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WHAT DID THE FOUNDERS THINK ABOUT CONSTITUTIONAL GOVERNMENT?



LESSON PURPOSE

This lesson introduces the basic ideas and experiences the founding generation drew on to create the kind of government they believed would best protect the natural rights of individuals and promote the common good. Classical Greek and Roman writers, natural rights philosophy, the Bible, Protestant theology, ancient and modern European history, and the Enlightenment in Europe and America were among the sources of the ideas that influenced the Founders. The Founders also participated in self-government in the American colonies before 1776 and in state and local governments after independence from Great Britain. The Founders' ideas about society and government and their experiences were diverse. The colonies differed widely. This diversity fostered a rich dialogue about the purpose of government and how it should be organized.

When you have finished this lesson, you should be able to describe the diverse features of the early American colonies and states and their populations. You should be able to explain what the Founders learned about government from history and their firsthand experiences of government. How did this knowledge shape their thinking? You should be able to explain the meanings of the terms *constitution* and *constitutional government* and describe the forms of constitutional governments. Finally, you should be able to evaluate, take, and defend positions on the sources that should be consulted if a new constitution for the United States were being written today, whether the Founders' concerns about abuse of government power are still valid today, and the importance of written constitutions.

TERMS AND CONCEPTS TO UNDERSTAND

constitution	limited government	unwritten constitution
constitutional government	Parliament	written constitution
democracy	republic	
forms of government		

WHAT WERE SOME CHARACTERISTICS OF COLONIAL AMERICA?

The United States was officially recognized as an independent nation in the Treaty of Paris of 1783, nearly two centuries after the first European settlers landed in America. Once colonies were established, one of the first things that the colonists noticed about their new surroundings was their vast size. England and Scotland together were smaller than the present states of New York and Pennsylvania. More than a thousand miles separated the citizens of northern Massachusetts from those of southern Georgia.

Of course, the colonists were not the first people on the North American continent. However, by the end of the Revolutionary War there were relatively few Native Americans living along the Atlantic coast. Encroachment of colonial settlements, disease, and warfare significantly reduced the indigenous population on the eastern seaboard, although many Native Americans remained on the western borders of the colonial frontier and beyond.

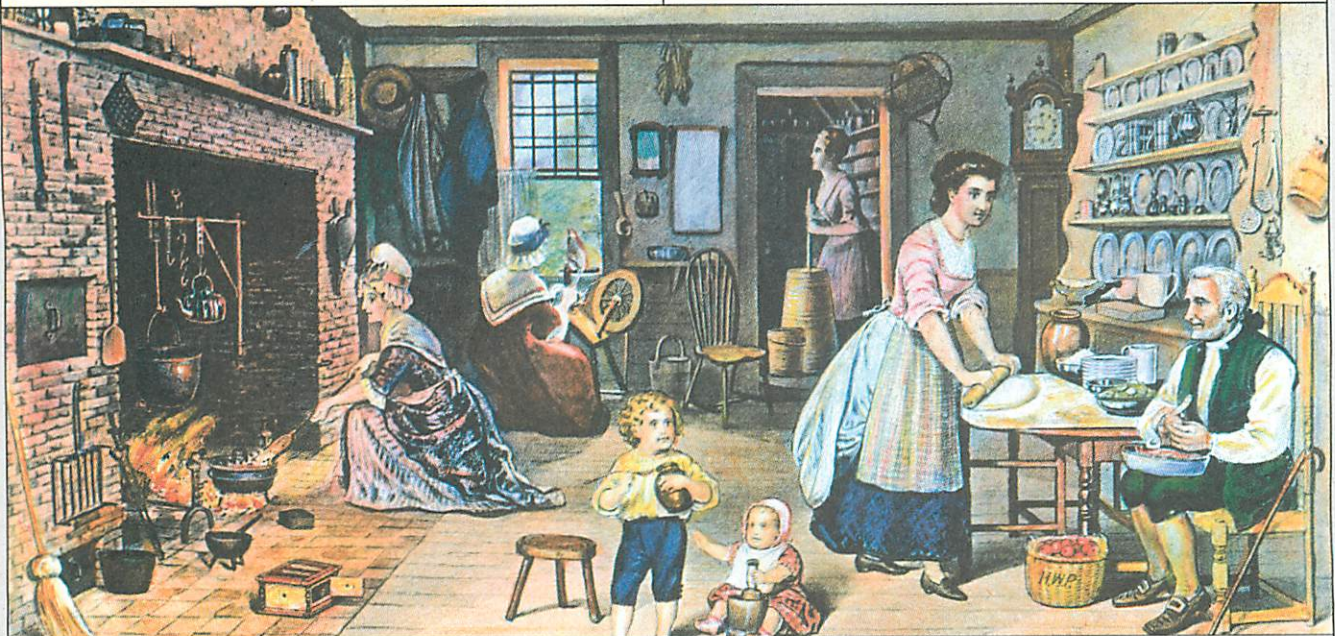
More than physical distance separated the colonists. Their backgrounds were diverse. Some, such as the Puritans in Massachusetts and the Quakers in Pennsylvania, came to the New World for religious reasons. Others came for economic reasons. They also differed in social structure and sometimes even in language. Pennsylvania, for example, had a large German-speaking population. French and Dutch were important languages in other colonies.

A few influential families dominated South Carolina, Maryland, and New York. They owned vast estates and tended to replicate European culture and habits as much

as they could. By contrast, New England and Georgia had fewer large estates and, partly as a result, had different social and political cultures than those found elsewhere. Most of the colonies also had established or official government religions. Slavery was practiced in all the colonies.

Almost all colonial Americans lived and worked on farms or in rural communities. But farming meant different things in different places. In South Carolina's coastal region, farming meant using slaves to work plantations that produced rice and indigo for export, mostly to England. Virginia's export crop was tobacco. By contrast, farming in New England meant growing crops and raising livestock for a local market. New England farmers relied less on slaves for labor than did Southern colonists, but the New England workforce included thousands of indentured servants, many of whom had entered into work contracts in exchange for transportation to America, food and shelter, or training in various skills.

Colonists who did not work on farms followed various trades, working as sailors, shoemakers, silversmiths, and a host of other occupations. Many dabbled in a favorite American pastime, speculating on land. In many ways colonial America was a society of traditions, in which people played social roles and exercised authority in long-established ways. But more than 300,000 people in 1760 were enslaved. These people, or their ancestors, had been transported to North America as captives from Africa. Later lessons will examine the effect of slavery on American **constitutional government** and culture. Indeed, the British colonies developed a number of different ways of organizing local governments during the century or more of their existence.



What evidence is there in this picture of self-reliance? How might the self-reliance of colonial Americans have influenced their thinking about government?

HOW DID THE FOUNDERS LEARN ABOUT GOVERNMENT?

The Founders learned about government from reading history and philosophy and from their own experience of self-government as colonists within the British Empire. They were as familiar with ancient Greece and Rome as they were with later European history. Many had read classical texts about government and politics by ancients such as Aristotle (384–322 BC), Marcus Tullius Cicero (106–43 BC), and others. They also had read newer theories of government by sixteenth- and seventeenth-century philosophers, such as Thomas Hobbes (1588–1679) and John Locke (1632–1704). By the 1770s some were familiar with the English jurist William Blackstone's explanations of English law, published between 1765 and 1769. Almost all were well read in Protestant theology. The Founders looked to many examples of good and bad government for guidance.

By 1776 Americans also could look back on more than 150 years of local self-government. Free white men from all walks of life had served on juries, attended town meetings, and voted in local elections. In fact, in the colonies and the early states more Americans participated in self-government than did people almost anywhere else in the world.



Why did the Founders read the works of William Blackstone and other jurists and philosophers?

WHAT DID THE FOUNDERS LEARN ABOUT GOVERNMENT?

Not all the sources that influenced the Founders taught the same lessons. Some sources contradicted others. Some did not teach clear lessons at all.

For example, classical (ancient) political philosophers taught that human beings are naturally social creatures with obligations to each other and to their community, without which they could neither survive nor achieve human excellence. To Greek philosophers, such as Plato (c. 428–348 BC), those who govern must be wise. All the classical philosophers agreed that one purpose of government is to help people learn about and perform their civic and moral duties.

Greek and Roman history taught that although democracies may appear to begin well, they tend to end in tyranny when the poor attack the rich. Class warfare breeds chronic disorder. The people then submit to tyrants, who enter the scene promising security.

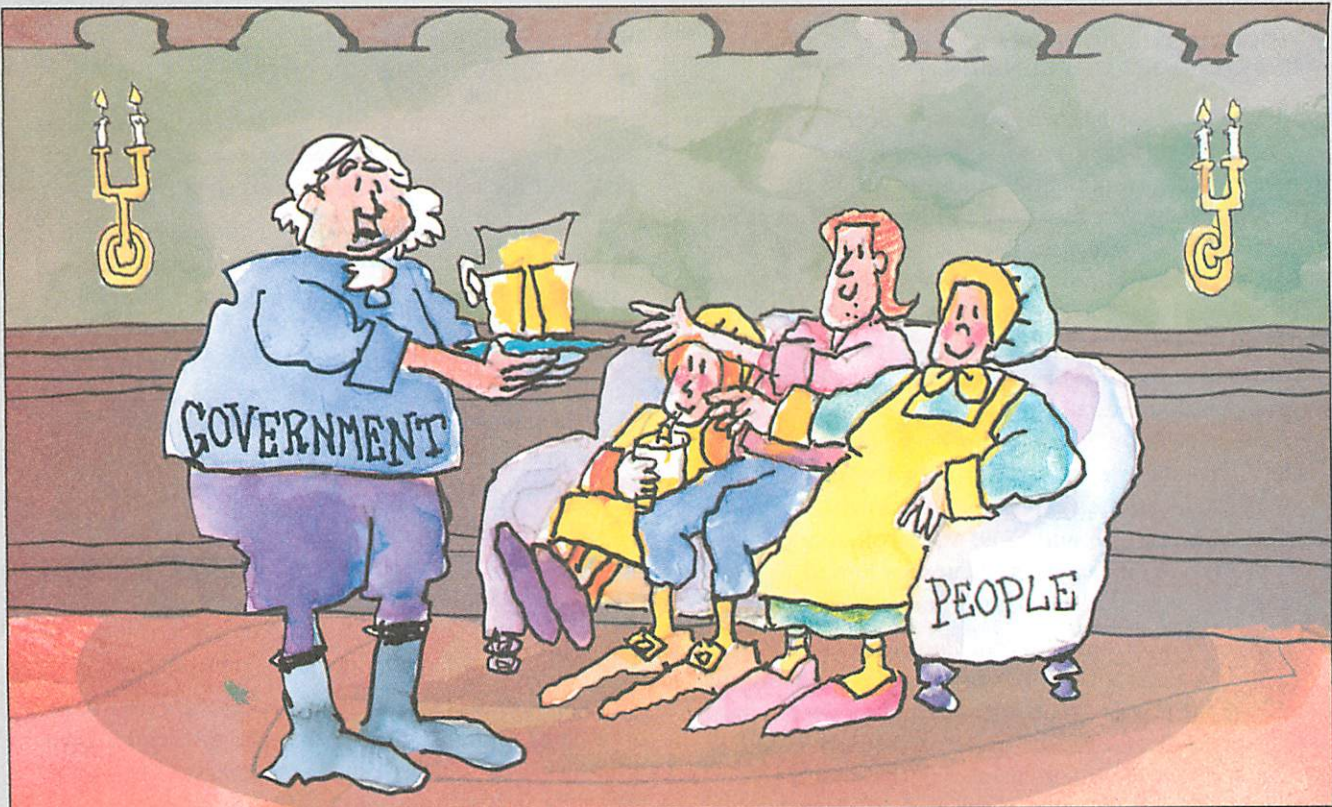
Natural rights theorists taught that people have natural rights that others must respect. English philosopher John Locke summarized them as rights to “life, liberty, and estate.” People agree to form a society and create a government to protect their rights.

British history showed that even a monarchy might evolve into free government. If the people are determined, they can ensure that monarchs respect the rights that the people have gained over time.

American colonial history showed that local self-government could coexist with a distant central authority—in this case, Britain. However, American colonial history also showed that when people believe that the central government is abusing its power, then social and political unrest follows.

The Founders had many examples of government to choose from in designing their state constitutions and the U.S. Constitution. Why did they make the choices they made? From reading their explanations in documents such as the Virginia Declaration of Rights, the Declaration of Independence, and various pamphlets, essays, and letters, it is clear that the Founders had learned at least two important lessons about government:

- Government should be the servant, not the master, of the people.
- A fundamental higher law, or **constitution**, should limit government.



In a nation in which government is the servant of the people, what obligations, if any, do the people have to the government?

WHAT FORMS OF GOVERNMENT COULD THE FOUNDERS CHOOSE FROM?

The Founders were familiar with the writings of the Greek philosopher Aristotle, who observed that every state—meaning “country” or national entity in this sense—must perform three functions. First, states must deliberate about what is to be done and decide what public policy should be. Today we call this the legislative function—deliberating on and enacting law. Second, states must perform an executive function, through which public officials carry out public policy. And third, states must carry out a judicial function, through which disputes about the interpretation of law are managed and applied in everyday life.

Aristotle also distinguished between types of governments on the basis of the number of persons exercising power. Countries may be governed by one person, a few people, or many people. Each of these three **forms of government** has a “right form” and a “corrupt form.” Right forms are governed for the common good, whereas corrupt forms are governed for the private interests of the rulers.

The right form of government by a single person is called “monarchy.” The right form of government by a few people is called “aristocracy,” or the rule of the “best.” And the right form of government by many people is called “polity.” Aristotle referred to polity as a “mixed”

form of government (or “mixed constitution”) because it incorporates elements of democracy and oligarchy (see next paragraph). No group of citizens—for example, the rich or the poor—is able to abuse political power. Although a polity is a mixture of social elements, it is most like **democracy**, as we define the concept today.

According to Aristotle, corrupt forms of government are “tyranny,” for rule of a single person; “oligarchy,” for rule of a few, usually rich, people; and “democracy,” for rule of the many, by which he meant the poor.

The following table illustrates right and corrupt forms of government as identified by Aristotle:

RULE OF	RIGHT FORM	CORRUPT FORM
One	Monarchy	Tyranny
Few	Aristocracy	Oligarchy
Many	Polity (mixed constitution)	Democracy

To Aristotle *democracy* meant “direct” democracy, in which the people themselves make decisions, rather than the type of government we call democracy today, which is largely representative. Aristotle’s description of

democracy as a corrupt form of government refers to what ancient Greece experienced when the poor (“the many”) took power. They attempted to seize the property of the rich for themselves, setting off destructive civil wars based on social class. In such cases the poor looked after only their own interests to the exclusion of the common good.

Although Aristotle classified the governments of countries on the basis of their number of rulers, he also focused on economic considerations within countries, which usually are far more important. He was especially concerned with the distribution of wealth and the effects that various distributions have on political stability—specifically on the avoidance of civil strife. He concluded that the dominant group of most stable countries consists of those who are neither rich nor poor but occupy a middle ground of moderate wealth.

According to Aristotle, this middle group is known for moderation. Rule by those who are moderate yields

the most stable form of government because those of moderate means are most likely to behave in accordance with reason. In Aristotle’s view the problem with “democracy” is that the poor, who are numerous, attempt to seize the wealth of the rich, who are few. But if a constitution can combine (“mix”) the many poor with the lesser number of wealthy persons, then it can achieve stability.

The Founders were familiar with this idea of mixed constitution from reading Aristotle and other writers, such as the Greek historian Polybius (203–120 BC). Polybius popularized the idea in the ancient world that mixed constitution is a combination of monarchical, aristocratic, and democratic elements. This idea, embraced and passed on by the Roman statesman Cicero, then became widespread among scholars in the Middle Ages—roughly the fifth century to the fourteenth century, depending on the country. Through Cicero’s great influence in the subsequent period of the Renaissance, the fifteenth through seventeenth centuries, the idea of mixed constitution was incorporated into Renaissance political thought and thus into republicanism. It was then passed on to the Enlightenment in the eighteenth century.

For example, the eighteenth-century French political thinker Charles-Louis de Secondat, Baron de la Brède et de Montesquieu (1689–1755), cited England as a mixed constitution. The British government had a limited monarch, an aristocracy in one house of **Parliament** (the House of Lords), and in theory, the House of Commons for the common people. In fact, the landed aristocracy dominated the House of Commons, though they were of lower rank than members of the House of Lords.

Both the British Parliament and the legislatures of colonies were examples of representative government. Representative government sometimes is called “republican government.” The term **republic** comes from the Roman term *res publica*, which is Latin for “thing (or property) of the people.” The Roman Republic had an unwritten mixed constitution. Its form of government after 287 BC consisted of executive and legislative branches, in which virtually all classes and tribes in Roman society were represented.

Based on the Founders’ reading of history and their personal experiences, they did not believe that direct democracy was the best model for government. It could potentially fail to protect property and other rights, such as rights of minorities. The Founders preferred a representative, or republican, form of government, in which many interests can be represented in the legislature; and those who govern, like ordinary citizens, are required to obey the law.



Which of Aristotle’s ideas about government, if any, seem most relevant today?



Why do you think the Founders wanted to establish a constitutional government?

CRITICAL THINKING EXERCISE

Examining the Founders' Sources of Information

If you were part of a group drafting a new constitution for the United States today, which of the sources the Founders used would you rely on in your deliberations? What other sources might you also consult? Why?

WHAT IS A CONSTITUTION?

As it is understood today, a constitution is a plan that sets forth the structure and powers of government. Constitutions specify the main institutions of government. In so doing, constitutions state the powers of each of these institutions and the procedures that the institutions must use to make, enforce, and interpret

law. Usually constitutions also specify how they can be changed, or amended. In the American conception of constitutional government the constitution is a form of higher, or fundamental, law that everyone, including those in power, must obey.

Many controversies surround **written constitutions**, including what the words mean, whether the understanding of the document should evolve or remain unchanged, and who should have the final say about what the document means. Nearly all constitutions are written. Only three of the world's major democracies have **unwritten constitutions**—that is, constitutions that are not single written documents. These are Britain, Israel, and New Zealand. In each of these nations, the constitution consists of a combination of written laws and precedents.



Constitutional government means **limited government**—government limited by the provisions of the constitution. Limited government is characterized by restraints on power as specified by the constitution. In democracies, for example, one restraint is the inclusion of free, fair, and regular elections. The opposite is unlimited government, in which those who govern are free to use their power as they choose, unrestrained by laws or elections. Aristotle described the unlimited government of a single ruler as tyranny. Today the terms *autocracy*, *dictatorship*, or *totalitarianism* often are used to describe such governments. Believing that they had been subjected to tyranny by the British king, the Founders also believed that government in the newly independent United States of America should be limited by the higher law of a written constitution.

HOW DID THE FOUNDERS CHARACTERIZE HIGHER LAW?

According to the founding generation a constitution should function as a type of higher law. A higher law differs from a statute enacted by a legislature in these four ways:

- It sets forth the basic rights of citizens.
- It establishes the responsibility of the government to protect those rights.
- It establishes limitations on how those in government may use their power with regard to citizens' rights and responsibilities, the distribution of resources, and the control or management of conflict.
- It can be changed only with the consent of the citizens and according to established and well-known procedures.

CRITICAL THINKING EXERCISE

Examining Why the Founders Feared Government Abuse of Power

Given their knowledge of history and their experiences under British rule, it is not surprising that the Founders feared possible abuses of governmental powers. Read the following three statements by famous American Founders. Then respond to the questions that follow.

“ Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many.

Alexander Hamilton, 1787

“ There are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power and the love of money.

Benjamin Franklin, 1787

“ From the nature of man, we may be sure that those who have power in their hands...will always, when they can...increase it.

George Mason, 1787

- 1 What view of human nature is expressed in each of these statements?
- 2 If you agree with the views of human nature expressed in the statements, what kind of safeguards to prevent abuses of power would you include in a constitution?
- 3 Do you think the Founders' concerns about government are as valid today as they were in the 1700s? Why or why not?

WHAT KINDS OF GOVERNMENTS MAY BE CONSTITUTIONAL GOVERNMENTS?

The Founders knew that constitutional government might take many forms. It is possible to have a constitutional government with one ruler, a group of rulers, or rule by the people as a whole as long as those in power must obey the limitations placed on them by the higher law of the constitution. Historically, constitutional governments have included monarchies, republics, democracies, and various combinations of these forms of government.

The problem for any constitutional government is to ensure that those in power obey constitutional limits. History provides many examples of rulers who ignored constitutions or tried illegally to increase their personal power. The Founders believed that direct democracy

was more likely to ignore constitutional limits than representative government. Direct democracy makes it easy for momentary passions to inflame people and leads to passionate rather than reasoned judgments. The interests of the community, as well as the rights of individuals in the minority, may suffer as a result.

WHAT DO YOU THINK?

- 1 How would you organize a government so that it would be fairly easy to remove and replace officials who violated the constitutional limitations on their powers?
- 2 What might happen in a government in which there was no agreed-on or peaceful means for removing officials? Give a recent example to support your answer.
- 3 Is it important that a constitution be written? What are the advantages and disadvantages of a written constitution? Of an unwritten constitution?

REVIEWING AND USING THE LESSON

- 1 Identify at least three characteristics of the British colonies.
- 2 What important lessons did the founding generation learn from political theory and political history?
- 3 What is the difference between limited government and unlimited government? Do you think the difference is important? Why or why not?
- 4 What is a constitution?
- 5 What is a mixed constitution? Explain the advantages and disadvantages of this type of government.
- 6 Why is a constitution considered a higher law, and what are the major characteristics of a higher law?
- 7 According to Aristotle, what are the differences between right and corrupt forms of government?