

LESSON 7

What Basic Ideas about Rights and Constitutional Government Did Colonial Americans Have?

Purpose of Lesson

This lesson describes how the basic ideas of constitutional government were developed and used in the American colonies before they gained their independence from Britain. You learn about social and economic conditions that were special to America. These conditions sometimes required old ideas to be adapted or discarded. Sometimes the creation of entirely new solutions was necessary.

When you finish this lesson, you should understand the early development of America's own traditions of constitutional government. You should be able to explain how the differences between colonial America and Europe affected the Founders' political views. You also should have a better understanding of why the American colonists attached special importance to such constitutional principles as written guarantees of basic rights and representative government.

Terms to Know

constituents	magistrate
covenant	Massachusetts Body of
established religion	Liberties
Fundamental Orders of	Mayflower Compact
Connecticut	primogeniture
indentured servants	suffrage
Laws and Liberties of	
Massachusetts	

How did the colonial settlement of America inspire new experiments in constitutional government?

Almost half of our history as a people—over 150 years—took place before we gained our independence in 1776. This history had a great influence on the Founders.

The many thousands of immigrants in the seventeenth and early eighteenth centuries came to America for various reasons. The most common were economic and religious. The English colonists brought with them English customs, laws, and ideas about good government. They were

separated from England, however, by 3,000 miles of ocean. Consequently, the colonists soon discovered that they would have to improvise, adapt old ideas, and develop new ones if they were to survive.

In some respects, the settlement of America meant a return to a state of nature as later described by the natural rights philosophers. This new experience required new political solutions. One of our country's oldest and most famous charters, the **Mayflower Compact**, was a **covenant** or social contract, to which the Pilgrims agreed prior to landing in Plymouth, Massachusetts, in 1620. The Compact established a civil body authorized to make laws and appoint officers.



How does the Mayflower Compact reflect the principle of government by consent or social contract?

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 readily available. People available to till this land or perform other jobs in colonial society were always in short supply.

Cheap land and the great demand for workers meant that most American colonists had far greater opportunities to get ahead and achieve prosperity than most people in Europe. While some became very wealthy, others

failed, creating a class of American poor. But the great majority realized at least a moderate prosperity that was beyond their reach in Europe. Almost any white man with ambition could gain the fifty acres of land required as a qualification to vote in most colonies.

There was no nobility whose social and economic status was protected by law. In Great Britain laws prohibited the sale and distribution of property attached to a noble title; it had to be handed down to eldest sons—the right of **primogeniture**. Since economic and political power was based on this property, generations of noble families had a privileged status in English government and society.

It is true that those people who came from educated British families or those with great personal wealth had an advantage over those who arrived in the colonies almost penniless and unknown. But wealth and family name did not mean automatic success in a land without a rigid class system; and the lack of these advantages rarely held back for long those with ambition. The carpenter and brick mason, for example, enjoyed modest social status in England. The constant demand for new buildings in America, however, allowed such craftsmen to earn a living equal to many of their social “superiors.” A well-born gentleman from Europe who considered hard work or manual labor beneath him might have a difficult time surviving in the colonies.

Thus, there was greater equality among Americans than among Europeans in their economic, social, and political life. While some upper class Americans might not have liked this situation, equality of opportunity and the chance to better one’s position in life became fundamental ideals in the American experience. In this land of almost unlimited opportunity, one of a candlemaker’s 17 children, Benjamin Franklin, could

rise to become a great inventor, statesman, and diplomat. An English corset-maker’s son, Thomas Paine, could become a famous writer on behalf of the American Revolution. Alexander Hamilton, the illegitimate son of poor parents, could become the first Secretary of the Treasury of the newly formed United States.

Critical Thinking Exercise

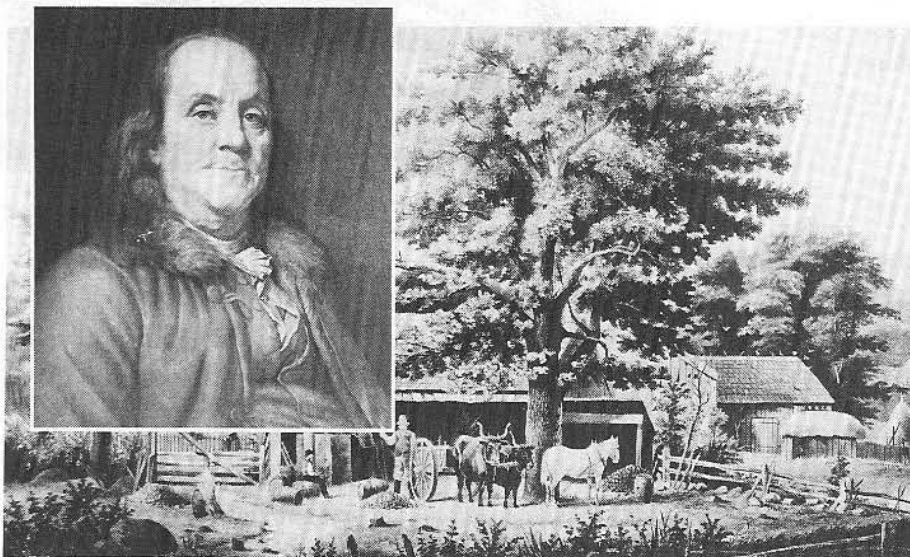
EXAMINING AN ORIGINAL DOCUMENT ABOUT COLONIAL LIFE

In the mid-eighteenth century a colonial farmer, Philip Taylor, wrote about his life on the border of what today is the state of Vermont. Read what he wrote and then be prepared to discuss your answers to the questions that follow.

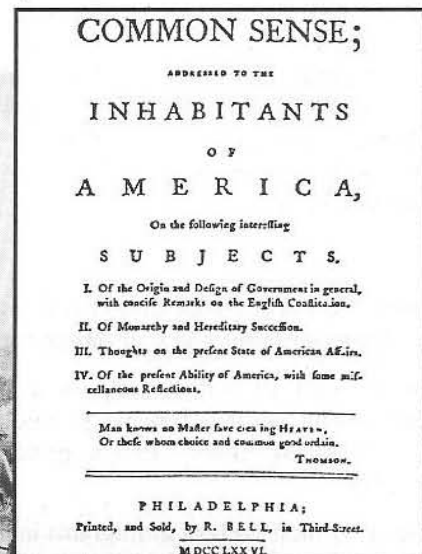
We now have a comfortable dwelling and two acres of ground planted with potatoes, Indian corn, melon, etc. I have 2 hogs, 1 ewe and a lamb; cows in the spring were as high as 33 dollars, but no doubt I shall have 1 by fall.

I am living in God’s noble and free soil, neither am I slave to others...I have now been on American soil for two and a half years and I have not been compelled to pay for the privilege of living. Neither is my cap worn out from lifting it in the presence of gentlemen.

1. What was it that Philip Taylor liked about life in America?
2. What rights did he enjoy? How are they related to the ideas of the natural rights philosophers? Do you enjoy these rights today?



How did life in the American colonies break down the social and economic barriers so common in Europe?



3. Given what you know of Philip Taylor's experiences, explain why he would be more or less likely to favor laws that

- guarantee each individual the right to be secure in his property
- limit an individual's right to buy and sell goods to anyone he or she chooses
- give people certain rights because they are wealthy or from a certain family background or group

What basic ideas of constitutional government did the colonial governments use?

The colonies were originally founded by charters or grants given to private groups or individuals. These charters and grants said little about what form of local government the colonies should have. As a result the colonies developed their own forms of government, and America became a fertile ground for constitution making. The colonies depended more on written constitutional arrangements than was the case in England, whose own unwritten constitution represented centuries of evolution.

In creating such limited government, the colonists tried to protect themselves not only from abuse of power by the English government in London, but also from abuses by colonial governments themselves. The first governments of many of the colonies lacked constitutional restraints that were later seen as essential. Some of the early colonial governments persecuted those who refused to conform to the **established religion**. Resistance to religious persecution in the colonies became an important stimulus to the advancement of constitutional ideas and institutions.

There are many stories of religious dissenters who were persecuted in these early years. Anne Hutchinson, a brilliant and talented woman, arrived in Massachusetts in 1634 with her husband and seven children. She gained great respect as a midwife, healer, and spiritual counselor. Before long she began preaching a theory of salvation that was contrary to the official Puritan beliefs. Not only was she a dissenter but as a woman she was particularly offensive to the male leaders of the community. Brought to trial, she was cast out of the colony as "a heathen and a leper."

Hutchinson fled Massachusetts to Rhode Island where religious dissenters were tolerated. It was the first colony to grant freedom of conscience to everyone. The Charter of 1663 provided that "noe person...shall bee any wise molested, punished, disquieted, or called in question, for any differences of opinione in matters of religion." Jews, Quakers, Catholics, and others not welcomed elsewhere found a haven in Rhode Island.



Why is it important to protect the right to dissent?

Others were inspired by constitutional values early on. The first colonial constitution was the **Fundamental Orders of Connecticut**, created in 1639 by three town settlements along the Connecticut River. Deriving its authority from all free men living in these towns, this constitution established a central legislative body for making laws. The other colonies would adopt constitutional arrangements of their own in the years that followed.

Some of these experiments were successful. Others failed or had to be revised many times before they became practical. The forms of colonial government varied somewhat from colony to colony. They all, however, shared certain basic constitutional principles. These principles generally reflected the influence of England but in some ways they differed. The ideas of British constitutionalism embodied in the governments of the British colonies follow.

Fundamental rights. The colonists were concerned foremost with protecting those fundamental rights they believed they had brought with them from England. At first these basic rights were seen as the ancient and fundamental rights of Englishmen. These basic rights were later described as the rights of all men. They were defined by the natural rights philosophers as the natural rights to life, liberty, and property.

Rule of law. In order to protect their fundamental rights, the colonists insisted on the creation of a government of laws, in which those responsible for making and enforcing the laws could not exercise arbitrary power as had been the case in some of the first colonial governments. The colonial constitutions also included the idea that the English law was higher law and was superior to any laws the colonial governments might make.

Separation of powers. To a greater extent than in the British government, colonial governments provided for a separation of powers among the three branches of government. In colonial governments the three branches tended to be more independent of each other. Separation of powers was evident in the following ways:

- **An executive branch.** **Governors** were responsible for carrying out and enforcing law. In most of the colonies by the time of the American Revolution, the governors were chosen either by the monarch or the proprietors. Only in Connecticut and Rhode Island were the governors elected by those men in the colonies who were allowed to vote.
- **A legislative branch.** All the colonies had **legislatures** that were responsible for making laws. All but Pennsylvania were similar to the Parliament in Britain with an “upper house” like the House of Lords and a “lower house” like the House of Commons. Members of the upper house were either appointed by the governor or elected by the most wealthy property owners of the colony. The lower house was elected by all the men in the colony who owned a certain amount of property. Pennsylvania was an exception; it had only one house. More independent of the executive branch than the British Parliament, the colonial legislatures would eventually become the strongest of the three branches of government.
- **A judicial branch.** This branch was made up of judges called **magistrates** who were usually appointed by the governor. Their responsibility was to handle conflicts over the laws and to preside at trials of those accused of breaking the law. They also were responsible for making sure the colonies were being governed in a way that was consistent with English law and tradition.

Checks and balances. Power was separated and in some cases shared among these branches, so that the use of power by one branch could be **checked** by that of another. That is, the power of one branch could be opposed and therefore limited by the power of another branch.

The powers of the **governors** were checked because they could not

- collect taxes without the consent of the legislature
- imprison people without a trial by a magistrate
- set their own salaries

The **legislatures’** powers were checked by

- reliance on the governor to enforce the laws that they passed

- the power of the judges to make sure they did not make laws that violated those of England
- the veto power held in some colonies by the governor

The powers of the **judges** were checked by

- their being appointed by the governor
- the governor or legislature having the power to remove them if their decisions seemed inappropriate
- their reliance on the governor to enforce their decisions
- the basic right of every Englishman to a trial by a jury of his peers from the community



How did early colonial governments reflect the ideas of English constitutionalism?

Representative government and the right to vote. One of the most important constitutional developments during the colonial period was the growth of representative institutions in government. Representative government began soon after the first colonies were established. The first representative assembly was held in Virginia as early as 1619. The right of colonists to elect representatives was seen as a way to

- reduce the possibility that members of government would violate the people’s rights
- make sure that at least a part of the government could be counted on to respond to the needs and interests of the people, or at least of those people who had the right to vote. It also established firmly the principle that those governed could not be taxed without their consent or that of their representatives.

Why did colonial governments become more representative than Britain's?

Like their English counterparts, the American colonists believed that the security of life and liberty depended on the security of property. Thus, property had to be protected. This explains why in the colonies as well as England there was a property requirement for the enjoyment of political rights like voting. If one of the purposes of government was to protect property, it seemed reasonable to limit **suffrage**—the right to vote—to those who possessed at least a small amount of property.

Fifty acres was the usual requirement for voting in the colonies. Since land was easily acquired in America, the body of eligible voters was proportionally larger than in England and the colonial legislatures were accordingly more representative. The economic opportunities in America meant that a larger proportion of colonial society enjoyed political rights than was the case in England.

There were other important differences between elections to the colonial legislatures and those to Parliament. More colonial elections offered the voters a choice of candidates. The colonial legislators were elected more frequently than members of Parliament, who usually faced reelection only once in seven years.

Unlike their British counterparts, colonial legislators usually came from the districts they represented and were considered to be the agents of their **constituents'** interests. By the time of the Revolution, members of the British Parliament, on the other hand, were said to be representative of the interests of the nation as a whole. The colonists were considered part of the British nation. Therefore, the British argued, the colonies were represented in Parliament.



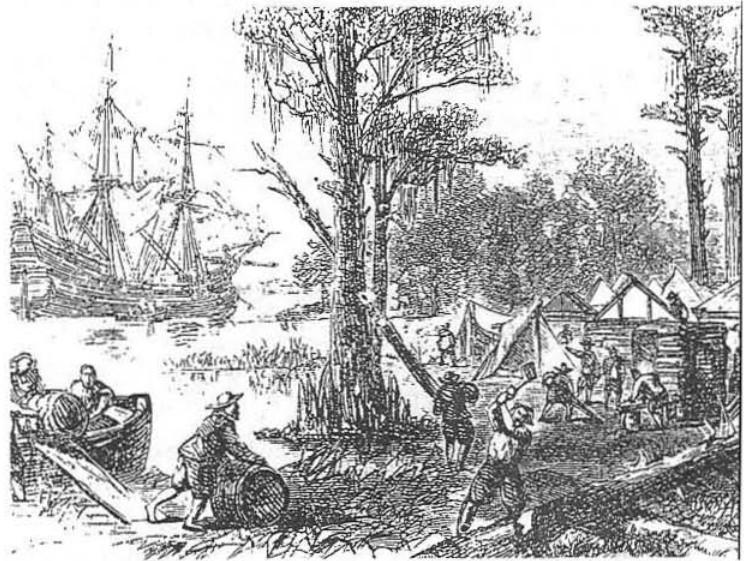
Why did more people in America enjoy the right to vote than in England?

What basic rights did most Americans enjoy?

The royal charter that established the Jamestown colony in Virginia in 1607 declared that

[T]he persons that shall dwell within the colony shall have all Liberties as if they had been abiding and born within this our realm of England or any other of our said dominions.

Similar guarantees were included 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 fundamental rights, which needed to be confirmed from time to time in official documents.



Why did the American colonists believe they enjoyed the same rights they had in England?

This tradition became a fundamental part of American constitutionalism and led eventually to the U.S. Bill of Rights. The first of the colonial charters of rights was the **Massachusetts Body of Liberties**, adopted in 1641. This charter secured the rule of law and protection of basic rights of persons living in that colony against any abuse of power by the colony's magistrates. In some respects this document was America's first bill of rights.

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

The Body of Liberties guaranteed trial by jury, free elections, and the right of free men to own property. It also made it illegal for government to take property away without fair compensation. It prohibited forced self-incrimination as well as cruel and unusual punishment, rights that later were incorporated into the

U.S. Bill of Rights. Though it limited suffrage in Massachusetts, the Body of Liberties granted nonvoters certain political rights, including the right of petition, which was to become part of the First Amendment.

Similar chartered guarantees of basic rights were later passed in other colonies. In addition to such guarantees as freedom from illegal arrest, trial by jury, and no taxation without consent, Pennsylvania's first constitution provided for freedom of conscience. By the eighteenth century all of America's colonies had come to acknowledge this basic right, though in some colonies full enjoyment of political rights remained restricted to those belonging to the established religion in the colony.

Most of these charters guaranteed rights that were familiar to English law. Sometimes they went even further than English law. The Massachusetts Body of Liberties, for example, was followed seven years later by an even more comprehensive code of laws, called **The Laws and Liberties** (1648). This code abolished the laws of primogeniture. It also provided more humane treatment of convicted criminals and debtors and simplified the judicial process.

What do you think?

1. Did the colonists enjoy a greater degree of representation in their local governments than British citizens had in Parliament? Why or why not?
2. Why were voting rights limited to men of property in the colonies and England despite the belief in representative government?
3. In what ways did the colonists' experience with limited self-rule for over 150 years affect their ideas about government?

Did all Americans enjoy these rights?

Not all Americans, however, enjoyed the rights that had been secured in the colonial constitutions. In some colonies the right to vote or hold office remained restricted to male Protestants, in others it was restricted to those who belonged to the established state religion.

Women were denied political rights. Colonial laws limited their ability to own property and manage their own legal and personal affairs. Although laws varied in different colonies, women usually had the legal status of

underage children. When they married, they lost most of their legal identity to their husbands. According to English law,

The husband and wife, are one person...the very being or legal existence of the woman is suspended during the marriage.

There were also in the colonies a large number of **indentured servants**, most of them white, who were little better than slaves while they completed their period of service.

The most glaring example of the violation of rights was the permanent enslavement of Africans, which had become well established in the American colonies by the eighteenth century. Slaves, who made up twenty per cent of the population at the time of the Revolution, were treated as property and thus denied their basic human rights. Much of the prosperity enjoyed by colonial Americans came from slave labor.

The contradiction between the colonists' demands for liberty and their continued tolerance of slavery was often noted by the British at the time of the American Revolution. As one English observer asked, "How is it that we hear the loudest yelps for liberty among the drivers of negroes?" The Reverend Samuel Hopkins criticized his fellow Americans for "making a vain parade of being advocates for the liberties of mankind, while...you at the same time are continuing this lawless, cruel, inhuman, and abominable practice of enslaving your fellow creatures."

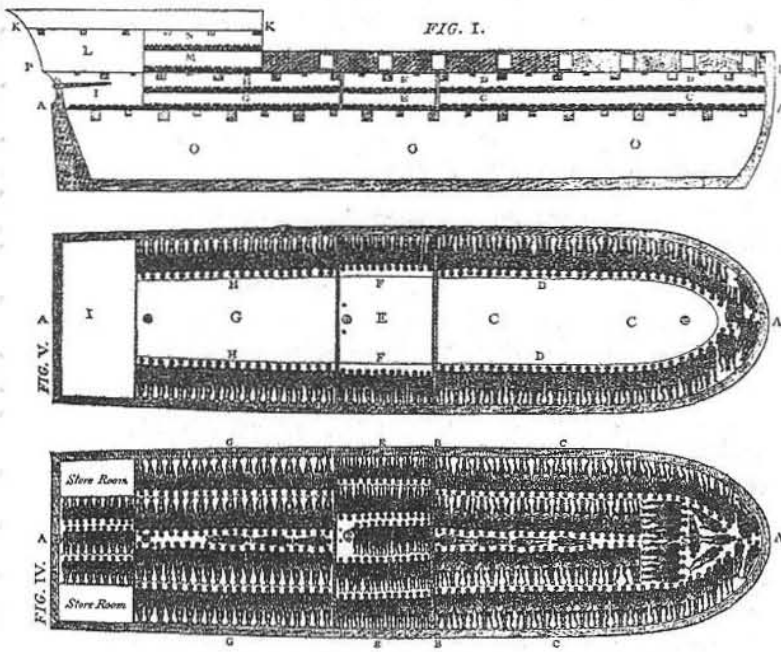
Critical Thinking Exercise

EVALUATING THE INSTITUTION OF SLAVERY BY USING THE NATURAL RIGHTS PHILOSOPHY

Twenty percent (700,000) of the 3,500,000 people living in the colonies in 1776 were enslaved Africans. Slavery flourished in the plantation economy of the southern colonies, but existed elsewhere and was legally recognized throughout the colonies. New York City had a significant slave population, as did New England.

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

DESCRIPTION OF A SLAVE SHIP.



How does this diagram of a typical slave transport vessel show the inhumanity of the slave trade?

1. How might the natural rights philosophy be used to oppose slavery in the colonies?
2. How might the supporters of slavery also have appealed to the natural rights philosophy to justify their cause?
3. Is slavery compatible with the natural rights philosophy? Explain.

How did the colonial experience prepare Americans for independence?

By the time Americans became independent, they had acquired more than 150 years of experience in self-government at the local level. Such self-government had become necessary because of the colonies' distance from the government in England. This long experience in self-government would become invaluable in building a new nation.

The colonists had adapted the governmental institutions and constitutional principles inherited from England to meet their own special needs. They had created colonial constitutions that embodied such important principles as the rule of law and a separation of powers between the executive, legislative, and judicial functions of government, thus limiting the power of government through checks and balances.

Perhaps most important to America's future were the legacies of strong representative government and written guarantees of basic rights. As they developed, colonial legislatures became more representative and independent

than the British Parliament. Colonial charters guaranteeing fundamental rights became treasured reminders of the colonists' constitutional inheritance. Together, these two traditions of representative government and written guarantees of rights would provide a basis for the American Revolution.

What do you think?

1. In what ways were eighteenth-century American and British societies similar or dissimilar in terms of the rights of individual liberty, equality of opportunity, and property?
2. What effect did colonial experiences have on the Founders' views about rights and government?
3. In what ways were liberty and opportunity for women and minorities restricted because of limited property rights in eighteenth-century America?
4. Do you think the same degree of social and economic opportunity exists for immigrants to America today? What has remained the same? What has changed?

Reviewing and Using the Lesson

1. What was the Mayflower Compact? Why was it drafted? How does it reflect the idea that government should be based on consent?
2. How would you describe the economic, social, and political conditions of life in colonial America? How were these conditions important in the development of American ideas about government?
3. What basic features of English constitutionalism were found in the governments of the colonies?
4. Why was the right to vote in the colonies limited to those who owned a certain amount of property? Why were colonial governments nevertheless more representative than the British government?
5. What examples can you identify of written guarantees of basic rights in colonial America? How were these written guarantees important in the development of Americans' ideas about government?
6. Do research to find out more about the controversies over slavery that existed in colonial America. What arguments were made to abolish it? What arguments were made to justify it? What actions were taken by people on each side of the issue to achieve their goals?