, "development" is. APD scholars use the term as a way of insisting that history matters: APD focuses on the process of political change and attempts to understand politics in time and not as a "snapshot."[1] Yet development suggests more than change: it suggests change in a particular direction. Such an understanding clearly underlies early APD scholarship. Woodrow Wilson's *Constitutional Government in the United States*, for instance, cast development as progressive change that was linear and directed by History.[2] This understanding was later imported into comparative political studies in the guise of "modernization," which saw different countries at different "stages" of political development.[3] Comparative political studies and APD scholarship have attempted to break this link, rejecting the notion that development is necessarily linear or progressive. Leading APD scholars Stephen Skowronek and Karen Orren have notably sought to redefine

[1]Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004), 2.

[2]Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908), 22.

[3]See, especially, W. W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1960), Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968), and Alexander Gerschenkron, *Economic Backwardness in Historical Perspective: A Book of Essays* (Cambridge, MA: Harvard University Press, 1962).

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development as a "durable shift in governing authority."[4] But why call a "durable shift" political development? Is "development" now jargon for the view that politics includes movement through time?

This article argues that "political development" offers a unique way to study the polity. Precisely because "developmental approaches" focus on movement through time, they are uniquely positioned to illuminate the logic and experience of a polity in a manner that cannot be captured by more conventional political science methods.[5] And yet Orren and Skowronek's attempt to found political development in "durable shifts of governing authority" threatens to leave APD aimless. APD has long been home to scholarship that focuses on larger historical questions, including questions about the health and maintenance of the polity, or regime. This scholarship has also been notable for taking ideas seriously in shaping political development. Yet the move to situate APD more neatly within the mainstream of political science is likely to make this emerging subfield less hospitable to questions about the health and maintenance of the polity. Orren and Skowronek's effort to focus APD on institutions, rather than ideas or culture, follows from their interest in the "temporal attributes" of governance and the "construction of governing authority" over time.[6] As Orren and Skowronek argue, "Research in APD assumes . . . that time is constitutive of politics."[7] But time, as political science has recognized since Aristotle, can also be degenerative of political order. Durable shifts in governing authority, however, are not analyzed in such terms—as healthy or degenerative—because such thinking is seen to be fraught with normative evaluations.

I will argue that APD will be poorer as a subfield if it marginalizes questions of regime maintenance and, as a corollary, neglects the study of ideas. Studies that investigate the maintenance and health of the regime—and take ideas seriously in doing so—not only ask important and illuminating questions, they are neglected by mainstream political science.[8] Such questions, as this article seeks to illustrate, also happen to be uniquely suited to developmental approaches. At the same time, to study the polity, regime,

[4]Karen Orren and Stephen Skowronek, *The Search for American Political Development* (New York: Cambridge University Press, 2004), 9.

[5]Ronald Kahn and Ken Kersch, introduction to *The Supreme Court and American Political Development*, ed. Kahn and Kersch (Lawrence: University Press of Kansas, 2006), 19–21.

[6]Orren and Skowronek, *The Search for American Political Development*, 77–78.

[7]Ibid., 25.

[8]Interestingly, however, earlier approaches such as "systems theory" and structural-functionalism took these questions seriously. See, for example, Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton: Princeton University Press, 1963).

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or constitution from this perspective is not to indulge the political scientist's "values." Normative questions about maintaining the polity can be pursued—and have been pursued within APD—in a manner that does not simply lead to irreconcilable clashes of "values." Normative underpinnings inhere in all regimes. Thus the normative standards at stake here exist within the regime and do not come, in a subjective manner, from the political scientist studying the regime.[9]

I use the terms *regime*, *polity*, and *constitution* more or less interchangeably as these terms refer to the makeup—the essential characteristics, foundations, or identity—of the political order. And while there is a difference between ancient constitutionalism and modern constitutionalism, from a developmental perspective we are interested in how both are "constituted."[10] Thus a constitutional perspective on political development can focus on a range of polities: American political development is concerned with a particular polity, but the approach applies far beyond America and some of the most promising work on political development has come in the reemerging field of comparative constitutionalism. This approach is preoccupied with how a polity is created and maintained, as well as how it is transformed or dissolved.[11]

APD practitioners have long wavered between more philosophically (or normatively) oriented studies of political and constitutional development and studies that seek to situate themselves more comfortably within value-free social science.[12] Orren and Skowronek have noted "the ease with which scholars have moved between political philosophy and the study of American political development" and how APD's openness to "issues of interpretation and meaning" has often resulted in its "ambiguous relationship to the scientific bent of mainstream political science."[13] Theirs is the latest effort to unify the disparate elements that march under the banner of APD in order to fit it more securely within the mainstream of political

[9]James W. Ceaser, *Liberal Democracy and Political Science* (Baltimore: Johns Hopkins University Press, 1990), 41–69.

[10]Alexis de Tocqueville, *Democracy in America*, ed. and trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 7. This is true of ancient understandings of constitutionalism insofar as such understandings wrestle with the aims of a polity across time. See Aristotle, *Politics* 4.1.

[11]See, for example, Walter F. Murphy, *Constitutional Democracy: Creating and Maintaining a Just Political Order* (Baltimore: Johns Hopkins University Press, 2007).

[12]See the exchange between Sotirios A. Barber, "Normative Theory, the 'New Institutionalism,' and the Future of Public Law," Rogers M. Smith, "The New Institutionalism and Normative Theory: Reply to Professor Barber," and Martin Shapiro, "Political Jurisprudence, Public Law, and Post-Consequentialist Ethics: Comment on Professors Barber and Smith," all in *Studies in American Political Development*, no. 3 (March 1989): 56–102.

[13]Orren and Skowronek, *The Search for American Political Development*, 30.

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science. My concern is that such efforts at unity, implicitly or explicitly, seek to banish normative and philosophical approaches to APD, resulting in an "a-constitutional" approach to political development.[14] And they do so, I venture, from a misguided notion that any examination of normative questions is the equivalent of a subjective clash of values, as well as from an unreflective positivism that accepts that "facts" and "values" can easily be separated.

APD and Historical Change

The connection between history—or, at least initially, History—and development is longstanding. In *Constitutional Government and the United States*, Woodrow Wilson situated America in the History of "constitutional development" and compared it with England and Prussia. In doing so, Wilson spoke of passing through "the four stages and forms of development"[15] that were driven by historical imperatives and moved in a progressive direction. Such an understanding was central to the thinking of Herbert Croly as well as John Burgess (a frequent critic of Wilson) and has had a significant pull on APD scholarship.[16] In *Building a New American State*, Skowronek used development in this larger historical sense. To be sure, different nations will have their peculiarities, and development occurs against the peculiar historical details of individual nations, but, Skowronek argued, whatever its peculiar form, "state building" is a "developmental imperative," a "process basic to any nation's political development."[17]

Thus American state-building was the natural result of modernity as America followed other nations—European nations—in its developmental trajectory. What unifies these understandings—and captures the particular use of the word *development*—is the insistence on different stages that move, if not seamlessly, with History. Development has a *telos*. The latest manifestation of this, which strongly echoes Alexandre Kojève's "end of history" thesis, is the insistence on the global convergence of constitutional law.[18] In this scenario, constitutional law within a country will evolve in a

[14]Barber, "Normative Theory," 59.

[15]Wilson, *Constitutional Government in the United States*, 28.

[16]Herbert Croly, *Progressive Democracy* (New Brunswick, NJ: Transaction, 1998) (originally published in 1914) and John W. Burgess, "Political Science and History," *American Historical Review* 2, no. 3 (1897): 403, 405.

[17]Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (New York: Cambridge University Press, 1982), 16, 10.

[18]James H. Nichols Jr., *Alexandre Kojève: Wisdom at the End of History* (Lanham, MD: Rowman and Littlefield, 2007).

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manner that conforms to a range of global norms and networks leading nations down a similar path of constitutional development. As Mark Tushnet puts it, "the globalization of constitutional law is inevitable."[19]

Yet this understanding of development has plagued APD. The most prominent attempt to redefine development—in the process of taking stock of its past and pointing to its future—is Orren and Skowronek's *The Search for American Political Development*. The deans of APD scholarship, Orren and Skowronek not only launched the flagship journal *Studies in American Political Development* but in *The Search for American Political Development* offer an authoritative understanding of "development." They begin by noting that APD seeks to understand the "historical construction of politics" as it traces "political movement through time," as a polity is "constructed over time."[20] This has often embraced a notion of progressive history, which is precisely what Orren and Skowronek want "purged" from development. Yet, as they ask, what does development mean when it is "purged of teleology"?[21] Why does it remain *development*?

Rejecting earlier understandings of development, Orren and Skowronek venture that development is best refashioned and understood as "a durable shift in governing authority."[22] Understood in this manner, development shifts from one set of arrangements to another. It is not so simple—as anyone familiar with APD can testify. But a shift, in their terms, is not the same as progress. What a durable shift does give us, Orren and Skowronek argue, is a "distinguishable event" that highlights the historical construction of politics. A "distinguishable event" suggests variance in governing authority that calls for investigation. Orren and Skowronek's definition of "development" might be understood as significant and entrenched political change and how that change necessarily interacts with the prior political landscape in temporal terms. The historical construction of politics, as they note, is always a "reconstruction" as it always interacts—often in incongruent ways—with preexisting institutions. Skowronek offers the useful distinction between "political time" and "secular time" to capture the interaction of political development through time, but in ways that are distinctly nonlinear, even if they may on occasion indicate patterns and cycles.[23] This is what is unique about APD approaches. It is the temporal that animates APD. How institutions "hold politics and political change to a discernable path" and

[19]Mark Tushnet, "The Inevitable Globalization of Constitutional Law," *Opinio Juris* (blog), http://opiniojuris.org/2009/06/11/the-inevitable-globalization-of-constitutional-law/.

[20]Orren and Skowronek, *The Search for American Political Development*, 9.

[21]Ibid., 120.

[22]Ibid., 123.

[23]Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to Bill Clinton* (Cambridge, MA: Harvard University Press, 1997).

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how they "intercur"[24] —that is, occur while other things are already going on—with past institutional orders has become the preoccupation of APD scholarship.[25]

Whether or not a "durable shift in governing authority" helps Orren and Skowronek bring coherence to the idea of "development" remains to be seen. But in accord with mainstream political science, this approach to development has jettisoned its traditional link with normative judgments, enabling APD to fit more securely as a methodological approach within the broader discipline of value-free political science (even if it tends to focus on the whole of the polity, which makes it profoundly different from most modern political science).[26]

Following this turn, for example, APD scholarship has come to view constitutional politics as a way of examining how changes in judicial understandings of the Constitution are, at root, due to changes in American electoral politics.[27] Indeed, much of this field takes its bearings from Robert Dahl's political science, which sought to understand politics as rooted in "extra-constitutional" factors and thus dispense with political science's traditional approach to constitutions. Following Dahl, these scholars seek to understand how the Supreme Court reflects the various political desires of the "governing coalition," which has come to be defined as a "political regime."[28] One leading scholar has even gone so far as to call "the political

[24]Intercurrence "refers to the simultaneous operation of different sets of rules, to a politics structured by irresolution in the basic principles of social organization and governmental control, and it describes the disorder inherent in a multiplicity of ordering rules" (Orren and Skowronek, *The Search for American Political Development*, 118). More simply, intercurrence is defined as "intervening" or occurring while other events are already in progress. The word is drawn from the medical lexicon, which defines it as a disease or pathology occurring while another disease is in progress.

[25]Ibid., 77.

[26]Ibid., 184–85. See also Karen Orren and Stephen Skowronek, "The Study of American Political Development," in *Political Science: The State of the Discipline*, ed. Ira Katznelson and Helen Milner (New York: W. W. Norton, 2002).

[27]See, especially, Robert Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policymaker," *Journal of Public Law* 50 (1957): 562–82. See, following Dahl in various ways, Howard Gillman, "Party Politics and Constitutional Change: The Political Origins of Liberal Judicial Activism," in *The Supreme Court and American Political Development*, 138–68; Keith E. Whittington, *The Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History* (Princeton: Princeton University Press, 2007); and Mark Graber, "Constructing Judicial Review," *Annual Review of Political Science*, no. 8 (2005): 425–51.

[28]See, for example, Cornell Clayton and J. Mitchell Pickerill, "The Rehnquist Court and the Political Dynamics of Federalism," *Perspectives on Politics* 2, no. 2 (2004): 233–48, and Kevin McMahon, *Reconsidering Roosevelt on Race: How the Presidency Paved the Road to Brown* (Chicago: University of Chicago Press, 2004). For a powerful critique of the "regimes" literature, see Thomas Keck, "Party Politics or Judicial Independence?

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construction of judicial power" the "new paradigm."[29] With some irony, these approaches, while "institutional" in an attenuated sense, end up replicating, although in far more subtle and sophisticated ways, Dahl's behavioral approach. This scholarship tends to shy away from normative questions: political or constitutional development is treated as an empirical and descriptive question; it is what happens when we get "a durable shift in governing authority" and it may or may not have any relationship to *constitutional* foundations, commitments, or identity. Indeed, the thrust of this approach is to foreclose normative questions, questions that might ask whether a "durable shift in governing authority" was a healthy constitutional development. Even when examining heated debates and arguments about shifts in "constitutional authority," which necessarily implicate the philosophic and the normative, these arguments tend to be treated as "constitutional narratives." That is, different sides offer their "constitutional narrative" but there is rarely evaluation of whether any "narrative" is true, or right.

This is partly, no doubt, to keep a social scientific distance from such value-laden questions. But there is, one suspects, an unreflective historicism and positivism behind such analysis. Normative questions, it seems, are not fit for analysis precisely because they are nothing but subjective judgments akin to one's personal taste. And there is no accounting for taste. Thus development, as a "durable" shift in political meaning or authority, is, at root, *whatever* significant change occurs. Hence, we get "narratives" on constitutional change, but not an examination of whether or how such developments are healthy. And constitutional foundings, constitutional maintenance, constitutional transformation, and constitutional dissolution are all just various "political developments."[30]

Ideas, Norms, and APD

The turn from ideas is curious. It does not follow logically from Orren and Skowronek's conceptualization of development, but, even so, they have

The Regime Politics Literature Hits the Law Schools," *Law and Social Inquiry* 32, no. 2 (2007): 511–44.

[29]Graber, "Constructing Judicial Review," 446.

[30]Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (New York: Cambridge University Press, 1991), 1. Long before *The Search for American Political Development*, for example, Orren defined development as "fundamental reconstruction." For an illuminating discussion of why these differences matter, see John Finn, "Transformation or Transmogrification? Ackerman, Hobbes (as in Calvin and Hobbes), and the Puzzle of Changing Constitutional Identity," *Constitutional Political Economy* 10, no. 4 (1999): 355–65.

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sought to downplay the importance of ideas—or "culture"—in developmental terms. Ideas are not seen as the cause of political development because political development occurs in governing institutions. Orren and Skowronek may well be right that it is not enough to point to ideas. Nor should ideas be seen as a way to fill in gaps in institutional analysis. Yet this should not prevent us from examining how governing institutions themselves are created and altered by ideas—ideas that might even bring about "durable shifts in governing authority." But this, too, is discounted. It is not clear, however, why ideas, particularly as they interact with political institutions, may not be the cause of political development.[31] Neglecting ideas as the cause of political development seems a mistake. It is a fallacy to think that deep structural changes are not driven, at root, by a change in ideas; indeed, it may well be "revolutions of mind" that pave the way for institutional and cultural change.[32]

This is curious for a second reason. APD itself has a formidable lineage of scholarship that treats thought as essential to understanding development and inexorably linked to normative analysis. If we cast our eye toward the prehistory of APD, as it were, the most prominent works center on ideas. Two foundational works in APD, Louis Hartz's *The Liberal Tradition in America* and David Greenstone's *The Lincoln Persuasion*, both take thought as central to American political culture as it shaped, for better and worse, how people saw the world they inhabited; it inevitably shaped, in our modern parlance, how people *behaved*.[33] While critical of Hartz's liberal-consensus view, Greenstone saw the boundary of American liberalism as shaping American political development by limiting the range of its change. As Greenstone explained, *The Lincoln Persuasion* examined "the

[31]Rogers M. Smith, "Which Comes First, the Ideas or the Institutions?" in *Rethinking Political Institutions: The Art of the State*, ed. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: New York University Press, 2006), 92. Howard Gillman, *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence* (Durham, NC: Duke University Press, 1993) illustrates how jurisprudential ideas—"legal ideology"—were a powerful source of constitutional development.

[32]Jonathan Israel, *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton: Princeton University Press, 2010), 37. To recognize the potential of ideas, one only need think of placing American institutions—and the formal separation of church and state—on a country like Iraq or Afghanistan. For these institutions to make sense they would have to coincide with a mindset that thought about government and civil society in a particular fashion.

[33]Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt Brace, 1955); J. David Greenstone, *The Lincoln Persuasion: Remaking American Liberalism* (Princeton: Princeton University Press, 1993), 43.

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political and philosophical dimensions" of a complex outlook—a persuasion.[34] Examining this persuasion, Greenstone argued that liberal ideas were capacious enough—what he dubbed "liberal bipolarity"— to allow for more variation than Hartz's analysis suggested.

Such an understanding also animates Samuel Huntington's *American Politics: The Promise of Disharmony*, the central preoccupation of which is the gap between America's creedal commitments and American institutions and practices. For Huntington, the American creed defined the essence of the polity and it was necessary to understand that creed to understand—for all its possible variation—America's distinctly disharmonic political development. As Huntington argued, progress and history have occasionally moved together, but they do not necessarily do so.[35] Rogers Smith, while taking issue with the uniformity of liberalism as "the American creed," argued that other traditions—of a distinctly nonliberal variety—have been central to American political development. Smith examined how ideas of "ascriptive inequality" took root in the development of citizenship laws.[36]

James Ceaser has also recently sought to underscore the importance of studying ideas in APD. In *Nature and History in American Political Development*, Ceaser introduced what he calls "foundational concepts." These are concepts—he put forward nature, history, and religion as examples—that serve as the foundation for other ideas. As Ceaser defines it: "A foundational concept is an idea offered in political discourse as a first cause or ultimate justification for a general political position or orientation. It is usually presented as requiring no further argument, since it is thought to contain within itself its first premise."[37] Ceaser goes on to suggest that foundational concepts have often been turned to in American history to justify a number of smaller ideas and policy positions influencing—if not always as independent variables, then often as intervening variables—American political development. The response from Rogers Smith, "What If God Was One of Us?" is particularly interesting. Smith raises a number of important questions for Ceaser—particularly in suggesting that foundational concepts need to be defined more clearly and that, in doing so, we must be

[34]Greenstone, *Lincoln Persuasion*, 6.

[35]Samuel P. Huntington, *American Politics: The Promise of Disharmony* (Cambridge, MA: Harvard University Press, 1981), 222–25.

[36]Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997). This has also been true of much of the literature on party realignment, which is often driven by constitutional ideas. See, for example, Sidney Milkis, *Political Parties and Constitutional Government* (Baltimore: Johns Hopkins University Press, 1999).

[37]James W. Ceaser, "Foundational Concepts and American Political Development," in *Nature and History in American Political Development: A Debate*, by Ceaser et al. (Cambridge, MA: Harvard University Press, 2006), 5.

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careful of our own normative presuppositions—yet he is in agreement with Ceaser on fundamentals.[38]

For all of their differences—and the differences are wide and deep—these path-breaking pieces of scholarship all take ideas (and political thought) to be central to understanding American institutions, culture, and behavior. One could not truly understand political development without understanding ideas—ideas, Smith argues, "give institutional orders much of their character, coherence, and significance."[39] What is more, these foundational pieces of APD scholarship linked the study of ideas to a normative analysis of political development in a twofold manner. First, they all seek to analyze the normative principles that underpin the American polity. In this, they build from the creation and development of the American regime. Even while profoundly disagreeing about particulars, these works are efforts to reconstruct and analyze the inherently normative makeup of the polity as drawn from its political life.

These works are normative in another sense as well. They seek to analyze political development in normative terms—these studies are concerned with questions about the maintenance and the health of the polity. If Hartz thought America should transcend its past,[40] Greenstone saw a liberal side—a humanitarian tradition of reform—that could be tapped into in order to help Americans confront the "uncertainties" of our own times.[41] Huntington's *American Politics* ends with prescriptions for Americans "to maintain their ideals and institutions."[42] And as Smith says of his *Civic Ideals*, the project "originated with concerns about modern America's political direction." He hoped that his empirical examination could help foster normative lessons that were conducive to American political development.[43] The exchange between Smith and Ceaser in *Nature and History in American Political Development* also illustrates how both scholars embrace an understanding of political development that is concerned with the direction and health of the polity and how political science, based on empirical and normative analysis, might aid that development.

Given this history, the benefit of narrowing the range of APD in a manner that may well exclude such interesting and important works is unclear. This concern is particularly acute insofar as the very "constitution" of the discipline shapes the development of graduate students and younger scholars. And insofar as the move to unify APD within the broader spectrum of

[38]Rogers M. Smith, "What If God Was One of Us? The Challenges of Studying Foundational Political Concepts," in *Nature and History in American Political Development*, 145, 161.

[39]Smith, "Which Comes First," 92.

[40]Hartz, *Liberal Tradition in America*, 32.

[41]Greenstone, *Lincoln Persuasion*, 285.

[42]Huntington, *American Politics*, 261.

[43]Smith, *Civic Ideals*, 9.

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political science turns on an untenable positivist version of political science, the benefits are all the more illusory.

Political Science, Political Development, and the Regime

The break with a progressive view of development need not entail a break with the normative; in fact, such concerns readily stem from APD's attempt to understand the whole polity. Normative principles—conflicted though they may be—constitute the polity itself, and political science can derive these principles from the polity in a reasonably objective manner. I label this a "constitutional" perspective on development because it is concerned with the constitution of the polity, or regime. This section offers a sketch of what a constitutional perspective on development might look like, drawing in part on works that, while part of the APD tradition, do not fit easily within the drive for unity. It then suggests how philosophical questions might be included in a more capacious view of development, drawing in particular on early modern political science to illuminate a blend of the empirical and the normative that is concerned with maintaining a healthy polity and the intuition that development is more than mere change. Finally, it turns to the vexing modern divide between "facts" and "values"—the empirical and the normative—to illustrate how even descriptive and analytical approaches depend, at root, on normative judgments.

Regimes and Political Development

If we trace the lineage of APD scholarship, we find approaches that connect developmental questions to normative constitutional questions. Thus Jeffrey Tulis's *The Rhetorical Presidency* emphasized a crucial distinction between change as *transformation* and change as *development*. Tulis argued that development was best understood as "change prefigured in the government's original form."[44] As Tulis went on to explain, we might conceptualize development as "an example of the maturation of an institution, grown from an original structure that contained the political equivalent of a genetic code for subsequent development."[45] Understood in these terms, development presupposes "what constitutes the essential character of the polity."[46] We see a similar conception of development in James Ceaser's *Presidential Selection: Theory and Development*. Ceaser speaks of the development of our system of presidential selection as stemming from particular ideas that

[44]Jeffrey K. Tulis, *The Rhetorical Presidency* (Princeton: Princeton University Press, 1987), 7.
[45]Ibid., 8.
[46]Ibid., 9.

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were part of a broader constitutional philosophy.[47] To be sure, there is much in this understanding that bears an affinity with more recent APD scholarship. This is perhaps most obvious in Orren and Skowronek's observation that development always occurs against a prior backdrop. The new is never fashioned on a blank slate, but always built upon a preexisting "site." Precisely because it was built on a preexisting site, we need to understand and define the essence of that site to say whether or not there has been a change.

Yet at the root of both Tulis's and Ceaser's work is a concern for the health of the polity: How have changes in presidential selection and rhetoric affected the health of our constitutional order?[48] Their political science is concerned with how development both flows from a constitutional foundation and maintains a constitutional order: How does political development relate to the foundations, commitments, or the presuppositions that a regime rests on? Is change good or harmful to the polity? This is a political science that attends to "regime-specific ends."[49] Was George W. Bush's use of executive power a natural development of Article II of the Constitution in the early twenty-first century, or was it a dangerous overreach that threatens the constitutional order? Is Barack Obama's political rhetoric an elegant and powerful means of engaging the citizenry or a potentially dangerous form of demagoguery that might harm our form of constitutional government? One might even think that George W. Bush's claim to sweeping executive power has real roots in the constitutional order; yet the repeated turn to overreaching executive power and war making might lead one to conclude that constitutional reform is essential in this area as it threatens to undermine the constitutional order.[50] This same sentiment could be applied, in some form, to questions of presidential rhetoric.

These are pressing questions that seem ideally suited to political development and they have the added virtue of taking their bearings from the world of politics as experienced by political actors themselves. To be sure, such questions turn on normative and philosophical understandings of the political order. To know whether a particular change is a further development

[47]James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton: Princeton University Press, 1979), 10.

[48]Tulis and Ceaser, in fact, take up questions of impeachment and demagoguery in this manner: Jeffrey K. Tulis, "Impeachment in the Constitutional Order," and James W. Ceaser, "Demagoguery, Statesmanship, and Presidential Politics," both in *The Constitutional Presidency*, ed. Joseph M. Bessette and Jeffrey K. Tulis (Baltimore: Johns Hopkins University Press, 2009).

[49]Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (Princeton: Princeton University Press, 2003), 27.

[50]Thinking in these terms also invites us to consider what Mark Brandon calls "constitutional failure." See Brandon, *Free in the World: American Slavery and Constitutional Failure* (Princeton: Princeton University Press, 1998).

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of regime principles or a change that transforms a polity, political scientists must measure the change by a set of constitutional foundations and values, elements of what Gary Jacobsohn calls "constitutional identity."[51]

Jacobsohn's work is indicative of this approach as it examines how the constitutional commitments of different regimes shape their development in different ways. Lest *development* become a meaningless term, floating with the current of history, Jacobsohn connects political development to questions of constitutional identity. As Jacobsohn says about all constitutions, "common to the genre is a conception, implicitly or explicitly incorporated in the document, of the kind of polity the constitution seeks to preserve and become."[52] If APD is preoccupied with the historical construction of politics, Jacobsohn draws our attention to the fact that questions of change implicate the essentials of what a constitution is. A constitution is an effort to preserve a particular kind of polity through time, but it is also an effort to become that polity through time. This is particularly true of modern constitutional government. Modern constitutionalism is an attempt to create and sustain a particular political order "intended to endure for ages to come." A constitution seeks not only to bring into being a regime (including both government and the resultant "civil society"), but, in doing so, it also seeks "to alter future states of affairs."[53] To endure, a constitution must be a living constitution.[54] But to create and sustain a political order—to be a constitution—it cannot simply evolve with the "live hand of the present."[55] Its preservative function is also an aspirational function. Yet this understanding runs beyond modern constitutional government and includes a way to think of regimes more generally.

All constitutions (polities or regimes) are going to be imperfect—even prior to their being self-consciously written constitutions—as there will always be a gap between the aspirations of a constitution and the constitution's life on the ground. Aspirations are set in motion by a constitution, but they are likely to be ends we are striving for yet never wholly reach (as Huntington noted in diagnosing the disharmony at the core of American politics). Development, in this manner, recognizes that the polity is "constructed over time." But it

[51]Gary Jeffrey Jacobsohn, "Constitutional Identity," *Review of Politics* 68, no. 3 (2006): 361–97.

[52]Gary Jeffrey Jacobsohn, "The Permeability of Constitutional Borders," *Texas Law Review* 82 (2004): 1763, 1767.

[53]Jeffrey K. Tulis, "On the State of Constitutional Theory," *Law and Social Inquiry* 16, no. 4 (1991): 712.

[54]I do not mean to rule out original meaning or suggest that a constitution must "evolve." Development is different from evolution. Indeed, development is primarily concerned with constitutional foundations and identity and, therefore, takes some form of original meaning seriously insofar as original principles must be kept "alive" if the constitution is to endure.

[55]Jacobsohn, "Constitutional Identity," 394.

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is also concerned with how "construction" is related to constitutional foundations or identity. For just as surely, constitutions can degenerate. From this perspective, political science is important precisely because it does not take for granted that History is the engine of constitutional development, or, alternatively, that we should be neutral in our evaluation of change. Political science of this nature is concerned with the sources of the polity's "destruction and preservation."[56]

Normative Political Science and Political Development

This perspective mirrors that of modern political thinkers who sought to develop a political science that could both *understand* and *secure* a regime—in this case modern constitutional government. Liberal constitutionalism is the invention of modern political science. Yet this approach to development finds deep roots in political science more generally. Aristotle, Locke, and Montesquieu were all practitioners of such a political science. So were the authors of *The Federalist* and Tocqueville. Of course, in our day, such thinkers are understood largely as political philosophers, and political philosophy tends to sit outside of political science, even if such creatures inhabit the same departments as the rest of us. But, as this somewhat old-fashioned, if not altogether lost, understanding of political science helps illustrate, the connection between thought and political practice is particularly important in political development.[57]

Political science, from its birth with Plato and Aristotle, has placed the study of constitutions at its center—not only the formal institutions of government (though happily the study of such institutions is back) but the study of political culture in all of its complexity. Thus we can speak of the polity, the constitution, and the regime in similar terms. Such an approach is different from normative constitutional theory of the law-school variety, which often attempts to persuade judges to accept one's normative political desires in the mode of advocacy. While this older understanding of political science renders normative judgments about the regime, the starting point is to understand and unfold the logic and norms that inhere within the regime. This

[56]Ceaser, *Liberal Democracy and Political Science*, 41.

[57]As president of the American Political Science Association, Gabriel Almond insisted that "whatever political science may become, one of its peculiarly important ingredients will be what it has been." He even insisted, against some contemporary behavioralists who sought to be too "scientific," that there was "no cause for shame in this past," a past, as Almond explained it, that included the likes of Aristotle, Montesquieu, and *The Federalist* (Gabriel A. Almond, "Political Theory and Political Science," *American Political Science Review* 60, no. 4 [1966]: 878). See also Gabriel A. Almond and Stephen J. Genco, "Clouds, Clocks, and the Study of Politics," *World Politics* 29, no. 4 (1977): 489–522.

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begins with an investigation of a particular regime—its political law and character. It seeks to construct and understand the regime on its own terms—not those imposed by the political scientist—but it also seeks to render judgments about whether change is healthy or degenerative for the regime, given its essentials. While this is a cumulative effort, political science is engaged in an ongoing encounter with the regime.

Aristotle, for instance, speaks of the "elements of which a state is composed" as defining its constitution.[58] And knowing "how it is originally formed," we should also want to know, "when formed, how it may be longest preserved."[59] Development, in this sense, is a question of maintaining the ends or identity of a polity. It might even be said that Aristotle thinks of constitutions as having a *telos*, much as Hegel sees the unfolding of History. However, for Aristotle, there is nothing inevitable about political development. On the contrary, a polity needs to be sustained, which is one of the crucial tasks of political science; it can help create a body of knowledge that is utilized in securing the polity. In this effort, Tocqueville went so far as to call for a "new political science" that could both *understand* and *secure* this new form of regime; indeed, understanding was essential to securing, and securing was the motive for understanding.[60] Tocqueville speaks of the roots of a constitution as bound up with the birth of the nation, which then shapes its development. We must have some knowledge of its identity to understand its subsequent development as well as potential dangers to its maintenance.

Intriguingly, Tocqueville, writing shortly after Hegel's *Philosophy of History* and possibly catching a whiff of its historical logic, says that democracy is the result of "Providence."[61] And yet Tocqueville is preoccupied with how to guide the development of democracy. If he takes democracy's central feature to be the equality of human beings, his political science is deeply concerned with how this feature might develop in different regimes. Understanding the promise and the problems of equality is at the heart of Tocqueville's comparative analysis and will allow us to nurture and guide a regime's development, as far as is possible. If Tocqueville's invocation of providence smacks of historical inevitability, he also fosters an understanding of political science that is deeply aware of the peculiar features of a nation's development based upon its birth and identity.[62]

[58]*Politics* 1252a20. The translation is from Aristotle, *The Politics*, ed. Stephen Everson (New York: Cambridge University Press, 1988).

[59]*Politics* 1288b29–30.

[60]Tocqueville, *Democracy in America*, 7.

[61]Ibid.

[62]Alexis de Tocqueville, *The Old Regime and the Revolution*, ed. Alan S. Kahan et al., vol. 1 (Chicago: University of Chicago Press, 1998), 241–47. See also *Democracy in America*, 45–53.

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Tocqueville's rich historical analysis is, no doubt, why scholars within APD and comparative politics still feel at home with his work and continue to turn to it. Orren and Skowronek, for example, take Tocqueville's supple understanding of the importance of history to be central to "the historical construction of politics."[63] And yet, most modern political scientists would depart from Tocqueville's developmental analysis insofar as it embodies normative assessments and prescriptions. Such normative activities, however, are part of what is needed in thinking of the health and maintenance of a polity. Moreover, normative assessments (and even prescriptions) are manifest in much APD scholarship.

Yet, as Orren and Skowronek argue, questions about the best regime, or the truly just political order, are better contemplated by political philosophy than political science.[64] Political philosophy may well measure the polity by a normative standard outside of itself. This, indeed, is a crucial and illuminating practice that may well benefit political science. But it is a different practice from the study of political development. The normative and philosophical standards of measurement at issue here are internal to the polity. The political scientist derives them by a careful study of the political law, culture, institutions, and practices of a polity.[65] From here rich comparisons between polities can be made and, happily, comparative constitutionalism has enjoyed a return in recent years. Still, the beginning point is a particular polity and its foundations and identity. Yes, there will be disputes about the foundations and identity of the polity (which almost certainly are going to be in tension). There will also be arguments about how political change relates to the regime's foundations and the potentially tragic choices between "creedal principles,"[66] or aspects of constitutional identity. Conflicts of this nature exist within descriptive scholarship as well. The fact that there will be dispute should not stop political science from asking whether change helped sustain the character of the polity or was corruptive or even transformative of it. Framing such questions in terms of the foundations or identity of a polity will limit and cabin the range of disagreement. Taking our measure from the polity—and the real world of politics— is different from engaging in our own favorite philosophical position. We are examining the normative (and often philosophical) constitution of the polity, not asking how the polity measures up to John Rawls's *Political Liberalism*. There is no question that even good faith efforts to come to terms with the essentials of the polity will, on occasion, be influenced by the presuppositions of the political scientist and even by her personal values.

[63]Orren and Skowronek, *The Search for American Political Development*, 1.

[64]Ibid., 194.

[65]Ceaser, *Liberal Democracy and Political Science*, 45; Murphy, *Constitutional Democracy*, 37.

[66]Ken Kersch, *Constructing Civil Liberties: Discontinuities in the Development of American Constitutional Law* (New York: Cambridge University Press, 2004), 8.

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There is, however, no getting around this even if we turn to supposedly more rigorous methods in political science. Whether we are constructing cases and concepts, or constructing and coding datasets, there will always be, even in good faith efforts, disagreement on the particulars of categorization.[67] There is nothing but logic and judgment to guide us in our efforts. Thinking about the essential makeup of the polity—its foundations and identity—is not so far removed from data-driven analysis that labels Supreme Court opinions "liberal" or "conservative," and very much like traditional APD approaches that speak of "the state of courts and parties," "the New Constitutional Nation," or "multiple traditions."[68] What are the characteristics that define a "liberal" decision from a "conservative" decision? What are the central features that make the "state of courts and parties" and how does it differ from "the New Constitutional Nation"? What are the elements of a "tradition"? Narrowing in on Orren and Skowronek's terms: if we are examining shifts in "governing authority," we are defining the essence of one set of institutions against the essence of another set of institutions and reaching a judgment that there was enough essential change to label this a "shift" in governing authority. Such concepts can be difficult to pin down. This may give us a good reason to explain our terms, but it is not a good reason to abandon concepts and analysis that are freighted with normative principles and implications. Doing so may well lead us to abandon the most important questions. Yet even for political scientists skeptical of the sort of normative analysis that has been at the heart of APD—that is, from a perspective internal to the polity—we should realize that it is much more difficult to separate "facts" from "values" than mainstream social science suggests.

"Facts" and "Values" in Political Science

A constitution, polity, or regime inevitably involves value choices that may shape how we understand and organize facts. A constitution imparts, even if indirectly, a "way of life."[69] In this sense, the regime, polity, or constitution moves far beyond what we normally consider politics. Indeed, the regime shapes, or constitutes, what we consider politics. If we think of the separation

[67]See George Thomas, "The Qualitative Foundations of Political Science Methodology," *Perspectives on Politics* 3, no. 4 (2005): 858, and Thomas, "What Dataset? The Qualitative Foundations of Law and Courts Scholarship," *Law and Courts* 16, no. 1 (2006): 9–10.

[68]See, respectively, Skowronek, *Building a New American State*, 38; Kersch, *Constructing Civil Liberties*, 12; and Rogers M. Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *American Political Science Review* 87, no. 3 (1993): 549–66.

[69]Murphy, *Constitutional Democracy*, 13.

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of church and state, the division between public and private, or the balance between liberty and democracy in the American polity, they are all the result of—indeed constituted by—value choices.

Consider religion in this context. The very notion of public and private, and how we understand religion against such distinctions, are a result of our constitutionalism (and are suggestive of why ideas might be essential to locate and understand institutions).[70] How we understand religion, and what we count as religion, are in fact the result of modern political thinkers' efforts to soften the tension between politics and theology.[71] Separating religion from the civil and political was a political choice: by removing religion to the newly created private sphere, modern constitutionalism sought to limit theological authority in the newly created public sphere. Religion has not always been separated from the political or civil. In ancient constitutional regimes, it would make no sense to speak of a separation of religion from the civil; nor were the public and private constituted in the way in which we think of them today.[72] Thus even if we sought to simply describe religion, our description of fact rests on a value judgment in constitutional terms.[73] And as comparative constitutional studies have drawn out, even if we wanted to analyze religion in neutral terms, what is included as religion will vary from regime to regime.[74] Imagine, then, a social scientist labeling a Supreme Court opinion "pro-religion"—as a putative description of fact—and we should begin to get an idea of the number of value judgments that coding rests upon. Whether a social scientist acknowledges it or not, such a coding will rest on normative presuppositions. It might seem, for instance, that a Supreme Court opinion that compels the state to provide exemptions for religious believers against a generally applicable law is a pro-religion opinion. Yet what if a secular constitution is the precondition to establishing

[70]Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge, MA: Harvard University Press, 2000).

[71]John Locke, *A Letter Concerning Toleration*, in *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003); James Madison, "Memorial and Remonstrance Against Religious Assessments," in *The Mind of the Founder*, ed. Marvin Meyer (Indianapolis: Bobbs Merrill, 1973). See George Thomas, "James Madison: Secularism and the Logic of American Constitutionalism," in *Secularism and the Enlightenment*, ed. Christopher Nadon (New York: Columbia University Press, Forthcoming).

[72]Numa Denis Fustel de Coulanges, *The Ancient City: A Study on the Religion, Laws, and Institutions of Greece and Rome* (Baltimore: Johns Hopkins University Press, 1980), chap. 7.

[73]Thus an APD work like James Morone's *Hellfire Nation*: *The Politics of Sin in American History* (New Haven, CT: Yale University Press, 2003) rests on a normative understanding of religion and morality (a point Morone is aware of).

[74]See, for example, Jacobsohn, *The Wheel of Law* and Ran Hirschl, "The Rise of Constitutional Theocracy," *Harvard International Law Journal Online* 49 (2008): 72.

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religious liberty? In that case, an opinion limiting religious accommodation against a generally applicable law might properly be characterized as "pro-religion" insofar as it furthers the foundations of religious liberty. Arguments of this sort belong at the center of political development. And even if we attempt to duck them and simply describe facts, our facts will inevitably engage us, even if surreptitiously, in a debate about values.

This is true of self-consciously APD scholarship like Keith Whittington's *Constitutional Construction*.[75] Whittington's work begins from a normative understanding of the American constitutional order, suggesting that the political branches have an important role to play in "constructing" or "building" American constitutionalism. Whittington then engages in a historical and normative analysis that roots "constitutional construction," the political development of constitutional meaning from the nonjudicial branches, in the American constitutional tradition and understands it as a healthy feature of our political development.[76] The companion volume to *Constitutional Construction* was *Constitutional Interpretation*, an explicitly normative defense of original meaning as the only legitimate theory of constitutional interpretation. Curiously, *Constitutional Construction* has figured largely within APD as a descriptive and analytical work, while *Constitutional Interpretation* has been located within normative constitutional theory. Yet *Constitutional Construction* necessarily rests on normative understandings (as Whittington makes clear). Key to Whittington's analysis is a distinction between constitutional "construction" and constitutional "interpretation."[77] Construction, as he conceives it, turns on the distinction with interpretation, which rests on a normative judgment about what is proper constitutional interpretation from the judiciary. Whittington's overall analysis, moreover, rests upon normative judgments about the constitutional order and how it has been maintained. Even if the work were put forward in purely descriptive and analytical terms, it would necessarily rest on normative judgments. Whittington's category of constitutional construction has powerful utility only when it is located within a normative understanding of the constitutional order and what counts as legitimate interpretation within that order. Without belaboring the point, even from a purely analytical perspective we must make sense of facts that are themselves judgments about values.[78]

[75]Keith E. Whittington, *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard University Press, 1999).

[76]Whittington, *Constitutional Construction*, 10.

[77]Keith E. Whittington, *Constitutional Interpretation: Original Intent, Judicial Review, and Constitutional Meaning* (Lawrence: University Press of Kansas, 1999).

[78]A work like Kevin McMahon's *Reconsidering Roosevelt on Race*, for example, seeks to describe the New Deal as "pursuing a more rights-centered agenda," but this fact depends on a value judgment about how we define rights. Other scholarship has illustrated that the Progressives were often "anti-rights" and many New Dealers sought to limit what counted as "civil liberties." See, for example, George Thomas, *The*

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Conclusion: Why Political Development

Not all political developments, of course, stem from constitutional norms. But it is an important task of political science "to distinguish those developments that are constitutionally induced from those that are not."[79] Rejecting Hegelian views of political development, scholars have turned to development as whatever significant change happens to a polity. This is at least in part because modern political science posits a radical distinction between fact and value. But we cannot meaningfully speak of political development without looking at values. Even from the stuff of facts, we need to understand and evaluate the content of political opinions, which either embody or implicate normative judgments. This approach to political development takes seriously the notion that political opinions may well be founded on reason and may not simply be rationalizations justifying an economic, sociological, or psychological interest (even while being open to the fact that reasons may well be a mask for such interests). It also takes seriously the notion that normative principles can be rationally defended and are not simply, or at least not always, "narratives." Capturing and diagnosing the historical play of politics within and against the normative order of the polity animates much of what is best about developmental approaches to the study of politics. From this perspective, political development recognizes the temporal nature of the polity while not losing sight of its normative nature.

Madisonian Constitution (Baltimore: Johns Hopkins University Press, 2008), 115. These "facts" quickly engage us in a debate about "values." Similarly, a work like Ran Hirschl's *Towards Juristocracy*: *The Origins and Consequences of the New Constitutionalism* (Cambridge, MA: Harvard University Press, 2004), which is preoccupied with an empirical analysis of the emergence of powerful judiciaries across the globe, is at root concerned with the health of this development. Hirschl is concerned that the rise of judicial power is being used in ways that empower elites and is harmful to democratic government.

[79]Jeffrey K. Tulis, "On the State of Constitutional Theory," 714.

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