

Handout A: The Rights of Englishmen, American Style

Background:

One of the most important convictions held by the male colonists in seventeenth-century North America was that they retained all the rights of Englishmen—rights such as representation in legislatures empowered to tax them, fair trials, control of one's property, and prohibition of arbitrary rule. These rights, which were already described as ancient when King John was forced to confirm them through the Magna Carta in 1215, were in a constant state of development through custom and usage in English common law. The Magna Carta came about because King John repeatedly violated long-held principles about how he should treat nobles, and most of its restrictions on the king's power benefited nobles only. However, the trend over time was that more rights were extended to more people, creating a rich tapestry of expectations concerning the proper limits on government.

This trend received a remarkable new impetus when the English colonies were established in the New World, beginning with Jamestown, Virginia, in 1607. Since the Crown sought to establish new colonies and needed to encourage people to take the risk of crossing the ocean to live amidst unknown circumstances, the colonial charters were written to provide the greatest possible latitude of political, economic and individual liberties. The colonial charters, therefore, documented a greater degree of liberty than that enjoyed by most English citizens residing in England.

The First Charter of Virginia, granted in 1606, a year before the arrival of Englishmen in the Chesapeake, reflected a combination of events in England and the realities of life in North America. Drawn up by King James's chief legal officers, it created a joint-stock company, a precursor of the modern corporation. It protected the right of representation in the levying of taxes, and Virginia's General Assembly met for the first time in 1619. England's 1628 Petition of Right resulted from a power struggle between the king and Parliament, and Sir Edward Coke led the parliamentary battle for ancient rights such as trial by jury and protection against required quartering of troops. The arbitrary rule of Charles I, beginning in 1625, prompted Parliament to abolish the Star Chamber in 1641, and prompted many people to be willing to improve their condition by sailing to America.

In the midst of the power struggle between the Crown and Parliament, George Calvert, the first Lord Baltimore, sought a charter from King Charles I to establish the colony of Maryland. The elder Calvert died before the charter could be issued, so it passed to his eldest son, Cecil Calvert. The development in Maryland of a representative form of government based on this 1632 charter, and a high degree of religious toleration, resulted in a powerful motive for people seeking relief from tyranny and religious persecution in England to move to Maryland despite the hazards and hardships they would endure.

Initial settlement of the Massachusetts Bay Colony in 1630 under a charter granted by King Charles I reflected the beliefs and values of the Puritan refugees led by John Winthrop. In the early years of the theocratic settlement, the governor and a few magistrates made and executed the laws, giving little voice to the colonists. In the 1630s, several committees drafted successive attempts at codes of law that would allow for more protection against arbitrary rule by combining principles of the Magna Carta with biblical teachings. The General Court, or representative assembly, finally approved the Massachusetts Body of Liberties in 1641. This document provided for limitations on the magistrates and for significant protection of the rights of individuals under the pattern set by the Magna Carta as the authoritative source of the rights of Englishmen.

Reflecting the growing sense of liberty among many of the charter writers of the 1600s, William Penn explained his philosophy of government in the preface to Pennsylvania's 1682 Frame of Government.

Document: William Penn, Preface to the Frame of Government

Source:

<http://press-pubs.uchicago.edu/founders/documents/v1ch17s4.html>

Text
Any government is free to the people under it (whatever be the frame) where the laws rule, and the people are a party to those laws, and more than this is tyranny, oligarchy, and confusion. . . .
Governments, like clocks, go from the motion men give them, and as governments are made and moved by men, so by them they are ruined too. Wherefore governments rather depend upon men than men upon governments. Let men be good, and the government cannot be bad; if it be ill, they will cure it. But if men be bad, let the government be never so good, they will endeavour to warp and spoil to their turn. . . .
That, therefore, which makes a good constitution [good people], must keep it . . . [needing] men of wisdom and virtue, qualities that because they descend not with worldly inheritances, must be carefully propagated by a virtuous education of youth. . . .
The great end of all government [is] to support power in reverence with the people and to secure the people from the abuse of power, that they may be free by their just obedience, and the magistrates honourable for their just administration; for liberty without obedience is confusion, and obedience without liberty is slavery.

To show the development of written, guaranteed rights in the North American colonies before the English Bill of Rights and Glorious Revolution of 1689, the following excerpts from four colonial charters are provided for comparison:

- First Charter of Virginia, 1606
- Charter of Maryland, 1632
- Massachusetts Body of Liberties, 1641
- Frame of Government of Pennsylvania, 1682