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WHAT BASIC IDEAS ABOUT RIGHTS AND CONSTITUTIONAL GOVERNMENT DID COLONIAL AMERICANS HOLD?



LESSON PURPOSE

This lesson describes how basic ideas of constitutional government were developed and used in the American colonies before independence from Britain. It explains how social and economic conditions in America sometimes required old ideas about government to be adapted or discarded. Occasionally the colonists needed to create entirely new institutions.

When you have finished this lesson, you should be able to describe the early development of America's traditions of constitutional government. You also should be able to explain why the American colonists attached special importance to such constitutional principles as written guarantees of basic rights and representative government. Finally, you should be able to evaluate, take, and defend positions on the differences between life in colonial America and in England during the same period, the relationship between natural rights theory and slavery in America, and how natural rights philosophy and history help to explain the colonists' views of the proper role of government.

TERMS AND CONCEPTS TO UNDERSTAND

charter	magistrate
constituent	Mayflower Compact
covenant	suffrage
indentured servant	

HOW DID THE COLONIAL SETTLEMENT OF AMERICA INSPIRE NEW EXPERIMENTS IN CONSTITUTIONAL GOVERNMENT?

More than 150 years elapsed between the time colonists arrived in British North America and 1776, the year when the thirteen colonies gained their independence from Great Britain. This history had a great influence on the Founders.

By the early 1600s England wanted to establish colonies on the North American continent, as Spain and the Netherlands already had done. England had many reasons for wanting colonies in North America. Foremost among these reasons was England's desire to develop a profitable maritime empire. To entice settlers to go to America, the Crown offered various incentives. Two important incentive plans were royal proprietorships and joint-stock companies.

- **Royal proprietorships** One way the Crown encouraged settlements was to create royal provinces in America, called proprietorships. Most proprietors were personal friends of the English king. Proprietors had to find ways to lure settlers to the provinces that the Crown had given them. Eleven of the original thirteen colonies were founded as proprietorships. Perhaps the best-known colonial proprietor was William Penn (1644–1718), the founder of Pennsylvania.

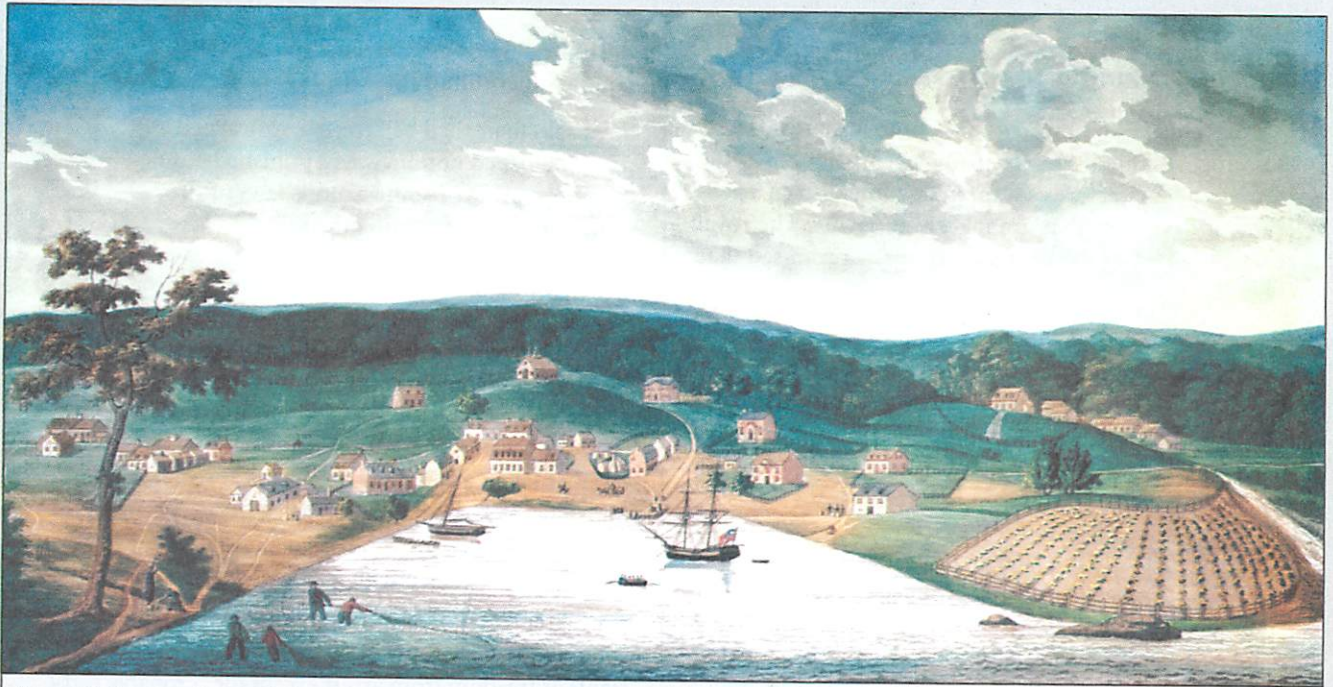
- **Joint-stock companies** The Crown also chartered business ventures called joint-stock companies, giving each company the right to settle certain areas along the East Coast. Each had to attract enough settlers to establish a colony. The Virginia Company of London settled the first successful colony at Jamestown in 1607.

Settlement did not always proceed smoothly. For example, in 1620 after a seven-week voyage from Plymouth, England, under a grant from the Virginia Company of London to settle and establish a government in Virginia, the ship *Mayflower* arrived instead at Cape Cod in what is today the state of Massachusetts, where it had no right to be. Nevertheless, the leaders of the expedition decided before they landed to create a government to serve their needs. The **Mayflower Compact** was an early example of social contract theory put into practice in America. The Compact also laid the foundation for the state of Massachusetts:

“ We...the loyal subjects of...King James... having undertaken...a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these presents solemnly and mutually in the presence of God and of one another, **Covenant** and Combine ourselves together into a Civil Body Politic, for our better ordering and preservation...and by virtue hereof, to



How did the Mayflower Compact embody the ideas of the social contract and consent?



How did the abundance of cheap and undeveloped land affect economic, social, and political life in colonial America? How might this abundance have resulted in greater economic opportunities for the colonists than for people in Europe?

enact, constitute, and frame such just and equal Laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience.

WHAT WAS UNIQUE ABOUT THE AMERICAN EXPERIENCE?

The special conditions of an undeveloped land profoundly affected economic, social, and political life in colonial America. Land was cheap and especially in New York, Pennsylvania, Virginia, and the Carolinas, readily available. Labor, by contrast, was scarce. Because of the labor shortage indentured servants looked forward to earning their wages and buying land themselves after their period of servitude. An **indentured servant** was a person who sold his or her labor, usually in exchange for the cost of the trip from Europe to the colonies.

Nonindentured and free laborers generally earned higher wages in America than they could earn in Europe. Some of the Southern colonies gave newcomers fifty acres of land if they were able to arrange for their own transportation to the colony.

Cheap land and the high demand for workers meant that American colonists usually had greater opportunities to achieve prosperity than most people in Europe. While some became wealthy, others of course failed, creating a class of American poor. However, over time the great majority of free inhabitants achieved at least moderate prosperity.

Some English practices that protected the landed aristocracy in Great Britain did not survive in the colonies. For example, the English law of entail prohibited the sale or distribution of property beyond male family members. The law of primogeniture required that land be handed down to eldest sons. The colonists paid little attention to these laws, thereby increasing the wide distribution of land in the colonies.

England's rigid class system also was harder to maintain in America. Wealth and family name did not mean automatic success in a land where everyone had to work to survive. Those who came to America without great personal wealth rarely were held back if they were ambitious and hardworking. Carpenters and brick masons, for example, enjoyed only modest social status in England. But the constant demand for new buildings in America allowed such craftsmen to earn a living equal to many of their social superiors. "Well-born" Europeans who considered hard work or manual labor beneath them sometimes had difficulty surviving in the colonies.

The chance to improve one's lot in life became a fundamental ideal of the American experience. Examples abound in colonial America. For instance, one of a candle-maker's seventeen children, Benjamin Franklin (1706–1790), became a great inventor, statesman, and diplomat. An English corset-maker's son, Thomas Paine (1737–1809), arrived in Pennsylvania from England in 1774 and became a famous writer on behalf of the American Revolution. A son of a poor, unwed mother, Alexander Hamilton (1755–1804), became the first secretary of the Treasury of the newly formed United States.

WHAT RIGHTS BECAME PART OF COLONIAL CHARTERS?

King James I gave the Virginia Company a royal charter, which granted the company permission to settle Jamestown. A **charter** is a written document from a government or a ruler that grants certain rights. The royal charter granted to the Virginia Company promised that

“ The Persons...which shall dwell...within every or any of the said several Colonies and Plantations, and every of their children... shall HAVE and enjoy all Liberties, Franchises, and Immunities...as if they had been abiding and born, within this our Realm of England, or any other of our said Dominions.

Similar guarantees appeared in the royal charters establishing Massachusetts, Maryland, and other colonies. Such guarantees echoed the ideals of the Magna Carta—that all Englishmen, wherever they went, enjoyed certain basic rights.

This tradition of expressing rights in writing became an essential part of American constitutions. The Massachusetts Body of Liberties of 1641, for example, provided for the rule of law and protection of basic rights of persons living in that colony against any abuse of power by a **magistrate** or judge of the colony. In addition to echoing the Magna Carta in some respects, this



What were some of the basic ideas contained in the Massachusetts Body of Liberties?

document was America's first bill of rights. It provided among other things that

“ No man shall be arrested, restrained, banished nor anyways punished...unless by vertue of some express laws of the country warranting the same.

The Body of Liberties also guaranteed trial by jury, free elections, and the right of free men to own property. It prohibited government from taking private property without just compensation, from forcing witnesses to testify against themselves (self-incrimination), and from imposing cruel and unusual punishments. Although the Body of Liberties limited **suffrage**, or the right to vote, in Massachusetts, it granted certain political rights to those who did not enjoy the voting franchise, including the right to petition the government for the redress of grievances.

Guarantees of basic rights later appeared in other colonies. Pennsylvania, for example, guaranteed such rights as freedom from arrest except for “probable cause” and trial by a jury of one's peers and the right against taxation without representation, as did other colonies. But Pennsylvania was the first colony to guarantee freedom of conscience—“the rights of conscience.”

WHAT DO YOU THINK?

- 1 If you had been offered the opportunity to come to America as an indentured servant, do you think you would have done so? Why or why not?
- 2 What do you think were the most important differences between life in England and life in the American colonies? How did those differences shape early American governments?
- 3 Were the differences between theories of representation in colonial America and England significant? Why or why not?
- 4 Social classes developed quickly in the American colonies but were based on wealth rather than birth. Does the distinction matter? Why or why not?

WHO DID NOT BENEFIT FROM THE RIGHTS EXPRESSED IN COLONIAL DOCUMENTS?

Not all Americans enjoyed the rights secured in colonial charters and other documents. For example, in some colonies the right to vote or hold office was restricted to Protestant white men. In others such rights were restricted to those who belonged to the colony's official state or established church.

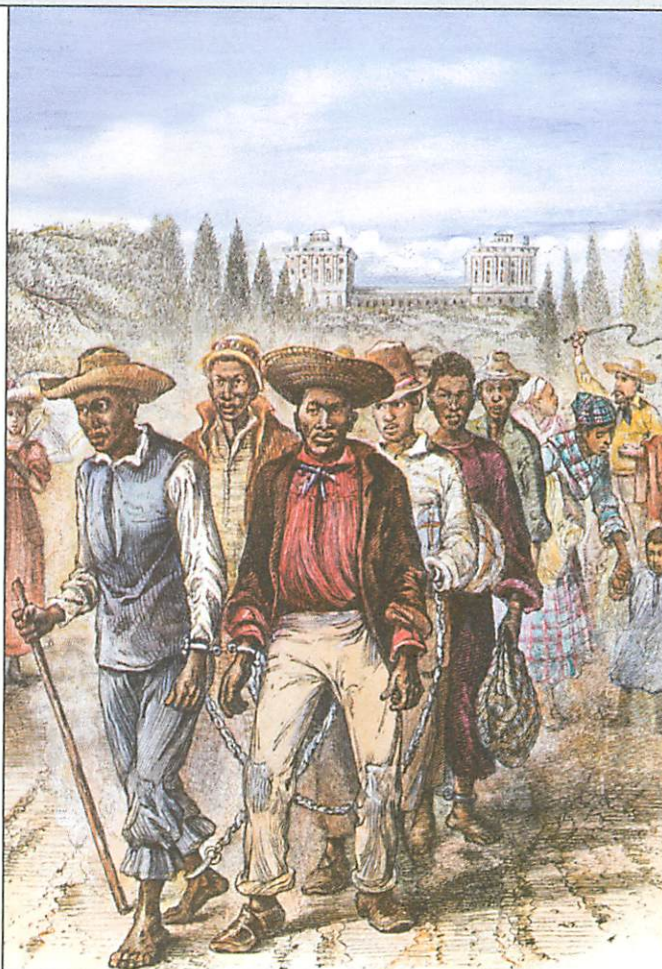
As in England and elsewhere, women were not granted political rights. Colonial laws limited their right to own property and to manage their own legal and personal affairs. Laws varied among the colonies, but married women usually had the legal status of underage children. They lost most of their legal identity to their husbands under a legal doctrine called coverture. According to English law,

“ Husband and wife are one person...
the very being or legal existence of the
woman is suspended during the marriage.

Between one-half and two-thirds of all immigrants to the colonies came as indentured servants. Most were bound to masters for periods ranging from a few years to decades. The status of many indentured servants was not much better than that of slaves until their period of indenture ended.

Native Americans also did not enjoy the rights expressed in colonial documents. Like the Spanish and French before them, British settlers treated Indian tribes as foreign entities. They were removed from their lands when necessary for colonial expansion and dealt with through treaties at other times.

The most glaring example of the failure to extend the rights and privileges to all was the institution of racial slavery. African slavery was well established in the American colonies by the eighteenth century. Slaves, who made up twenty percent of the population in 1760, were treated as property and thus were denied basic human rights.



What principles of the Declaration of Independence were violated by slavery?

CRITICAL THINKING EXERCISE

Using Natural Rights Philosophy to Address the Problem of Slavery

Consider this situation. Some 325,000 of the 1.6 million people living in the colonies in 1760 were enslaved Africans. Slavery flourished in the plantation economy of the Southern colonies, as it did in the British and French West Indies and in South America. Slavery was legally recognized in all thirteen British North American colonies. New York City had a significant slave population, as did New England.

There was some active opposition to slavery among the population of free citizens as well as among the slaves themselves. Some opponents sought its peaceful abolition, while others were willing to use violent or illegal means.

As explained in an earlier lesson, natural rights philosophy emphasizes both human equality and the protection of private property. Both slave owners and abolitionists in the colonies and in Great Britain could point to natural rights philosophy for support. Which side had the stronger argument? Why?



Why do you suppose the right to vote was usually limited to men who owned property?



What branches of government were established by the Fundamental Orders of Connecticut?

WHAT BASIC IDEAS OF CONSTITUTIONAL GOVERNMENT DID THE COLONIAL GOVERNMENTS USE?

As previously explained, the English colonies originated with charters issued by the Crown. In general the structure of colonial governments consisted of

- A governor, who was the proprietor, or someone else appointed by the Crown
- A council of between three and thirty landholders that advised the governor and in some circumstances served as the highest court of the colony
- An assembly elected by the people that had a say in matters of taxation

Beyond these rudimentary structures Crown charters usually offered few details about how local governments should function. As a result America became a fertile ground for constitution-making and governmental innovation.

In 1636 colonists in several Massachusetts towns received permission to move west into the Connecticut Valley. Three years later those settlers adopted the Fundamental Orders of Connecticut. The Orders derived authority from all free men living in these towns. This colonial constitution helped to establish the

American preference for written constitutions. The Fundamental Orders of Connecticut established a central legislative assembly, a governor, and courts. As was the custom, voting was limited to white male property owners. Other colonies also experimented with writing constitutions in the years that followed.

Some of the early written constitutions were successful. Others failed or had to be revised. The forms of colonial government varied from colony to colony. However, all constitutions shared certain basic principles, including the following:

- **Fundamental rights** The colonists were concerned foremost with protecting the common law rights that they brought with them from England. At first colonists understood these rights as the ancient and fundamental rights of Englishmen. As the Revolution neared, the colonists increasingly understood their rights to life, liberty, and property in terms of natural rights philosophy.
- **Rule of law** To protect their fundamental rights, the colonists insisted on the creation of a government of laws under which those responsible for making and enforcing the laws had to obey the laws and could not exercise power arbitrarily.

- Representative government and the right to vote** One of the most important constitutional developments was the growth of representative government. The first representative assembly in the colonies met in Virginia in 1619. The right of colonists to elect representatives to colonial legislatures was one device for enticing settlers to come to America. Representative assemblies reduced the possibility that royal governors would violate the people's rights. The legislatures would respond to the needs and interests of the people. The creation of representative assemblies also established the principle of no taxation without representation.
- Separation of powers** Colonial governments typically provided for the exercise of three kinds of governmental power. Separation of powers was evident in the following ways:
 - Legislatures** All the colonies had legislatures or assemblies that over time assumed greater responsibility for making laws. All but Pennsylvania adopted the structure of Parliament, with "lower" and "upper" houses. Pennsylvania adopted a unicameral, or one-house, legislature. Members of the upper house were either appointed by the governor or elected by the most wealthy property owners of the colony. All the men in the colony who owned a certain amount of property elected members of the lower house. The colonial legislatures eventually became the strongest of the three branches of government.
 - Governors** Governors were responsible for carrying out and enforcing laws. They also were concerned with ensuring that the colonies were governed in a manner consistent with English law and tradition. The British monarch chose the governors, or the governors were the proprietors. Only in Connecticut and Rhode Island were the governors elected.
 - Courts** Courts were created to administer local justice and to preside over the trials of those accused of breaking local laws. Judges were required to follow strict rules of procedure. Some colonies created a two-tiered system of trial and appeals courts.

HOW DID COLONIAL GOVERNMENTS BECOME MORE REPRESENTATIVE THAN THE GOVERNMENT IN BRITAIN?

American colonists believed that the security of life and liberty depended on the security of property, which explains in part the property requirement for full political rights, such as voting. If one of the purposes of government was to protect property, it seemed reasonable to many Americans to limit suffrage to those who possessed at least some land.

Owning fifty acres of land was a typical property requirement for voting in the colonies. Land was relatively easy to obtain, and so the body of eligible voters in America was proportionally larger than in England. Colonial legislatures accordingly were more broadly representative.

Unlike in England, colonial elections usually offered the voters a choice of competing candidates for office. Colonial legislators usually served shorter terms than members of Parliament, who faced election only once in seven years.



What were some of the differences between members of colonial legislatures and members of Parliament?

Colonial legislators also were required to live in the districts they represented. They were considered to be the voices, or agents, of the people, or their constituents. A **constituent** is a person represented by an elected official. And so, colonial legislators were responsible for ensuring that the legislature knew about the needs and interests of their constituents. By contrast, in 1776 members of the British Parliament did not have to live in the districts they represented and often had little understanding of the needs of their constituents. Instead, they were charged to represent the interests of the nation as a whole.



What were some of the similarities between colonial legislatures and Parliament?

WHAT DO YOU THINK?

- 1 What do you think is the best way to explain the American colonists' views of government? Is social contract theory or historical circumstance more important? Why?
- 2 What conflicts, if any, do you see between social contract theory and the status of women, indentured servants, and slaves in eighteenth-century America? What might explain those conflicts?
- 3 Does American colonial history help to provide context for understanding any contemporary issues in American politics and government? If so, which ones? If not, why not?
- 4 Do you think the same degree of social and economic opportunity exists for immigrants to America today as existed for the colonists? What has remained the same? What has changed?

REVIEWING AND USING THE LESSON

- 1 What was the Mayflower Compact? Why was it drafted? How could it be said to reflect the idea that government should be based on consent of the governed?
- 2 In what ways were eighteenth-century American and British societies similar and different in terms of the rights of individual liberty, equality of opportunity, suffrage, and property?
- 3 How would you describe the economic, social, and political conditions of life in colonial America? How did these conditions affect the development of American ideas about government?
- 4 How did the simple governing structures in colonial charters evolve into more comprehensive systems of local government before the Revolution?
- 5 What basic features of English constitutionalism were found in the governments of the colonies?
- 6 Why was the right to vote in the colonies limited to those who owned a certain amount of property? Why were colonial governments more representative than the British government?
- 7 Why were written guarantees of rights in colonial documents important to the development of Americans' ideas about government?
- 8 Are written guarantees of rights as important today as they were in colonial times? Why or why not?