



THE BROOKINGS INSTITUTION
***Democracy in Question* podcast**

“Is ‘consent of the governed’ possible amid polarized politics?”

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Guests:

Jonathan Rauch
Senior Fellow, Governance Studies, Center for Effective Public Management
The Brookings Institution

Host:

Kathryn Dunn Tenpas
Visiting Fellow, Governance Studies
Director, The Initiative on Improving Interbranch Relations and Government
The Brookings Institution

Episode Summary:

The Declaration of Independence declared that legitimate government rests on the “consent of the governed.” Where does the social contract between Americans and government stand today? In this episode of *Democracy in Question*, host Katie Dunn Tenpas asks Brookings senior fellow Jonathan Rauch to trace the idea from founding principle to present-day practice.

HARRY HUMPHREY: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights. That among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

TENPAS: Hi, I'm Katie Dunn Tenpas, a visiting fellow in Governance Studies at the Brookings Institution and Director of the Initiative on Improving Interbranch Relations and Government. And this is season three of Democracy in Question. This season, we're doing something a little unusual for a policy podcast. We're going back, 250 years back to the birth of the Declaration of Independence, the document that outlined exactly why the United States of America came to exist in the first place. Last episode, we unpacked arguably the most well-known phrase, "Life, Liberty, and the pursuit of Happiness." Now we're shifting focus to an equally important but lesser known phrase: "consent of the governed."

To understand the meaning of this phrase today, I'm excited to welcome my wonderful colleague, Jonathan Rauch. Jonathan is a senior fellow in Governance Studies and the author of nine books, most recently, *Cross Purposes: Christianity's Broken Bargain with Democracy*. Jonathan's also a contributing writer to *The Atlantic*, and his research addresses all things public policy, culture, and government.

Welcome, Jonathan.

RAUCH: Thank you. I'm happy to be here.

[1:51]

TENPAS: Yeah. So, we'll start sort of at the very basic level and, by asking you the question, what do you think the founders meant when they wrote the phrase "that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed"?

[2:09]

RAUCH: Well, there are four words there that give us a clue. "Just powers," "rights" of people, "instituted" government, and "consent" of government. And what they were doing there was going all in with what was, at the time, a radical new theory of government. Before that time, the person running the country, running the government was a monarch who was there by divine right, or was a tribal chieftain, who was there because the oracle put them there, or a priest, or a warlord.

In about 1660, a philosopher named John Locke comes along and says, No, the power has to be consent based. He's working on top of a philosopher named Thomas Hobbs, who comes about a generation earlier. Hobbs says, Everyone in society is at war with everyone else unless you have a government, a sovereign. So you have to vest all the power in the sovereign, the king. But once you do that, you're stuck. The king can do whatever he or she wants.

Locke comes along and says, You do need to have power vested in the government, but it has to be consent based. And if the government violates the people's rights, the people can take the consent back.

And that's what the founders were doing to King George. In 1776, they were saying, We no longer consent. Your government is unjust and it is not properly instituted. And that was a breathtaking step to take at the time.

[3:54]

TENPAS: And so by empowering the citizenry, we consent to government and to laws and to things of that nature. In the United States, we have a representational democracy, so we vote for people to represent us in what we hope will be our best interest.

But how does that connection work between voting and consent of the government, especially in 1776 when the voting franchise was really only extended to white male property owners?

[4:24]

RAUCH: Well, that's a big question. So if you'll permit, I'll give a big answer. I'll go back right to the beginning.

So it's obviously true that every American does not consent to every particular policy the government does. You might not like your tax rates, you might not like your DMV, all kinds of things that are specifics that people don't consent to.

So what are they consenting to? Well, the first, of course, is the Constitution, which says, You're going to have a voice through elections, and so will other people, and we'll all agree to be governed as a result of that. And that's a pretty strikingly fresh and important proposition.

But there's an even deeper layer of consent, which a lot of people miss, which I think is super important and interesting. And it goes back to Locke. Locke's theory of government is what's called the social contract theory. He says, We're all born into a society, and implicit in that society is that we make a contract with each other to obey each other's rights and God-given prerogatives. And that's a deal that I make with you and you make with me, and we both appoint a steward, a government, to help us with that, to make sure that these rights are enforced.

But at bottom, what it is saying is not that we're making a social compact with the government above us. We're consenting to a common society in which we agree to respect each other's rights. It's consensual and it's mutual. And at the lowest level, the most fundamental level, that's what the founders meant by consent.

[6:14]

TENPAS: And so at the time, or at least in John Locke's approach to this, the idea was that in order to kind of prosper and progress, we need a government. And so we will all agree to enter into this sort of compact with one another. Can you talk about maybe how that's changed over time? Because right now, it sounds very idealistic.

And with an electorate or a citizenry that's so polarized, you know, I sort of wonder, are we really entering into these contracts with one another? Or do we appreciate the fact that that this existed?

[6:45]

RAUCH: Well, of course, it's never been a literal contract. Certain types of libertarians will say, Well, I never signed a contract. Government has no power to tax me! So that's not what we're talking about. We're talking about a social contract that we're born into and that permeates our society. But does it change? Yeah, of course it does. It has to change.

Also, remember in that clause that you read at the beginning, the word "just," the "just powers" of government. Well, that definition has changed because the original compact, in terms of who could vote, who could be represented, who could serve as president, who could serve in Congress, was limited to white males of property.

The Declaration, and of course it's more famous clause, "all men are created equal," sets in motion a process to expand that circle of justice, to say government is not properly instituted unless it includes more than just that narrow universe. So of course, it gets rid of the property holder designation, it gets rid of the literacy tests, it allows Blacks to vote, it allows women to vote. And in 1965, when we actually become a full democracy for the first time, we effectuate the voting rights of African Americans.

So the justice of consent, which conditions it, you can't require people to consent to that which is unjust. That circle of justice expands.

[8:18]

TENPAS: And it strikes me that critical to the role of consent of the governed is a functional democracy with functional institutions, especially Congress, because that's the most representative branch. Do you agree with that? And what do you think about the current state of Congress and how it connects to this idea of the consent of the governed?

[8:36]

RAUCH: Well, remember, consent of the government is you and I both consent to each other's rights, and we consent to a governing authority that will help us enforce those rights, and also be a process that we delegate to making common decisions. What happens if that process breaks down? What happens if any of those branches, but especially, as you say, the most important branch, Congress, stops doing its job or doesn't do its job very well? It stops representing us particularly well, or as a lot of people would argue today, it just becomes semi-dysfunctional. It, it's just not doing the things that the founders expected to do. You get whole wars that go on where Congress never declares war and never even votes on the war.

Does that mean that it's forfeited consent? Well, not necessarily. But if things get bad enough for long enough, people will get disgusted with government enough so it will begin to lose its public legitimacy. People get fed up, and they'll get angry, and they'll

get cynical, and they say, This government doesn't represent me, this government is worthless, and they'll start following authoritarian ideas and leaders.

That's a form of defacto withdrawal of consent from our government. And I think we're seeing signs that it's underway.

[9:58]

TENPAS: Wow! Tell me about those signs that you see as sort of most prominent at this moment.

[10:03]

RAUCH: Well, the most obvious sign, this may strike some as partisan, but I think it's a reasonable statement and not partisan in nature, is that we had a president who falsely denied the outcome of the 2020 election, who encouraged people to come to Washington, D.C. Those people then tried to overthrow the government.

This president took other steps to try to overthrow the election. He failed. But then was reelected four years later, pardoned all the people who had engaged in the insurrection, and then engaged in a series of policies that looked increasingly authoritarian over the course of his time in office.

Now, John Locke would say, not necessarily where we are right now, but if a government gets undemocratic enough or authoritarian enough, or if it violates people's rights enough, then at some point it loses its legitimacy. And a lot of Americans seem to be concluding that.

And we're not all the way there yet. I'm not saying it's all over, and I'm not blaming this on any one individual. But everything we know shows that for years now, people's trust in government, specifically the federal government, has been in decline. It started in the late '70s, early '80s. It's been going on ever since. The younger people are today, the less legitimacy they think the government has, the more cynical and angry they are.

So this is a rolling, building process of people withdrawing their sense of legitimacy from the government. And at some point, as that continues, it becomes a crisis.

[11:48]

TENPAS: And can you cite a specific policy where you think that the government has truly lost the consent of the governed?

[11:57]

RAUCH: Well, you know, people don't vote on specific policies. As you said earlier, they vote on representation at the federal level. But you can certainly point to policies where the system has failed to reflect a pretty solid public consensus where the public, if you ask in polls or even people on the street or in focus groups, a solid majority agree on a policy and yet government isn't providing it.

And I think a good example of that, and a deeply vexing example of that right at the moment, is immigration. Where in the first two decades of this century, maybe not so much right at the moment, there was a pretty broad consensus in the public on comprehensive immigration reform. People believed that you should, one, control the borders; two, either continue or expand legal immigration, not illegal; number three, allow a path to citizenship for people who've been here illegally for many years; and number four, demand accountability from employers who hire people illegally.

There were two attempts, one in 2007, another in 2013, to put together reform packages like that. They got bipartisan consensus in the Senate, but they were stopped cold by objectors in the House—smaller unrepresentative groups. And there was another attempt at a deal in 2024, a smaller deal, but it was a deal that reflected consensus, and that was kiboshed by none other than candidate Donald Trump.

And immigration, of course, has become a flashpoint issue for the country. And that's not just because of immigration itself, but it's also and rightly because so many Americans are so frustrated that the process just cannot give them what they want.

[14:04]

TENPAS: And do you see any way out of this? So what would restoring belief in this contract and consent of the governed, what could it look like and how could we get on a path towards improving our current situation?

[14:19]

RAUCH: Gee, why don't you ask a hard question? So there are tons of things that people talk about. Brookings lives and dies every day producing idea after idea for reforms to realign government with the consent of the governed and to try to make our institutions of government function better. And they have to do with everything like reform of political primaries, which have become playthings of extremists. And we've made arguments about, for example, political money. All kinds of things, multiple levels of government.

But, but if you woke me up at 3:00 a.m. and shook me awake and said, What one reform would really make a difference, really move us from the wrong path to a better path? It would be making Congress functional again. There is only one institution in American life that is capable of bringing together the representatives of every region, of every demographic, of every interest, every ideology and saying, You guys have to agree on stuff. You don't all have to agree on everything, but you need to forge enough of a consensus every year on issues so that our country, we may not believe alike, but we can act together.

No one else can do that. The president can't do it, the courts can't do it, states, local governments can't do it. So consent of the governed relies very heavily on having a Congress that's functional. And Madison and the founders knew that. That's why Congress is Article I.

There are tons of ideas for making Congress work better. Some of them have already been enacted. There was a bipartisan commission that recommended, I think, 150 or so reforms, and I think about half of them have been done. There are a

lot more ideas. We can get into them if you want. There's a lot of desire for members of Congress who are as unhappy with the situation as anybody else for making Congress more functional. And I think that's where I would focus first.

[16:24]

TENPAS: And do you think the executive overreach that we've seen over the past several years is a function of congressional dysfunction? So in a sense, it creates a void for a president to overreach?

[16:37]

RAUCH: I'm tempted to say, is that a trick question? The answer is, the answer is yes. The imperial presidency is nothing new. It was a phenomenon that was named by, I think, Arthur Schlesinger, Jr., under Nixon. It's gathered steam, though, tremendously in this century. Donald Trump has driven it to what's almost its logical conclusion. But it's not original to Trump.

And, yeah, a big factor is that when Congress backs away from its role, it leaves a big sucking vacuum. To some extent, the courts step in and they begin legislating from the bench, which is unhealthy. But to a larger extent, the president steps in and says, Well, Congress isn't exerting its powers, and it's not gonna stop me from exerting my powers, so I'm gonna take more powers.

And the problem with that is that the president represents the people who vote for that president every four years, but not the whole country, because a lot of people voted for someone else. And the president isn't capable of doing that complicated process of bringing together all those different groups and ideas and putting them in a room together and sorting them out.

TENPAS: Right. That's not his job either.

RAUCH: It's not his job.

[17:46]

TENPAS: What would the founders say if they were alive today? What went wrong? Clearly sort of the separation of powers, shared powers, branches checking one another, were all really good ideas to avoid the situation that we're in.

[17:58]

RAUCH: Well, the founders would say all kinds of things. The list is so long, I don't know where to begin. The founders would deplore having, for example, people elected to Congress in order to get on social media and not to compromise on legislation. They would be horrified by the powers that have been assumed by the presidency.

One of, one of the big arguments by the anti-Federalists against the Constitution was this makes for a much more powerful president than we ought to have. And the Federalists who supported the Constitution said, Well, the check on that is going to be the Congress and it's going to be the virtue of the citizenry. And I think that latter

one is the biggest place where they might be surprised and disappointed. All the founders told us, Adams, Washington, Madison, they all said, No constitution is sufficient to govern the country unless there's what they called "virtue in the citizenry." And that means lawfulness, truthfulness, civility, forbearance. When you win an election, you don't try to cleanse the country of the other side. It means consent to the Constitution.

And it means consent to each other's legitimacy as part of our country. That's a lot of what consent means. It means I have to share the country with you, and we both consent to that.

And I think they would look at the condition of our polarized politics and say that a lot of the American public are behaving as if they don't consent to the other sides being here. And I think that would concern them.

[19:30]

TENPAS: So along the lines of thinking about the conditions of our polarized politics, when roughly a third of eligible voters actually participate in elections, in high turnout elections, that was the case in 2024, how do we manufacture consent for government policies?

[19:50]

RAUCH: Well, of course, we wish that was higher. And yet one of the features of a democracy like ours is that one of the ways to consent is saying, You know what? I'm okay with what we're doing and I don't feel a need to give up part of my day and go vote. So I'm gonna consent to what it is that my friends and neighbors and those who are voting are going to do.

Now, I don't like that. I think more people should vote. A lot of people think that that Americans should be required to vote. A lot of countries do that. And and yet that in itself is not a crisis of consent.

[20:28]

TENPAS: Right. In a way, it sort of shows the health of the government, that we give people the choice about whether they want to participate or not. By having it be compulsory, I think, then you sort of take out the part of the "D" in democracy, in a sense, because you're sort of requiring people to do something they might not want to do.

[20:42]

RAUCH: Yeah, that's right. That's a counter argument. Now, the hard thing is disaggregating are people not voting because, you know, they're more or less satisfied, and they think the outcome will be kind of okay either way, and, you know, they're more focused on their job and their kids and and whatever. Or are they not voting because they're disgusted? Because they're angry, because they think the whole system's a sham and both parties are crooked. Those two things have different implications because the second one is a de facto withdrawal of consent.

That's one of the reasons we do wish people would vote, doesn't leave that ambiguity.

[21:18]

TENPAS: Right. It is thought to be a sign of a healthy democracy when voter turnout is high.

And if we zoomed out for a moment, is there one takeaway about the Declaration more broadly, some aspect of it that you think is particularly relevant today?

[21:34]

RAUCH: The most relevant aspect of the Declaration today ... I still think it's that other sentence, all men are created equal and endowed by their creator with inalienable rights.

TENPAS: "Certain" inalienable rights.

RAUCH: Certain inalienable rights. Thank you. And the reason I think that's still so important is that after all these years, 250 to be exact, it remains a radical driver toward a better society. It remains something that for all our flaws, Americans take to heart. It's a very, very difficult commandment. We have to respect each other's rights and we have to respect each other as equals. And yet it continues to be the great motivating idea of the American government and of liberalism more generally.

And when I look for hope in a time when our government's not working as well as we want, I still look to that clause. I was born in 1960 in a world where homosexual Americans, it was illegal to be homosexual, to have sexual relations in every state in the country. And don't tell me it wasn't enforced. The police ran stings, including notoriously the vice squad right here in Washington, D.C., a mile from where we're sitting, in Lafayette Park. They would run stings, they would round people up, charge them with a misdemeanor, put their names in the paper, they'd lose their job the next day, and very often they'd have to leave town.

That happened all across America. Our bars and gathering places and restaurants were raided and shut down. We were denounced from every pulpit in America. We were excluded from service in the government. We were excluded from service in the military. The psychological profession branded us as sick. We were mentally ill by virtue of being gay. We were the most despised pariah group in the country.

And yet here I am, now married for 10, for 11 years in federal law, to a man, and that's because of the power of those words, "all men are created equal."

TENPAS: Well, Jonathan, thank you so much for your time, and thank you to the listeners. In the next two episodes, we'll dive into the grievances, the longest part of the Declaration, yet one less known by Americans. Stay tuned.

Democracy in Question is a production of the Brookings Podcast Network. Thank you for listening, and thank you to my guests for sharing their time and expertise on this episode.

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I'm Katie Dunn Tenpas. Thank you for listening.