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Marc Landy and Sidney M. Milkis
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American Government

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1 Introduction

American Government: Rights and Democracy, Consensus and Conflict

Chapter Overview

This chapter focuses on:

- ☆ The view that ideas about rights and democracy and the struggles that have taken place over the meaning of rights and democracy are the very heart of American political life
- ☆ The meaning of classical liberalism and the Constitution as the concrete embodiment of that political philosophy
- ☆ The role of religion and localism in nurturing democracy
- ☆ The different meanings of the words *liberal* and *conservative*
- ☆ The distinctive approach to studying politics and government called American political development

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"I Have a Dream"

On August 28, 1963, 250,000 people marched on Washington to protest discrimination against African Americans and to celebrate the rise of the Civil Rights Movement. Race relations in the South were dominated by so-called Jim Crow laws, enacted at the end of the nineteenth century, which imposed racial segregation in all aspects of life. In *Brown v. Board of Education of Topeka* (1954), the Supreme Court declared the so-called "separate but equal" doctrine in education policy unconstitutional. Nonetheless, many Southern schools remained segregated. Not since the turbulent Reconstruction Era that followed the Civil War had the South been so alienated from the rest of the country.

When civil rights demonstrations broke out throughout the South to protest this racial caste system, local police brutally repressed efforts to break down what the distinguished African-American sociologist W. E. B. Du Bois had called the "color line." When African-American students tried to enter Little Rock High School, a crowd of white parents cursed and threatened them as the governor of Arkansas, Orval Faubus, blocked the door. A particularly ugly confrontation took place in Birmingham, Alabama, where one of the Civil Rights Movement's most important leaders, Martin Luther King, Jr., was jailed. President John F. Kennedy had been reluctant to take on civil rights, arguing that it was up to local officials to enforce the law. After Birmingham, however, Kennedy gave his support to a comprehensive civil rights bill making racial discrimination in hotels, restaurants, and other public accommodations illegal and giving the attorney general the power to bring suits on behalf of individuals to speed up lagging school desegregation. The measure also authorized agencies of the federal government to withhold federal funds from racially discriminatory state programs.

When this bill ran into stubborn opposition in Congress, civil rights leaders organized the largest single protest demonstration in American history. King's speech at the Lincoln Memorial was its climax. Late in the afternoon, the summer heat still sweltering, King appeared at the microphone. The crowd, restlessly awaiting King's appearance, broke into thunderous applause and chanted his name. King began by praising Lincoln's Emancipation Proclamation as "a great beacon of hope to millions of Negro slaves who had been seared in the flames of withering injustice." But,

> [O]ne hundred years later, we must face the tragic fact that the Negro is still not free. One hundred years later, the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One

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Martin Luther King, Jr., called upon Americans to practice the political and social ideals of the Declaration of Independence.

> hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize an appalling condition.

This litany of oppression might have elicited anger; indeed, some of King's followers had been growing impatient with his peaceful resistance to Jim Crow and its brutish defenders. But King, an ordained minister, spoke the words of justice, not revenge: "Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred." A reverend might have been expected to invoke the warnings of the biblical prophets in calling America to account; however, in the wake of a century's scorn, King appealed to America's charters of freedom:

> When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.

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King lamented that America had not lived up to those famous words. Even after the Brown case had interpreted the Constitution so as to fulfill the promise of the Declaration of Independence, segregationists prevailed. The "check" that promised freedom had come back marked "insufficient funds."

Still, he counseled continued faith in the promise of American life. African Americans should "refuse to believe that the bank of justice is bankrupt." At the same time, King warned, their faith in American justice could not last much longer; the time had come "to make real the promises of Democracy." "Now is the time to rise from the dark and desolate valley of segregation to the sunlight path of racial justice." His indictment went beyond the South. "We can never be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing to vote for." The crowd shouted and clapped in cadence with him. Inspired by this surge of feeling, King abandoned his prepared text; but even as he spoke "from his heart," in words that would make this address memorable, King's sermon had a familiar ring, drawing again on the Declaration of Independence:

> I say to you today, my friends, that in spite of the difficulties and frustrations of the moment, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold this truth to be self-evident, that all men are created equal". . . . When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last! Free at last! Thank God almighty, we are free at last!

As King's inspiring speech made crystal clear, African Americans were not fighting just to get more economic and political power, they were fighting for their *rights* – the inalienable rights promised to all Americans by the Declaration of Independence. A right is a claim that belongs to an individual *naturally*; natural rights cannot be violated by any person or society. The Constitution provides a list of rights, among the most hallowed of which are freedom of speech, assembly, and religion; equal protection of the law; and freedom from being deprived of one's property without due compensation. The Declaration calls these rights *unalienable* to emphasize that they cannot be taken away, even by the majority. But as the whole history of African Americans makes dreadfully clear, their rights had been *alienated* and not

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by a king or a tyrant but by the actions of their fellow Americans. Several clauses that protected slavery were included in the original Constitution that was ratified by the people of the original states. The state legislatures that passed the Jim Crow laws and the governors who obstructed school desegregation were all popularly elected.

Like the word *rights*, the word *democracy* is cherished by Americans. We insist that our laws and the actions of our representatives reflect the people's will. But as the civil rights story shows, rights and democracy can come into terrible conflict. Indeed, such tension will arise whenever individuals or minorities claim that the majority is depriving them of their rights.

The challenge of this book is to convince the reader that the most essential ideas for understanding how Americans act politically are ideas about rights and democracy and that struggles over the meaning of rights and democracy are the very heart of American political life. The need to balance the two arises precisely because they are both such highly cherished values. They are both desirable, but they are not identical, and sometimes they pull in opposite political directions. Indeed, the book will show that much of the conflict and tension in American politics is attributable to the inherent clash between rights and democracy.

Rights

The problem of how best to secure rights dominated the thinking of the authors of the Declaration of Independence and the Constitution. After proclaiming the existence of "unalienable rights," the Declaration of Independence explains that "to secure these rights, governments are instituted among men." Thus government exists solely for this crucial but limited purpose. The deepest conviction that the Founders held about government is that it should be limited. In their minds, securing rights and limiting government were synonymous.

Originally developed by the great English political philosophers Thomas Hobbes and John Locke, this rights-based approach was a sharp departure from earlier political philosophical traditions. Those had stressed the duties and obligations individuals owed to the political community rather than the rights and freedoms of individuals. Hobbes and Locke influenced the American Founders to believe that individuals have these rights by nature and therefore the community may not trample on them. This new stress on individuals was as radical as the stress on rights. Traditionally, people conceived of themselves as members of a greater

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whole – a clan, a tribe, a city – not as solitary persons. Of course, Americans still recognize their ties to family, community, and nation, but Hobbes's and Locke's theories regarding the primacy of the individual have had a profound effect. Rarely do people disregard their own interests and desires simply because they recognize that they also belong to a larger whole. Americans are not taught to think of themselves merely as parts of a larger organism. It is considered legitimate and acceptable for Americans to pay a lot of attention to what is best for them as individuals and what rights they have on an individual basis. In recognition of John Locke's crucial role in developing this new understanding of the primacy of the individual, this philosophical perspective is often referred to by scholars as Lockean Individualism.

The principles of Lockean Individualism just described are also often referred to by political theorists and historians as classical liberalism. This use of the term *liberal* should not be confused with the one popular in contemporary American politics. When *conservative* politicians criticize their opponents by calling them "tax-and-spend liberals," they are not talking about classical liberalism. The classical liberal tradition is simply the rights-based perspective embraced by the authors of the Declaration of Independence and the Constitution.

The Framers of the Constitution believed that the greatest threat to inalienable individual rights came from the tyranny of the majority. They feared that, by dint of superior numbers, a majority would grab the reins of government and use that power to deprive others of their rights. Checks on the powers of government are designed to prevent a majority, or a minority for that matter, from behaving tyrannically. Government secures life, liberty, and the pursuit of happiness by establishing the rule of law to ensure that law-abiding citizens are protected from assault by the lawless. It also protects against foreign attack by providing for the common defense. Pursuit of happiness is the most difficult of the three inalienable rights to define and comprehend. Almost all the colonial charters referred to "life, liberty, and property." Yet in drafting the Declaration, Jefferson substituted "pursuit of happiness" for "property." It appears that this phrase is supposed to guarantee a right to property and more, but what more? It does not promise happiness itself, but only the right to "pursue" that dream. The difficulties that have arisen from this complex formulation are so profound that we devote an entire chapter, entitled Political Economy, to tracing how disputes about what government should and should not do to secure the pursuit of happiness have repeatedly been a source of conflict in American political life.

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Box One: Contemporary Politics

Illegal Immigration

Tens of thousands marched in the 2006 Great American Boycott and Immigration Rights Rally in New York City to protest proposed reforms of U.S. immigration laws.

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The Census Bureau estimates that each year 500,000 people come to the United States illegally. Of the 33.1 million foreign-born residents of the United States, roughly 9 million are illegal immigrants. Clearly, the millions of illegal immigrants who risk their lives to come to the United States do so in the "pursuit of happiness" – abandoning their homes, friends, and often their families in order to try to make a better life. For the most part, they work hard and live frugal lives in order to send money back to those they have left behind. But because they are not citizens, they are not entitled to the rights of citizens. They cannot vote, obtain valid driver's licenses, obtain Social Security cards, or enjoy many of the other benefits that citizens enjoy. And they live under the constant threat of being deported.

Many advocates for illegal immigrants would like to eliminate these disadvantages and narrow the distinction between who is a citizen and who is not. They would grant amnesty to those illegals who are already here and make it much easier for illegal immigrants to become citizens and to partake of all the various education, health, welfare, and other benefits that citizenship confers.

Those who oppose such changes do not deny that a right to pursue happiness exists but rather believe that this right is meaningless in the absence of a government strong enough to protect it. An essential power of such a rights-ensuring government is the ability to distinguish between who is and who is not a citizen of that government and who is entitled to the full measure of its protection. Therefore, the advocates of stricter control of illegal immigration support stricter border control, including building a fence along the border with Mexico. They also oppose providing greater public benefits to illegal immigrants on the grounds that to do so is to reward criminal behavior.

The dispute over illegal immigration is but the first of many examples in this book of how different understandings of rights arise in practical political circumstances and how such differences are dealt with democratically.

In declaring that "all men are created equal," the Declaration implies that the "pursuit of happiness" requires some form of democratic government. Believing that democracies are more likely to protect rights than

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other forms of government, especially the sort of monarchy against which the American colonies revolted, the Declaration required that governments derive their "just powers" to secure rights from the "consent of the governed." Therefore, no matter what a governing scheme looks like, it is legitimate only if it has gained the approval of the people. That is what is meant by the term *popular consent*, the democratic principle underlying the commitment to inalienable rights. In theory, the Declaration calls for limited democratic government that will protect natural rights; in practice, maintaining a balance between popular rule and individual rights has been an enduring challenge.

The Constitution

The Constitution gives concrete governmental form to the principles of limited government, securing rights, and popular consent. Ratified by the thirteen states that formed the original republic, the Constitution divides power among three separate branches of the national government and between the national government and the states. The legislative branch, called Congress, is composed of two separate bodies, the House of Representatives and the Senate. The executive branch is headed by the president. The judicial branch consists of three levels of federal courts with the Supreme Court as the highest level. Each of these three branches is treated in a separate chapter.

Some of the Constitution's most essential features, which we will discuss in Chapter 3, were purposely intended to protect rights by limiting majority rule. For example, Supreme Court justices are appointed for life, meaning that elected representatives cannot remove them except through the impeachment process. Because they are not beholden to popular opinion, judges are expected to give greater care and attention to the rights of minorities. Every state elects two senators regardless of its population. Therefore, even though today California has more than thirty times as many people as Wyoming, both those states have the same number of senators. This was done to ensure that the states with large populations did not threaten the rights of the citizens of the smaller ones.

In fact, the constitutional system of checks and balances, which regulates the relationships among the legislative, executive, and judicial branches, is designed especially to filter the voice of the people, to moderate the intemperate passions that inevitably well up from time to time in a democratic society. The House of Representatives, elected directly by the people, was expected to be more responsive to such passions. But as the most important architect of the Constitution, James Madison, noted, the Senate, executive, and judiciary would be more independent of public opinion

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