

## Lesson 5

# State Constitutions



### Key Terms

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absolute veto  
higher law  
legislative supremacy  
override  
political guarantees  
popular sovereignty  
procedural guarantees of due process  
representation  
social contract  
state declarations of rights  
veto  
Virginia Declaration of Rights

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### What You Will Learn to Do

- Examine how state constitutions support protection of individual rights

### Linked Core Abilities

- Communicate using verbal, non-verbal, visual, and written techniques
- Apply critical thinking techniques

### Skills and Knowledge You Will Gain Along the Way

- Explain the purpose of the state declarations of rights
- Explain the value of checks and balances
- Compare the early state constitutions and current state constitutions
- Define key words contained in this lesson



*Did the Revolution return the colonists to a state of nature? Why?*

*Courtesy of the National Archives.*

## **Introduction**

The American Revolution returned the colonists to a state of nature. Colonial governments under British authority ceased to exist. New governments would have to be created, a task the newly independent states initiated soon after the war commenced. In this lesson you examine the main features of the written constitutions the thirteen new states created using the basic ideas of the natural rights philosophy, republicanism, and constitutional government.

## **Why the Colonies Returned to a “State of Nature”**

In terms of the natural rights philosophy, the American Revolution returned the colonists to a state of nature. The old colonial governments under the authority of the British ceased to exist. New governments would have to be created. Soon after the Revolutionary War started in 1775, the 13 states began to develop their own written constitutions. Never before had so many new governments been created using the basic ideas of the natural rights philosophy, republicanism, and constitutional government.

## **Six Basic Ideas Included in the State Constitutions**

The experiments of the new American states in constitution-making provided the Framers with valuable experience that later greatly influenced their writing of the

### Key Note Term

**representation**—the state or condition of serving as an official delegate, agent, or spokesperson

**higher law**—as used in describing a legal system, refers to the superiority of one set of laws over another

**social contract**—the agreement among all the people in a society to give up part of their freedom to a government in return for the protection of their natural rights by that government

**popular sovereignty**—the natural rights concept that ultimate political authority rests with the people

Constitution of the United States. The following basic ideas were included in these state constitutions:

- **higher law and natural rights**
- **social contract**
- **popular sovereignty**
- **representation and the right to vote**
- **legislative supremacy**
- **checks and balances**

### Higher Law and Natural Rights

Every state constitution was considered a **higher law** and was based on the idea that the purpose of government was to preserve and protect citizens' natural rights to life, liberty, and property.

### Social Contract

Each state constitution also made it clear that its government was formed as a result of a **social contract**—an agreement among its people to create a government to protect their natural rights.

### Popular Sovereignty

In all the new state constitutions sovereign authority existed in the people. The authority to govern was delegated to the government by the sovereign people. This is considered **popular sovereignty**.

### Representation and the Right to Vote

One of the most significant characteristics about each state constitution was the importance it placed on representation of the people in their government. All the state constitutions created legislatures that were composed of elected representatives of the people. Most of these constitutions required annual elections to their legislatures.

Some state constitutions gave the right to vote for representatives to all white male taxpayers. In most states, this right was limited to people who owned a specified amount of property, as it had been when the states were colonies. Since property was relatively easy to acquire in America, about 70 percent of adult white males could vote.

In seven states, free African Americans and Native Americans could vote if they met the property requirements. In New Jersey, the vote was given to “all inhabitants . . . of full age, who were worth fifty pounds” and who met a twelve-month residency requirement. Under these rules, both women and free African Americans were able to vote until 1807, when the law in New Jersey was rewritten to exclude women. Twelve states specifically denied women the right to vote by inserting the word “male” in their constitutions.

## Legislative Supremacy

**Legislative supremacy** means “a government in which most of the power is given to the legislature.” Most state constitutions relied on a strong legislature and majority rule to protect the rights of citizens. This reliance continued a development that had begun in the colonial period when the legislatures had become strong.

All the state constitutions included some separation of powers. This reflected the former colonists’ distrust of executive power which they believed had been abused under British rule. The belief in legislative supremacy was based on the following:

- **The legislative branch of government, composed of representatives who are elected by the voters and vulnerable to removal by the voters, is the most democratic branch of government. Therefore, in a government based on popular sovereignty it is considered the safest branch in which to place the most power and the most likely to protect the rights of citizens and promote their welfare.**
- **The executive branch should not be trusted with much power because it is not easily controlled by the people. You may remember that the colonists’ greatest problems with the British government had been with its executive branch—the king’s ministers and the royal governors in the colonies.**
- **The colonists also distrusted the judicial branch—in this case, the king’s magistrates—who tried them for breaking British law. The following examples of a preference for legislative supremacy can be found in the state constitutions:**
  - **The constitutions of most of the new states provided for executive branches but made them dependent on the legislatures. Pennsylvania’s new constitution eliminated the office of governor altogether and replaced it with a twelve-man council. In other states, legislatures were given the power to select the governor or to control his salary.**
  - **Governors were allowed to stay in office for only one year. This limit was an attempt to make sure that the governor would not have time to gain much power while in office.**
  - **Appointments made by a governor had to be approved by the legislature.**
  - **Governors in most of the state constitutions were almost totally excluded from the process of lawmaking, which the legislatures kept to themselves. In all the states, the governor no longer had an *absolute veto* over legislation. He could still refuse to approve a proposed law in some states, but the legislatures in those states could *override* his *veto* by passing the proposed law again.**
  - **State legislatures exercised influence over the judiciary through control of salaries and length of tenure.**

## Checks and Balances

Although the powers in the state governments were unbalanced in favor of strong legislatures, there were some checks provided by their state constitutions. Most of these checks existed within the legislatures themselves. For example, in every state except Pennsylvania and Georgia, the legislature was divided into two houses, just as was the case in the British Parliament. Since most important decisions had to be made by both houses, each had a way to check the power of the other house. Unlike Parliament and the colonial governments, however, both houses of the new state legislatures were made up of representatives elected by the people.

The voters could check the legislators’ power by electing new representatives to both houses if they did not like the way the government worked.

### Key Note Term

**legislative supremacy**—a system of government in which the legislative branch has the most power

### Key Note Term

**absolute veto**—the inviolable power to cancel or nullify a legislative act

**override**—to declare null and void; set aside

**veto**—the constitutional power of the President to refuse to sign a bill passed by Congress, thereby preventing it from becoming law

### *Evaluating Legislative Supremacy*

John Locke and the natural rights philosophers believed that in a representative government the legislative branch should be supreme because it was the branch closest to the people and it reflected most accurately the people's wishes. The legislative branch was, therefore, less likely to violate the people's rights.

Most of the state constitutions accepted this argument and heavily weighted the balance of power in favor of their legislatures.

1. What are the advantages and disadvantages of legislative supremacy?
2. Do you agree with Locke's argument presented above?
3. Does the legislative branch necessarily reflect the people's wishes?
4. How might the people's wishes pose a threat to basic rights?
5. Describe what a government might be like in which the executive or judicial branch was supreme.

### *How Was the Massachusetts Constitution Different?*

In 1780, Massachusetts became the last state to ratify a new constitution. Written principally by John Adams, the Massachusetts constitution was different from those of the other states. In addition to relying on popular representation as a means of preventing the abuse of power, it used a system of separation of powers and checks and balances. It gave government more effective checks on the powers of the state's legislature.

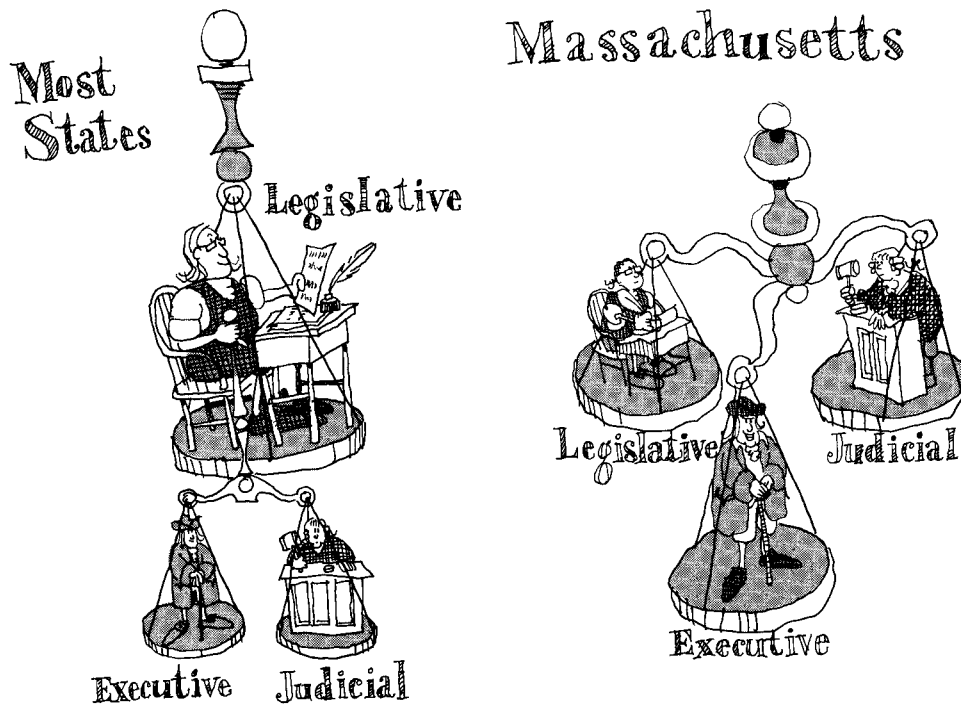
Because the Massachusetts constitution is more similar to the present Constitution of the United States than the other state constitutions, it is worth looking at in some detail. The following are some important characteristics of the Massachusetts constitution.

#### *A Strong Executive Branch*

Under the Massachusetts constitution, the governor was elected by the people. The writers of this constitution believed that because the governor would be elected by the people, it would be safe to trust him with greater power so that he would be able to protect their rights and welfare.

To enable the governor to be more independent of the legislature and to allow him to check the legislature's use of power, the Massachusetts constitution contained the following provisions:

- **The governor's salary was fixed and could not be changed by the legislature.**
- **The governor had the power to veto laws made by the legislature, and his veto could only be overridden by a two-thirds vote of the legislature.**
- **The governor could appoint officials to the executive branch and judges to the judicial branch.**



*How did the Massachusetts constitution differ from those of the other states? Why did the Massachusetts constitution provide for a strong executive branch?*

### *Representation of Different Groups in Society*

Several other parts of the Massachusetts constitution show how that government was organized more like the British model of government than were those of the other states. This state constitution separated powers among the different classes in society to prevent one group from dominating the others. The Massachusetts constitution divided the people of the state into groups based on their wealth since there was no royalty or nobility.

- Only people with a large amount of property could elect the governor.
- People with slightly less property could vote to elect members of the upper house of the state legislature.
- People with the minimum amount of property that qualified them to vote could vote for members of the lower house.

Thus, the Massachusetts state constitution expressed the classical republican ideal of mixed government. Consequently, it provided for more balance among the powers of the different branches of government. It did not make the legislature the most powerful branch as did the other state constitutions. This approach reveals different beliefs about the best ways to prevent the abuse of power by members of government.

The constitutions of the other states were based primarily on the idea that representation of the people in a strong state legislature was the best way to protect their rights. They reflected a basic trust in political power held directly by a majority of the people.

### Points to Ponder

1. Which branch of government do you think is most responsive to the will of the people? Should that branch have more power than the other two branches? Why or why not?
2. In what ways was the Massachusetts constitution a forerunner of the U.S. Constitution?

The Massachusetts constitution reflected a more skeptical view of human nature and of unchecked power held by any group in society. It was based on the idea that representation, separation of powers, and checks and balances were all essential for the protection of the rights of the people.

None of the state constitutions, however, relied entirely on the form of their governments to protect individual liberties. Most of them began with a declaration of rights. By doing this, they indicated that the citizens to be governed by these new constitutions possessed certain basic rights that existed prior to government and that no constitution or government could take away.

Americans in the colonial era attached great importance to guarantees of basic rights. Although the lists of rights differed somewhat from state to state, they were all based on the idea that people have certain inherent rights that must be protected. It was only after safeguarding these rights at the very start that the authors of these constitutions believed it proper to form state governments.

Taken together, the rights protected in the state declarations included all the fundamental rights guaranteed today in our Bill of Rights. By looking at these declarations and how they were developed, we can learn a great deal about how we came to have the rights we enjoy today under both our state and federal constitutions.

## Important Ideas in the Virginia Declaration of Rights

### Key Note Term

**Virginia Declaration of Rights**—the first state declaration of rights, which serve as a model for other states declarations of rights and the Bill of Rights

On June 12, 1776, Virginia became the first state to adopt a declaration of rights, almost a month before the colonies declared their independence from Great Britain. The **Virginia Declaration of Rights** helped convince other colonies to vote for independence and influenced Thomas Jefferson's writing of the Declaration of Independence itself.

The Virginia Declaration was written primarily by George Mason (see Figure 2.5.1), who later opposed the ratification of the U.S. Constitution because it did not include a bill of rights. In writing Virginia's own bill of rights, Mason relied heavily on the writings of John Locke. He also was influenced by the ideas of classical republicanism and by the American colonial experience.

The Virginia Declaration of Rights stated:

- **That all power is derived from and kept by the people.**
- **That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and lib-**



Figure 2.5.1: George Mason (1725–1792)

Courtesy of Bettmann/Corbis Images.

erty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

- **The government is, or ought to be, instituted for the common benefit, protection, and security of the people. If a government does not serve these purposes, the people have an unalienable right to alter or abolish it.**

The Virginia Declaration also included many of the rights we enjoy today under both our state and federal bills of rights, such as the right to trial by jury, protection against forced self-incrimination and cruel and unusual punishments, freedom of the press, and the free exercise of religious beliefs. Concerning the right to religious freedom it stated:

*That religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience.*

The Virginia Declaration ended with a statement based on the ideas of classical republicanism about civic virtue and religious values:

*No free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue. . . . it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.*

The framers of the Virginia Declaration believed that listing rights and establishing a constitutional government were not enough to guarantee people their freedom. They argued that each individual must accept the responsibility to live according to certain moral principles and ideals.

It is important to note that the Virginia Declaration omitted some important rights found in other state declarations and later made part of the U.S. Constitution.

### Examining Historical Documents

Work with a study partner to complete the following exercise.

1. Refer to the Virginia Declaration of Rights in the Reference Section to this text. Identify specific examples of the following basic ideas:
  - Natural rights
    - social contract
    - individual rights
    - limited government
  - Classical republicanism
    - civic virtue
    - common welfare
    - political rights
2. Which historical experiences of the colonists seemed to have the greatest influences on the authors of the state declarations?
3. Why do you think that, generally, state constitutions protected rights first and then created governments with limited powers?

## Rights Protected by the Other States

Most states adopted declarations or bills of rights that resembled Virginia's. The few that did not have such declarations included guarantees of certain rights in the main body of their constitutions. Similar to Virginia's the other states' declarations began with statements about natural rights, popular sovereignty, and the purposes of government. Some declarations also included the idea that civic virtue and a commitment to certain moral and religious principles were essential to preserving freedom.

Other states' declarations varied in the rights they chose to include or leave out. Most included such **political guarantees** as

- the right to vote
- free and frequent elections
- freedom of speech and of the press
- the right to petition the government
- no taxation without representation

### Key Note Term

**political guarantees**—  
guarantee of aried rights

They all included important **procedural guarantees of due process** such as

- **the rights to counsel and trial by jury**
- **protection from illegal search and seizure**
- **protection from forced self-incrimination, excessive bail and fines, and cruel and unusual punishment**

Most of the state declarations, including Virginia's, expressed a fear of military tyranny by condemning professional standing armies in time of peace and the quartering of troops in civilian homes. Many endorsed the idea of "well regulated" civilian militia and the right to bear arms.

Vermont took its commitment to natural rights literally by becoming the first state to outlaw the institution of slavery.

## *Ways the State Declarations Differ from the U.S. Bill of Rights*

The **state declarations of rights** would have a great influence on the later drafting and adoption of the U.S. Bill of Rights. Many states drew from their own declarations to propose the rights that should be included in the federal version. The principal writer of the U.S. Bill of Rights, James Madison of Virginia, was strongly influenced by his own state's Declaration of Rights.

The state declarations, however, differed from the U.S. Bill of Rights in many ways. They resemble more the Declaration of Independence. They were written as preambles to the state constitutions to establish the moral and philosophical foundations of the state governments. They describe the purpose of government and set forth the principles of the natural rights philosophy and classical republicanism.

The circumstances at the time prompted the authors to make these pronouncements. The state declarations were written while Americans were in the midst of fighting a revolution. The authors of these documents were principled, law-abiding citizens who wanted to explain to their fellow citizens and the rest of the world why the violation of their rights had forced them into armed rebellion.

The U.S. Bill of Rights, on the other hand, was written after independence had been won and the Constitution had created a new government for the nation. The principles of government were already established. The Framers of the Bill of Rights did not believe there was a need to list those principles again. What was needed was a list of specific rights that should be protected from this new and stronger national government. The Bill of Rights is such a list.

The Bill of Rights was to go much further than the state declarations in its guarantee of freedom of religion. Several states, as well as Virginia, provided for the free exercise of religion, but at the same time permitted state religious establishments. They allowed tax money in their states to be spent to support a particular religion or denomination. In most states there continued to be religious requirements for holding public office that excluded Roman Catholics and Jews. The Bill of Rights not

### *Key Note Term*

**procedural guarantees of due process**—refers to those clauses in the U.S. Constitution that protect individuals from unreasonable and unfair governmental procedures

### *Key Note Term*

**state declaration of rights**—the citizens to be governed by these new constitutions possessed certain basic rights that existed prior to government and that no constitution or government could take away

*How did the state constitutions balance fear of military tyranny with recognition of a need for defense?*



only provides for freedom of religious practice, it also prohibits the federal government from passing any law for the establishment of a particular national religion. The Bill of Rights, therefore, protects equality as well as freedom of religion.

## **Conclusion**

After declaring their independence from Great Britain, the colonists had to decide how they would govern themselves. The Articles of Confederation, which were the first attempt at establishing a government, were thought to be inadequate by leaders such as Madison, Washington, and Hamilton. Fifty-five men met in Philadelphia in 1787, and wrote and adopted the United States Constitution. These men became known as the Framers. The Constitution was not universally acclaimed, and its adoption and ratification gave rise to discussions of the most basic questions about political life and governmental institutions. In this lesson, you learned why the Articles of Confederation were replaced by the Constitution. You also learn the reasons the Framers created the United States government as they did. Different opinions held by Americans about the merits of the new Constitution also are presented.

### *Lesson Review*

1. What basic ideas about government were contained in the new state constitutions?
2. Define the term “popular sovereignty.”
3. What were the important differences between the Massachusetts constitution and the other state constitutions?
4. What important ideas did the Virginia Declaration of Rights contain? How was this document influential throughout the colonies?