

**Foundational Ideas, Constitutionalism,  
and Public Policy:  
Towards a Paradigm of American Political  
Thought and Development**

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# **Foundational Ideas, Constitutionalism, and Public Policy: Towards a Paradigm of American Political Thought and Development**

## INTRODUCTION

In this paper, I sketch a model or paradigm for understanding American political thought and thus American political development. That plan might seem ridiculously bold, for several reasons, and, whether to deepen my indictment or to plead my exoneration, I want to make clear at the outset that I am aware of the boldness of the plan and its apparent implausibility.

In the first place, American political thought and American political development are typically treated as unrelated subfields. The former is expansive in its reach, historical in its orientation, and normative in its concern. At issue is the meaning of American politics, maybe even more generally the meaning of America herself; classic texts considered range from the “Model of Christian Charity,” a sermon preached upon arrival in America by John Winthrop, the Puritan governor of Massachusetts Bay Colony, to the “Letter from Birmingham Jail” by Martin Luther King, Jr. By contrast, American political development, though also historical, is more focused and more empirical: at issue is how American politics have changed since the establishment of government under the Constitution, with special attention to the growth of the administrative state. How can a single model, much less a paradigm – a model powerful enough to organize a field of study and generate a series of research questions – incorporate such disparate approaches?

In the second place, American political development (APD) seems in the eyes of its most professionally recognized students to be lacking a settled paradigm, not for lack

of looking, but because political reality has not conformed to expectations. The intellectual tradition out of which the subfield grew centered on the question why there was and is no viable socialist party in America; the background paradigm against which the United States was measured and found wanting might be said to be Hegelian, according to which the progress of the political principles of liberty and equality receives concrete actualization in the building of a modern administrative and welfare state. Lacking evidence of clear directionality, scholars of APD are now satisfied with identifying “durable shifts of governing authority,” developing concepts such as “intercurrence” (recognizing that contrary trends sometimes unfold simultaneously and run back and forth across one another, so to speak) and “path dependency” (noting that similar goals may yield subtly different outcomes when developed through one course of events rather than another), useful in explaining particular developments but hardly comprehensive or revolutionary.<sup>1</sup>

It might be noted that American Political Thought as a field is similarly situated. Where once the subject might have been presented as the story of the rise of democracy or the progress of liberty and equality, now there are vibrant narratives about the coming of equality and maybe liberty in relation to particular groups in society – African Americans, for example, or women – but nothing about American society as a whole. Indeed, telling the story of the parts seems premised on their being no possible account that is comprehensive, unless through some sort of affinity of the parts. If inequality and oppression are not assigned to particular groups that once considered themselves representative, such evils might be attributed to the search itself for a common tale.

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<sup>1</sup> See especially Karen Orren and Stephen Skowronek, eds., *The Search for American Political Development* (Cambridge: Cambridge University Press, 2004).

I am aware of the inchoate character of the model – I admit, it does not yet deserve to be called a paradigm – and aware, too, of the inexactness of its categories, pleading on the one hand the limitations of precision that are to be expected in the analysis of politics (limitations explained by Aristotle and Publius<sup>2</sup>), and appealing on the other hand to the good will of my readers in suggesting how the model might be corrected or improved. I think it addresses the problems just noted, however, for it explicates the relation between American political thought and development of the state, it points to a dimension of our political experience where development seems genuinely to happen, rather than lurching back and forth, and it speaks, moreover, to the search for political unity in the midst of social pluralism.

Let me add one final caveat before turning to the model itself. Models and diagrams in political science have been popular for years among those who take a behavioral approach to the study of politics. They seek to find correlations or regularities among variables, and though they are aware of the difference between a correlation and a cause, they seem invariably, so to speak, to offer explanations in terms of causality, often belittling anything else as merely descriptive. Although I suppose my lists might be interpretable as variables, and my charts as causal frameworks, I think there is a difference between acting as a result of a cause and acting for a reason, even though other people's reasons which we find unconvincing might seem like blind causation as far as we are concerned. It is no small part of the task of prudence to understand the causes and the reasons that move human beings in political communities, and political science needs to be open both to listening to reasons where one at first sees only some cause, and to

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<sup>2</sup> Aristotle, *Nicomachean Ethics*, I 1094b12-27; Alexander Hamilton, James Madison, John Jay, *The Federalist*, No. 37.

looking for the causes that form and skew human reason. I mean the framework that follows as a modest effort on the part of political science to inform political choice, not replace it.

## THE MODEL

Let me begin by distinguishing three forms of political thought and action – perhaps I should say, three moments of authority. I will next talk about each one in turn, then discuss how the three forms or moments relate to one another. This initial presentation of the model is designed to speak to American political life today, and maybe even to provide a framework that could be applied to constitutional governments in other places, and I will pause to comment on some contemporary issues that I think the model helps clarify. Finally, I want to historicize the model, so to speak, and suggest what it can show about continuity and change over American history or, as we political scientists like to say, what it can explain about American political development.

The three forms or moments of authority I want to suggest are (1) law and public policy, (2) constitutionalism, and (3) foundational ideas and interests. The first includes the basic policies of government, often hotly disputed between the political parties, sometimes settled as older disputes have cooled. By constitutionalism I mean the basic principles according to which the institutions of government are formed, described, and defended, and basic rights are defined and secured. Finally, by foundational ideas and interests I refer to fundamental commitments, first principles, what people understand to be the truth about what is good and what is just, or at any rate what they hold to be truly good and right; I would use the term “values” if it could be

seen as descriptive, not as implying that views of what is good and just are ultimately brute facts, impervious to rational criticism and change. I should note before proceeding that I adopt the term “foundational ideas” from James Ceaser’s recent work, though I think it has a slightly different instantiation there.<sup>3</sup>

Now let me define each one of the forms by listing the kinds of things it includes and some characteristics of each list as a whole. Law and public policy would include, *inter alia*, criminal law, contract law, tort law, economic regulation, social welfare, health care policy, education policy, technology and research policy, environmental policy, family law and policy, public morals, even foreign and military policy. I do not mean this list to be exhaustive; add something else if you think it belongs, provided government at some level insists on controlling it. Such subjects of law and policy are contended for in what we call ordinary politics, and, as mentioned above, contended for in disputes that typically become partisan. If subject to partisan dispute in the political realm, the various issues raised are also matters of study in the academy; generally speaking, we would call the disciplines that study them policy sciences, at least insofar as they aim to inform policy-making, and it is often hoped, somewhat wryly, that they can be studied if not sought in non-partisan ways.

The second form of authority I have labeled constitutionalism. Here I mean to refer not only to the institutions of government, but to the principles that explain or justify those institutions. Here I aim for, though may not have achieved, a comprehensive list: sovereignty of the people (in other words, political liberty), representative government, bicameralism, separation of powers, federalism, individual

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<sup>3</sup> Ceaser, *Nature and History in American Political Development* (Cambridge: Harvard University Press, 2006).

rights, equal protection, judicial review, limited government, active citizenship. While there is a constitutional politics that went into the establishment of these principles and goes into their interpretation and application, the mood of constitutionalism is agreement or compromise: I mean for this list to include principles and institutions of government that various partisans who engage in ordinary politics would agree upon, or at the very least agree to name, reserving the right to dispute in application. The study of the principles of constitutionalism is called – political science.

Finally, I would draw attention to foundational ideas and interests, the clusters of ideas that justify things that people consider good, or the interests that people recognize as simply or self-evidently good. Again, I'd like to simply list natural rights liberalism, pragmatic liberalism, historicism or progressivism, classical natural law, and leave room for other philosophical systems. Religion counts here, too, so Protestant Christianity, Catholic Christianity, Judaism, and perhaps a host of others, many new arrivals. Among interests I have in mind the sorts that structure people's lives or constitute their identities, so for example, estates in landed property, membership in learned professions or in the trades, perhaps even ethnic identities. While laws and policies, and even constitutional principles, are subject to political establishment, foundational ideas and interests are sheltered from politics as a matter of constitutional right: ideas and religion by freedom of conscience and free inquiry, the basic interests by basic rights of person and property. If regarding policies the mood is partisan, while regarding constitutional principles the mood is compromise or agreement, on these fundamental matters the mood is pluralism: because of freedom of conscience and more generally because of constitutional freedom, no one set of ideas can assert its hegemony, for example as a political religion, and given

the natural tendency of men to differ, pluralism is to be expected. As for the relevant study, perhaps we could attribute it to philosophy and theology for ideas and religion, and for fundamental interests, made to seem something worthy of devotion, to literature.

Now, how do the three forms of authority relate to one another? First, foundational ideas influence both policy views and constitutional decisions, or in other words, people can give reasons for both their policy views and for their constitutional opinions by appealing to their foundational beliefs. More specifically, we expect people with different fundamental convictions to differ in their views of what good laws and public policies would be. If we stop to think about it, we might also expect them to interpret the Constitution in different ways or at least to give different reasons for supporting constitutional principles and practices. Since the mood of the one is pluralism and of the other agreement, this is to say that the same institutions and constitutional principles can be explained or defended in different ways.

Second, constitutionalism mediates between fundamental convictions and public policy; in other words, though we recognize plurality in the fundamental beliefs Americans hold and expect partisan differences to emerge in our opinions about public policy, we expect the path from the former to the latter to pass through a shared constitutional framework. This is the familiar observation that constitutionalism structures and constrains political choice.

[Now, please look at the model in the first three slides in the accompanying PowerPoint presentation.]

## IMPLICATIONS

What are the implications for political thought? The arrows in the model indicate lines of authority, so to speak; constitutionalism constrains how fundamental ideas can be made authoritative law and policy for the society at large. Political thought, however, is left free, and with much to do, visualizable as covering the previous slide with a web of arrows. For example, political thought is needed: to develop partisan coalitions for purposes of making law and policy that link together groups of people with different fundamental ideas; to ground constitutionalism so that it seems reasonable and therefore choiceworthy to people according to their fundamental ideas; to explain and develop constitutionalism itself. One reason the texts usually taught together in courses on American political thought are so various is that that thought serves so many different functions. The model here supposes an analysis of kinds of political thought, but also sets the terms of that analysis.

Moreover, there are probably “feedback loops” that could be identified, so that for example, immigration policy will affect what religions are found among the population, or education policy might affect what philosophies. Politics cannot invade the sphere of conscience, but it certainly can affect it indirectly. Moreover, I don’t mean to suggest this sphere is static, on the contrary, precisely because foundational ideas give reasons, they are subject to reason, so to criticism, and this might result in conversion, or a turning from one idea to another.

What are the implications of grounding constitutionalism in foundational interests and ideas? The point of the model, in one sense, is to show that constitutionalism is not

merely a constraint: It is the locus of consensus or agreement in the midst of pluralism and partisanship. Constitutionalism, however, can be grounded in different ways; that is, different groups, for example natural rights liberals and Catholics, can agree on constitutional principles for different reasons. To be sure, the different reasons are likely to color their interpretations of the Constitution; moreover, some groups are likely to favor some principles more than others, and in fact can be shown to have contributed them to the mix or “amalgam.” But, to reiterate, freedom of conscience means that people can’t be forced, by virtue of their agreement to certain *constitutional* principles, to profess certain *fundamental* principles. American constitutionalism holds that it is possible for people to live together as loyal citizens of a common constitutional order even though they differ on fundamental things.

There are further, more controversial implications of grounding constitutionalism in this way. First, there are sure to be some fundamental beliefs or ideologies, maybe even some religions or sects within religions, that cannot in good conscience reasonably accept American constitutional principles. I see no way not to interpret them and those who steadfastly adhere to them as outside American constitutionalism and so the polity – not necessarily as enemies, though of course as potential enemies. That citizenship and office-holding require taking an oath to support the Constitution seems to me to vindicate this interpretation. Whether out of Aristotelian confidence in the “natural instinct for what is true” or out of Christian charity, Americans tend to err on the side of tolerance, at least to accept as members those who agree for the most part – as, for example, at the Founding, the Quakers. There is at least optimism that self-evident American goods will

win over non-jurors. Still, not everything can fit in the “left-hand” column in the model: e.g., Communism, Nazism, and perhaps Jihadism.

## AMERICAN POLITICAL DEVELOPMENT

I promised at the outset to mention the implications of the model or paradigm for the study of American political development. What I would suggest is that the full model develops over time, and that significant political decisions and constitutional crises lead the model to change. Without trying to provide a comprehensive account of such changes, I will offer a slide [the fourth in the PowerPoint] that addresses how the model appears or develops – or how some leading advocates might want to see it developed – at three different moments in the past.

First, consider the English constitution, understood in the terms of colonial settlement, and then decisively altered in the Revolution. The model suggests the fluidity between different columns or realms of authority, arguably recognized in speech but seldom clearly distinguished in practice. Liberty of conscience, as I have said, separates the first column from the second and is a Revolutionary development; so is the line that separates the second column from the third, namely the decision in favor of written constitutions, clearly distinguishing constitutional texts and principles from the tumult of ordinary politics. Second, consider the crisis over slavery, say from 1840s-1870s, as the country faced a new fundamental belief in the positive good of slavery (and a new activism on the part of abolitionism) that led to Civil War and the addition of equal protection to constitutional principles. Here, I think, the model illustrates the seriousness of the questions that precipitated the conflict and the constitutional change that resulted.

Finally, consider twentieth-century liberal pragmatism, that sought to soften the formalities of constitutionalism in the name of rational policy formation and in the opinion that fundamental difference could be reduced to “value disputes.” Here the constitutional system was alternately disputed and accepted: the foundations shifted while many of the forms seemed to remain tacitly in place, albeit as relics and without reasoned defense. In more recent years, it is in question whether the forms can find new reasons to defend them, or perhaps whether old reasons can again appear cogent.

The chart here is only suggestive, but with a little imagination it can be applied to other critical periods in American history: Jacksonian democracy, for example, or Progressive

## CONCLUSION

How does my argument here differ from *A Theory of Justice* of John Rawls, as modified by his subsequent book *Political Liberalism*.<sup>4</sup> I mean for my model to serve as terms of analysis in political science; within those terms, Rawls’ theory would have a place in the left-hand column, as a political philosophy explaining to liberals why to accept constitutionalism as just. Rawls cannot, however, assert his hegemony over other theories or faiths; and his theory itself does not have constitutional status. Rawls, in effect, wants to insert his theory in between my lists of fundamental ideas (on the left) and of constitutional principles (in the middle), as a kind of super-constitutionalism vindicated by “public reason.” It would take a longer argument to explain – but the model certainly indicates – how that attempt severs the bond between actual

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<sup>4</sup> Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), and *Political Liberalism* (expanded edition) (New York: Columbia University Press, 2005).

constitutional principles and fundamental beliefs, at once violating the rights of conscience (excluding all but deontological liberals) and undermining the heritage of constitutionalism as a noble choice.