Maladapted: An Exhausted Constitution, an Exhausted Governing Elite

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We can start at the end. The final paragraph of Stephen Skowronek's trenchant new book, *The Adaptability Paradox*, closes on this sobering note:

> There may come a day when we look back on the current predicament as just another rough spot on the road to constitutional democracy in America. But a lot will have to change if we are to pull ourselves past this one. A fully inclusive polity needs a strong constitution of its own. It needs arrangements that all its participants trust and that effectively manage their conflicts. Arrangements of that sort are not yet part of our Constitution. If they can't be built around it, if they can't reduce the pressures on it, if they can't in some agreeable way rewire and reinvent it, it's hard to see how the constitutional democracy we have historically aspired to exemplify gains a new lease on life. (2025, 236)

There is no shortage of answers as to how the American experiment in constitutional democracy ended up here. Much of the first wave of diagnoses, and much political science scholarship, focuses on Donald Trump's emergence in 2015 and election in 2016. Trump's election signaled the essential racism, xenophobia, sexism, and white identarian tendencies of American voters—but

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before that there was a body of scholarship that made the same diagnosis about the Tea Party. Comparative explanations grounded in populism and authoritarianism were also homed in on. The United States was one more country caught in a wave of democratic regression as elites in wealthy Western countries took their lumps. A more prescriptive but equally common diagnosis was that progressives should, like the conservatives had with the Republican Party, take over the Democratic Party and rescue it from its (putative) center-left, neoliberal zeitgeist.

Without gainsaying the validity of some of these explanations—and even as others appear incomplete in light of the 2024 election and accompanying voter file data—*The Adaptability Paradox* outstrips these explanations in breadth and depth (Catalist 2025). This book gets to the root of the issue, one that is also the central problem or pattern of American political development: the repeated ability of political elites to coalesce around an inventive adaptation of the Constitution—and their inability to do so since the 1960s and 1970s in the wake of constitutional full inclusion. Whatever else comparativists might offer, this is a peculiarly American problem, one that compels what Skowronek offers: an inward (if far from parochial) understanding that dispenses with patchwork fixes (e.g., party reform, the filibuster, Supreme Court term limits) and stares down a constitution stuck in a rut, unable to regenerate, with two opposed sets of elites whose only move seems to be doubling or tripling down on their political commitments.

This article highlights and airs out three key episodes *The Adaptability Paradox* identifies from the past century of American politics: the Progressives' reordering of the Constitution to make way for the modern state, indeed modernity itself; the Warren Court's assertion of judicial supremacy and polarization of the Constitution; and the emergence of dueling "new classes" of liberal and conservative elites in the 1970s. Each development built on the prior and informs how we have ended up at a political juncture this vexing and disputatious. We are in need of imaginative large-stakes thinking about the Constitution. Yet we have been met with an exhausted (and exhausting) set of dichotomous elites who seem unwilling to or incapable of meeting the moment.

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Because the historiography on the Progressives has so muddied the waters, *The Adaptability Paradox* points historical social scientists to a conceptually useful understanding of who the Progressives in fact were.[1] In the least,

1. Committed methodologically and politically to "history from below," historians have long argued that progressivism is a conceptual grab bag or simply an "era" (1890–1920). When

Skowronek shows, the Progressives were a cadre of elites—from Croly to Wilson, from Roosevelt to Dewey, and scores of lesser lights—who all agreed that the nineteenth century's Constitution, to say nothing of the framers' Constitution, was no longer up to the task. Expertise—"knowledge-based authority"—lodged in a modern administrative state was a necessary adjunct to a constitution that did not know industrial capitalism and its corporate behemoths, urbanism and its social problems, along with the limited imagination of the "professional politician," the party man (Skowronek 2025, 87). In addition to building or wrenching into modern form key civil society institutions (e.g., the modern research university, think tanks, charitable foundations), Skowronek shows that it is shortsighted to see the influence of the Progressives abruptly ending just as the "era" named after them closed out in 1920. Their promise of a new constitution where expert governance cut across the founders' structures (especially states' rights and separation of powers) was, with the assist of the Great Depression and World War II, solidified by the Administrative Procedure Act (APA) of 1946. The promise of their administrative state was that expertise could serve "the operations of [all] three constitutional branches," indeed "bridging what the Constitution separated" (88).

Even if most conservatives long chafed at the very notion of this (by their lights) "faddish" expertise, modern American democracy is difficult to imagine without the Progressives' critique and reordering of the Constitution via a modern administrative apparatus. Seen in this consequential light, Progressivism is a success story, not merely an incoherent jumble of this-and-that reform policy, and the very opposite of a project hemmed in by just so periodization schemas. It is no mistake that as conservatism evolved from the "movement" thinking of William F. Buckley and *National Review* et al. into one where governing was possible, their self-understanding expanded from the New Deal as their bête noire to the Progressives and the modern state—the moment where the constitutional train ran off the tracks. We should take conservatives seriously and literally when they tell us that the administrative state, as an institution and ideology, is their enemy in its fullest form (Roberts 2024).

Reinforcing this developmental understanding of Progressivism is another of the book's contributions: a weighty look at the Warren Court and its legacy. If constitutional law professors can criticize the Warren Court's rights revolution only from the left, and conservatives (legal elites and otherwise) now have larger targets, Skowronek throws into sharp relief how these justices "left the rule of law and the determination of fundamental rights markedly more difficult to

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they do take up elites, they often conclude that Progressivism was a disappointing corporate liberalism.

distinguish from policy and ideology" (2025, 132).[2] Building out the living constitutionalism of the Progressives—focused as it initially was on remaking notions of public law to be inclusive of expert-driven administrative law—in *Brown v. Board of Education* (1954), the Warren Court breezily married fundamental rights to the Progressive creation of modern social scientific expertise. The Court admirably laid segregation on its deathbed, but there was no going back after *Brown*. That case opened the door to a fully "unbound" Constitution and presaged what we have today: nationalized, dueling sets of fundamental rights claims often meant to cancel or encroach on each other (see chap. 3).

Even more provoking, *The Adaptability Paradox* shows that for all the persistent complaints about the Roberts Court arrogating to itself vast parcels of policy terrain, it was the Warren Court that inaugurated and practiced modern judicial supremacy (Bouie 2020). Unable on its own to compel integration of public schools and spaces in the stubbornly segregationist South, the Warren Court offered instead an assertion in *Cooper v. Aaron* (1958): that the Court was supreme, the final arbiter of constitutional meaning. Unbowed and confident that it could lead the way, the Court famously pressed on the gas in the 1960s via its "rights revolution." Even as conservatives were slow to lose their affection for segregation in public law, it was by now quite clear that there were two diametrically opposed Constitutions. In the 1960s "the justices prompted an ever-wider set of interests to question whether *that* Constitution was *their* Constitution" (Skowronek 2025, 133; emphasis in the original). True enough, the Roberts Court has been happy to use judicial supremacy for its preferred ends, but without the Warren Court's initial assertion and example, this "poor substitute" for a new adaptation could not be so easily characterized as turnabout being fair play (119).

If this is bracing for the reader accustomed to encomiums of the Warren Court, that is why it is necessary. It can be simultaneously true that the Warren Court was often enough on the side of angels and that it (further) polarized the Constitution via its willful, often sloppy, results-driven body of public law. That these justices did not take "doing law" seriously is epitomized by Justice William Brennan's admonition that counting to five votes was "the most important rule in constitutional law" (Powell 2008, 16) and by Justice Abe Fortas's penchant for drafting an opinion with the result he wanted and then tossing it on his law clerk's desk with the admonition, "Decorate it" (with precedents; Kalman 1990, 272). The Warren Court moralized constitutional law, for better and for

2. In the legal academy, assessments of the Warren Court range from an amen corner to chastising it for not being even more bold in pushing the law in a more progressive direction—though this being a plausible counterfactual is at least debatable. Still others in the critical theory tradition argue that *Brown v. Board of Education* was a failure and did little more than show the limits of rights-based liberalism.

worse. As *The Adaptability Paradox* shows, it elevated political principles over constitutional forms and structures. In the process of doing so, and without much foresight (something also true of its new Constitution of criminal procedure rights), constitutional law essentially boiled down to rights claims built on first philosophical principles and contestable assumptions that were often impossible to judicially resolve (Stuntz 2011). If we cannot grapple first with the unvarnished legacy of the Warren Court, we cannot find a way out of the current bind.

On the heels of the Warren Court and its normatively charged approach to public law came the "new class's" thin 1970s progressivism and the conservative response (seen most clearly in the Federalist Society). The new class, a subject of much academic and journalistic debate in the 1970s, fell out of fashion in the 1980s as social scientists turned to other concerns. But as Skowronek shows, understanding the new class is critical to understanding the subsequent lack of constitutional adaptation—and the ferocious conservative answer that has led to the current stalemate.

If *The Adaptability Paradox* takes a somewhat critical posture toward the new class (Skowronek 2025, 217–21), I want to briefly press it further here. Some of the new class's academic progenitors (like Daniel Bell) grew wary of it as a concept as it morphed into a conservative cudgel, but this class is tractable. As Barbara and John Ehrenreich recognized, this was "the professional-managerial class," knowledge workers who thrust to the fore a post-material progressive politics in the 1960s and 1970s (Ehrenreich and Ehrenreich 1977, 7–24). Think here of elite or high-level journalists; lawyers (especially the public interest variety); academics (especially social scientists and humanists); doctors (especially in public-facing roles); urban and city planners; human and public relations specialists; social workers; public school teachers and administrators in large cities and districts; education consultants; architects; artists of all types; some denizens of Fortune 500 corporate suites; many state and federal civil servants in Senior Executive Service positions (and like roles); nonprofit and nongovernmental organization workers; grant administrators at legacy foundations; clinical psychologists, psychiatrists, and therapists (especially in public institutions); community organizers; and so on (Spenkuch 2021; al-Gharbi 2024). They were not owners of capital—they wanted to take down while often simultaneously serving the proverbial top 1%—yet they were also in an antagonistic relationship with the working class (often framed as paternalism) (Ehrenreich and Ehrenreich 1977; al-Gharbi 2024). Exemplified by the "radicals-in-the professions" movement, this left-liberalism dropped the pragmatic, experimental, provisional truth claims of their Progressive forebears in favor of an ideologically charged moral certitude. This was a certitude the new class often reified with claims to expertise and competency via its elite academic

credentials as it declared the "public interest" to be in full alignment with its policy and ideological goals (McDermott 1969; Kloppenberg 1988; Teles 2008; al-Gharbi 2024; Macedo and Lee 2025).

The claim in *The Adaptability Paradox* that the new class had a Janus-faced attitude toward the administrative state, dissolving most everything into a policy concern while making public policy about everything, is also on the nose. Thus, these latter-day progressives were unimaginative about the constitutional adaptation needed for a full-inclusion polity. One can press further here too. The new class's attack on the administrative state from the left can be understood as the result of utopian visions of participatory democracy and concomitant policy proposals—and their often swiftly apparent failure (Torrey 1997). Just as much, the attack was the result of the new class claiming that a by-and-large liberal state was not activist enough. The thrust of their complaint was that the agencies were not pushing policy to the left as fast as possible—this was stuff of many class members' entire professional existence and career (Skrentny 2014; Berman 2022; Cebul and Geismer 2025). The reality was an "inside-outside" game the new class played with a vastly expanded (even compared to the New Deal) administrative state and related civil society institutions (what we might today call "the groups" and the "omnicause") (Shefter 1994, 88–93; Berry 1997; Cebul and Geismer 2025, 66–67).

By that same token, the new class's thinking about the Constitution and public law was sorely lacking. In the 1970s, many progressive legal academics gave up on the constitutional text altogether. There was an "unwritten Constitution" that did not pose an impediment to constitutionalizing their policy agenda (TerBeek 2021, 878). One liberal law professor cut to the quick—this was constitutional law via reference to the ideological sensibilities of "*New York Review of Books*" readers (Ely 1978, 37). Not only was there no longer any attention to constitutional forms and structures, but also there was little attention to the Constitution at all. It was just a collection of increasingly ambitious positive rights claims—even as new class cause lawyers seemed oblivious that these claims far outstripped the capacity of judges to make them real in any meaningful sense. Public law was now fully moralized and instrumentalized. Even more than the Warren Court's "rights revolution," this was the zenith of legal liberalism. In short, if no doubt earnest in their aims, the new class was often enough its own worst enemy. They spent down much of the cultural capital the Progressives had built up around expertise and the promise of neutral administration. Calcified in thinking that they had cracked the code, the new class (and their ideological descendants) grew conservative: their focus became protecting their control of key institutions against the conservative insurgents.

And this leads us, then, to another contribution of the book: its synthesis and analysis of the conservative legal movement, especially the Federalist Society.

Often enough, the Federalist Society is both feared and dismissed. The group is ascribed the power of a political puppet master while simultaneously derided as simply a clever constitutional "messaging" outfit whose ideas are intellectually unserious. As *The Adaptability Paradox* argues, this misses the point. Even if the originalism that coheres their thinking is instrumental and stands in for conservative policy preferences, their diagnosis of the constitutional conundrum is far more penetrating than what the new class and legal progressives ever offered. In fact, legal progressives have been so discombobulated that they created a liberal "living originalism" and promised that they take constitutional text and history seriously too (TerBeek 2021, 880). This points up why the Federalist Society and the constitutional thinking it has spurred are nothing less than the "most broadly based, deliberately conceived, and collectively self-conscious vehicle for reordering the state to emerge from the rights revolution" (Skowronek 2025, 221). Conservatives are making a concerted effort to reorder the Progressives' constitutional adaptation and the APA's uncertain settlement of it (Wurman 2017, 22–23). But at the same time, this conservative new class—not by mistake drawn from the ranks of constitutional lawyers—and the constitutional settlement they hope to achieve via originalism are likely to only further strain current tensions: "If the text is the only binding element we have left, we are in deep trouble" (Skowronek 2025, 225–29). These conservatives end up as the mirror image of the new class: earnest, full of moral certitude, but without a unifying solution for a full-inclusion Constitution.

The problem, then, runs even deeper than we suppose. It is not just that our political parties are polarized. We are polarized on the Constitution itself, with irreconcilable understandings of what it allows, blocks off, and requires. If there is a way out—*The Adaptability Paradox* eschews a list of preferred policy reforms that promise the off-ramp—it may be that this time around the problem is with our elites rather than the Constitution itself. Perhaps it is comforting that, for example, we have seen the emergence of racial depolarization over the past ten years as class-based voting is reasserting itself (Catalist 2025). This may open the path toward a full-inclusion Constitution. This may be cold comfort, Skowronek might reply. We are short on time, and what rescued us in the past was a "new governing cadre" that offered something original to reach a broadly acceptable adaptation (Skowronek 2025, 86). The Constitution is not "a machine that will go of itself" and never has been (Kammen 1986). The moment requires genuinely new thinking, even as the iterations of progressivism and conservatism that appeared in the 1970s have done little more than work themselves pure and pulled further apart.

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We can end at the very beginning. In 1982, Skowronek published *Building a New American State*, one of the foundational works of American political

development (APD) and a book that still repays reading. Along with scholars like Karen Orren and Theda Skocpol, Skowronek grew APD into a subfield that now counts many adherents. With *The Adaptability Paradox*, he reinforces what is distinctive and illuminating about the APD enterprise. This book is in some (reductive) sense a history of American constitutional politics. Yet it is more than that, and more to the point, it is a book that could not have been written by a historian, a legal scholar, or a standard-issue political scientist. This is a work of penetrating analysis, but most importantly it cuts to the core of the problem of this moment in our politics, a problem that is inherently a developmental one. It is also a peculiarly American one. It is going to require, as Woodrow Wilson once put it, combining "cosmopolitan what-to-do" with the "American how-to-do-it" (Skowronek 2025, 87). The stakes are clear and of the highest order. *The Adaptability Paradox* has shown us how to think about the problem. It is past time to get to work.

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