

Bill of Rights in Action



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THOMAS PAINE: AMERICA'S MOST RADICAL REVOLUTIONARY

THOMAS PAINE HELPED SPARK THE AMERICAN REVOLUTION BY CHALLENGING THE IDEA OF MONARCHY, DEMANDING INDEPENDENCE, AND CALLING FOR A REPUBLIC. HE ALSO PLAYED A ROLE IN DEFENDING THE FRENCH REVOLUTION AND LATER DESCRIBED HIS VISION OF A JUST SOCIETY FAR AHEAD OF ITS TIME.

Thomas Paine was born in Thetford, England, in 1737. His father made corsets, an undergarment that cinched a woman's waist for a tightly fitted dress.

Although Thomas was baptized into his mother's Church of England faith, his father was a Quaker.

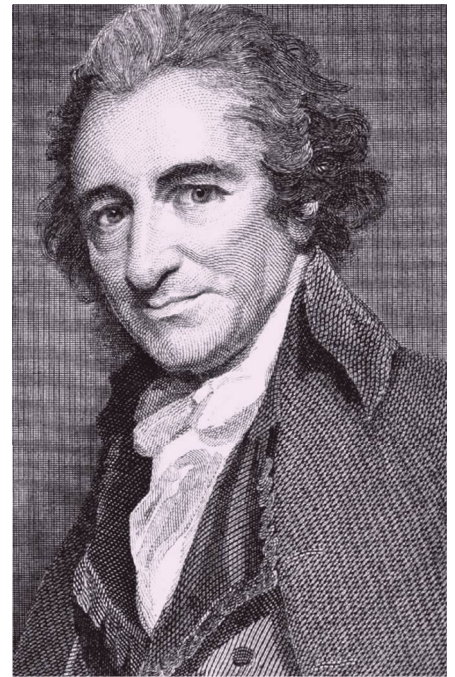
Thomas frequently went with him to Quaker meetings where he learned about abolishing slavery and other progressive ideas.

Thomas' father had to borrow money to pay for his son's elementary school education. But his father forbade Thomas from studying Latin, because he saw it as the language used by the government and Church of England to cover up their tyranny.

Not learning Latin ended Thomas' chances for going to a university. Therefore, at age 12, he became his father's apprentice.

At age 20, Paine left Thetford for London. With England at war with France, he signed on as a crewman aboard a British privateer, a sort of government authorized pirate ship. The privateer captured several French ships, and Paine earned a share of the booty. This gave him a stake to start a new life in London.

Paine was eager to advance his education. He visited bookshops, attended lectures, and learned to debate. He read books, newspapers, magazines, and political pamphlets and studied the Bible. London was buzzing with Enlightenment ideas



(Library of Congress)

THOMAS PAINE (1737-1809) pushed for revolution in America and praised the French Revolution.

such as using reason to discover natural laws and human rights.

Paine started his own corset-making business and got married. But his business soon failed, and his wife died in childbirth. He tried teaching and then became a tax collector. He married again and managed a tobacco shop owned by his wife's family.

Paine wrote a petition to Parliament on behalf of his fellow tax men for an increase in salary. After a long delay, Parliament rejected his petition in 1774. Soon afterward he lost his tax collecting job. Meanwhile, the tobacco shop failed, and he separated from his wife.

At this low point, Paine happened to meet Benjamin Franklin, who represented the American colonies in London. Franklin convinced him ▶

REVOLUTIONARY THINKERS

This edition of *Bill of Rights in Action* focuses on three revolutionary thinkers. Our first article looks at Thomas Paine, the radical voice of the American Revolution. The second article examines the thinking of William Blackstone, whose massive work *Commentaries on the Laws of England* deeply influenced law in the early years of the American Republic. The last article looks at St. Augustine who has been called the last classical and first medieval scholar.

U.S. History: Thomas Paine: America's Most Radical Revolutionary

Government: Sir William Blackstone and the Common Law

World History: St. Augustine and the Role of Religion in the State

Guest writer Paul Baumgardner, a CRF summer intern, contributed the article on St. Augustine. Our longtime contributor Carlton Martz wrote the other two articles.

U.S. HISTORY

to give America a try and recommended him to businessmen in Philadelphia. The 33-year-old Paine quickly sailed for America and landed in the middle of growing hostility between England and her colonies.

Common Sense

Paine found a job as a magazine editor and writer. He wrote articles on a variety of subjects that ranged from cruelty to animals to the abolition of slavery.

The recently formed Continental Congress attempted to negotiate with Parliament and King George III. But the English refused to compromise and instead sent troops to put down the rebellion in Boston. After the king's troops clashed with Americans at Lexington and Concord in April 1775, Paine went to work on a pamphlet, arguing for independence and the establishment of an American republic. He wrote this pamphlet in plain language to appeal to the "common man." He titled it *Common Sense*.

Paine first argued that England's system of government was a tyranny. It granted the king and aristocracy more power than Parliament's elected House of Commons.

Paine attacked the whole idea of a hereditary monarchy. He declared that the first kings were "nothing better than ruffians." He thought it absurd that kings and queens could pass on the monarchy to their children or other family members because this often resulted in poor rulers. Paine asked: What use is a king? Only to make war and impoverish the nation, he answered.

Paine ridiculed the origin of the English monarchy. It began, Paine reminded his readers, with a French noble, William the Conqueror, invading England. William made himself king against the consent of the English people.

Paine turned to his arguments for immediate independence. After the battles of Lexington and Concord, Paine explained, he had lost all desire for negotiating with the

"Pharaoh of England." Paine contended that staying with England meant being dragged into Europe's never-ending wars, which would ruin American trade. In addition, the king could veto laws passed by colonial legislatures.

Paine called for a constitutional convention to establish a democratic republic. He wrote, "A government of our own is our natural right." He insisted that a written American constitution should secure "freedom and property to all men, and above all things, the free exercise of religion."

*Paine's hope for
democratic republics
sweeping away
hereditary rulers has
become a reality in
much of the world.*

What about a king for America? The only king he recognized "reigns above, and doth not make havoc of mankind like the Royal Brute of Britain." In America, he wrote, "THE LAW IS KING."

Published early in 1776, Paine's *Common Sense* electrified Americans and prompted the Declaration of Independence a few months later. The pamphlet also made Paine America's first best-selling author. A quarter million copies were printed by the end of 1776. Paine donated all the profits to General Washington's army.

Paine and the American Revolution

Paine joined the war for independence as an aide to General Nathaniel Greene. But Washington and others realized he could offer

greater service by using his writing talents. Thus, he began writing a series of essays that together are called *The American Crisis*.

When Paine began writing the *Crisis* essays in December 1776, the revolutionary fight was in trouble due to military defeats, short-term enlistments, desertions, and lack of financial support. In the first *Crisis* essay, Paine called for patriotic sacrifice:

These are the times that try men's souls. The summer soldier and sunshine patriot will, in this crisis, shrink from the service of their country; but he that starts it now, deserves the love and thanks of man and woman. Tyranny like hell, is not easily conquered. . . .

Paine's words had an immediate effect. Washington had the essay read to his troops just before their surprise Christmas Eve crossing of the Delaware River to attack Hessian troops.

Throughout the Revolutionary War, Paine successfully boosted American morale and goaded men of wealth to finance the cause. He continued to donate the profits of his writings to the army. When the war ended, Paine was a Revolutionary War hero but impoverished. New York gave him a farm confiscated from a Tory Loyalist.

Paine retired to his farm and pursued an interest in engineering. Encouraged by Franklin, he designed a single span iron bridge. In 1787, the 50-year-old Paine sailed for England to seek financing for his bridge.

The Rights of Man

In England, Paine found little interest in his bridge project. But he became a friend of Edmund Burke, who had supported the American Revolution in Parliament. On a visit to France, Paine was treated as a celebrity for his now internationally famous *Common Sense*.

When the French Revolution began in 1789, Paine was thrilled at

the prospect that American-style republican government would sweep Europe. Paine's friend Burke, however, was appalled at what he saw as mob rule in France and wrote a work attacking the revolution.

In his *Reflections on the French Revolution* (1790), Burke condemned the destruction of centuries of French civilization. It was better, he argued, to rely on a king and the landowning nobility than the "swinish multitude." He predicted the French Revolution would end in the dictatorship "of some popular general." Burke also celebrated Britain's unwritten constitution with its hereditary monarchy and House of Lords as the best way to ensure the rights and freedom of the people. The English constitution was a compact, Burke wrote, between those who are living and those who are dead, representing the "wisdom of ancestors."

Paine was shocked by Burke's assault on the French Revolution and immediately began to write a rebuttal to his arguments. This became Paine's most thorough piece of revolutionary writing, *The Rights of Man*.

Paine called Burke's idea that the "wisdom of ancestors" should control the living generation an "absurdity." He declared that "government is for the living and not for the dead." He wrote that the French Revolution was caused by the "hereditary despotism of the monarchy" imposed on the people long ago.

Paine wrote that everyone was born with equal natural rights. He said that once society formed, the people made a compact with each other, not with a king, to form a government. Thus, government was "out of the people." Paine charged that an English constitution did not exist since it was merely a collection of traditions and past agreements. The English monarchy, he insisted, came about "out of conquest" and suppressed people's natural rights.

By contrast, Paine cited parts of the newly written French Constitution,

including the Declaration of the Rights of Man and of the Citizen. According to it, "Men are born and remain free and equal in rights," which include "liberty, property, security, and resistance to oppression."

Paine concluded that once monarchies, "the enemy of mankind," have been abolished, wars and the oppressive taxes used to conduct them would disappear. In "an age of Revolutions," he looked forward to a league of republics that would promote the progress of civilization.

First published in London in 1791, *The Rights of Man* was an international hit. Responding to criticism from Burke and others, Paine quickly wrote a second part in which he attacked the English monarchy for its spending and debt caused mainly by wars. He also scorned the House of Lords for being a body of tax-avoiding aristocrats.

Paine called for a major expansion of the right to vote with no property requirement. He then proposed that the people abandon the monarchy and adopt a republic. Part two of *The Rights of Man* became another bestseller, but Paine used the profits to print cheap editions that almost anyone could buy.

Fearing Paine's revolutionary ideas, the English government mounted a vicious campaign to smear him and suppress his "wicked and seditious writings." Paine was arrested for sedition (inciting rebellion, a hanging offense) and was headed for trial, but managed to flee to France.

Paine and the French Revolution

In 1792, the people of France welcomed Paine as a hero. The French made him a citizen and even elected him as a delegate to the National Convention, which abolished the monarchy and debated the fate of Louis XVI.

Using a French translator, Paine spoke against executing the king. He argued that this would set a terrible



PAINE'S *THE RIGHTS OF MAN* defended the French Revolution and attacked the English monarchy.

Library of Congress

precedent that would lead to more executions, eventually reaching the revolutionaries themselves. Even so, a bare majority of the Convention, led by Maximilien Robespierre, voted to execute the king.

Soon after King Louis XVI lost his head to the guillotine, the revolutionaries began to accuse each other of treason. Robespierre took control of the government and sent thousands to the guillotine.

Paine despaired that his hopes for a republican France modeled after the United States had become soaked in blood. Paine himself was imprisoned for six months and barely escaped execution. When Robespierre fell in 1794, Paine was released. ►

Around this time, Paine wrote *The Age of Reason*, which described his views about religion. He was a Deist, like a number of the American founding fathers. Paine declared, “I believe in one God.” But he rejected all organized religions, including Christianity, and believed much of the Bible was the work of humans, not the word of God.

Paine still hoped his republican ideals would topple the monarchs of Europe. He met with Napoleon, and even developed a plan for him to invade England to make it a republic.

Paine and the Just Society

Paine had a vision for a just society. In the second part of *The Rights of Man*, he foresaw a surplus of tax revenue once the English monarchy, with its wasteful spending and wars, had been abolished. He would use this surplus to subsidize newly married couples, make child welfare payments, and enable children to go to school for at least six years. In addition, he called for temporary support for the unemployed.

To provide a just society, Paine proposed a tax on the estates of the aristocracy. He also called for a tax on the interest gained by stockholders.

Later, after his release from prison in France, Paine wrote *Agrarian Justice*, in which he argued that everyone held an equal natural right to the earth. Ownership of land, he

said, consisted only of the improvements individuals made upon it, “not the earth itself.”

Paine concluded that in order to keep their property, individual landowners owed “ground rent” to those without property because they had been deprived of their “natural inheritance.” Paine proposed the “ground rent” should go into a “National Fund” to provide a stake to every man and woman at 21 to get a start in life. In addition, the fund would pay an annual pension to those aged 50 and over. Paine believed poverty would be ended by these measures, but his ideas were ignored.

Back to America

Paine saw no future in France for himself after Napoleon seized power as a dictator in 1799. In England, he was an outlaw. In America, many condemned him as an atheist and dangerous radical. But one of his few remaining American friends, Thomas Jefferson, was elected president in 1801 and invited him back to America.

At age 65, Paine returned to the United States, but not as a hero. He continued to write on American politics and prodded Jefferson to make the Louisiana Purchase. He died in 1809 with only a few mourners in New York City.

At the end of his life, Paine seemed to be a failure. Edmund

Burke was right about the French Revolution ending badly. Moreover, monarchies still ruled England and the rest of Europe.

Today, however, Paine’s hope for democratic republics sweeping away hereditary rulers has become a reality in much of the world. It is on the march today in Arab countries. In the end, it was Thomas Paine who had it right when he wrote in *Common Sense*, “We have it in our power to begin the world again.”

For Discussion and Writing

1. What do you think was Paine’s most important contribution to the American Revolution? Why?
2. How did Paine disagree with Burke over the “wisdom of ancestors”? Do you agree with Paine or Burke? Why?
3. Paine has been criticized as an atheist and a socialist. Define these terms and then explain why you agree or disagree with the critics.

For Further Reading

Nelson, Craig. *Thomas Paine: Enlightenment, Revolution, and the Birth of Modern Nations*. New York: Viking, 2006.

Foner, Eric, ed. *Collected Writings: Thomas Paine*. New York: The Library of America, 1995.

ACTIVITY

Thomas Paine’s Ideas

Meet in small groups to discuss and rank the following list of Thomas Paine’s ideas from the one you agree with the most(1) to the one you agree with the least(7). Be prepared to defend your choices.

Thomas Paine:

- _____ ridiculed the concept of hereditary monarchs.
- _____ rejected Burke’s “wisdom of ancestors.”
- _____ promoted the spread of democratic republics.
- _____ argued against executing King Louis XVI.
- _____ planned an invasion of England to make it a republic.
- _____ declared individuals did not really own the land they possessed but just the improvements on it.
- _____ proposed taxing property owners to pay for aiding the young and providing pensions for the old.

SIR WILLIAM BLACKSTONE AND THE COMMON LAW

WILLIAM BLACKSTONE WAS AN 18TH CENTURY LEGAL SCHOLAR AND JUDGE WHO TOOK ON THE MASSIVE JOB OF ORGANIZING AND CLARIFYING ENGLAND'S COMMON LAW. HIS *COMMENTARIES ON THE LAWS OF ENGLAND* DEEPLY INFLUENCED THE EARLY DEVELOPMENT OF AMERICAN LAW.

The son of an English silk merchant, William Blackstone was born in 1723, shortly after the death of his father. By age 12, he had also lost his mother. His uncle paid for his early schooling and sent him to Oxford University where he studied the classics, logic, and math.

At 18, Blackstone went to London to study law. Legal education in England consisted of reading Roman law and observing procedures in the London courts.

In 1746, Blackstone began to practice law, but was not successful. In a few years, he gave up his law practice and returned to Oxford to apply for a professorship of Roman law, but was turned down.

Remarkably, none of the English universities taught English common law. One reason was that the English common law consisted of a huge confusing collection of court decisions and other documents, often written in Latin. Blackstone decided to fill this gap in legal education by giving a series of lectures on the common law.

In his lectures, Blackstone organized and clarified the entire body of the common law for the first time. The lectures proved popular with students and provided the basis for his *Commentaries on the Laws of England*, which he published between 1765 and 1769. This work, consisting of about 2,000 pages, made Blackstone the chief authority on the common law in England.

Blackstone was married in 1761. That same year, he was elected to the House of Commons in Parliament where he served until 1770. He accomplished little as a legislator. He



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WHEN WILLIAM BLACKSTONE (1723-1780) failed to get a position teaching Roman law at Oxford University, he began teaching about England's common law.

was a supporter of George III and voted against repealing the Stamp Act that the king's government had imposed on the American colonies. He later opposed the American Revolution.

Blackstone reopened his law practice, but his real passion was lecturing on the law. In his later years, he was appointed a judge of the Court of Common Pleas, England's main civil and criminal court.

George III knighted Blackstone in 1770, officially making him a member of the nobility. Sir William Blackstone died at age 57 in 1780.

The English Common Law

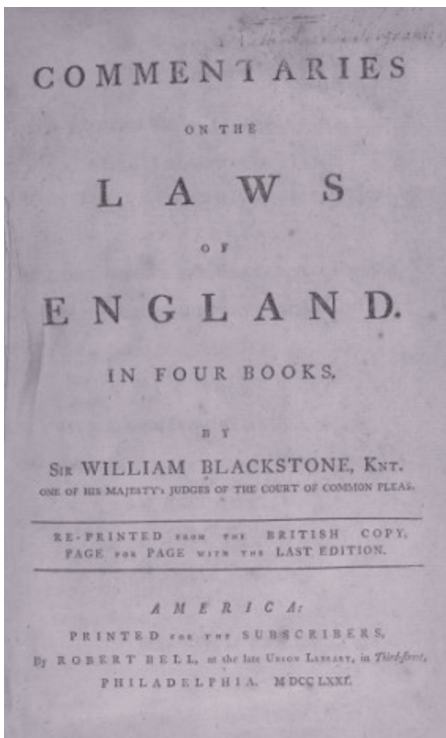
Blackstone stated in his *Commentaries* that the common law originated with God's "revealed law" in the Bible and the "natural law" that humans could discover by using their God-given ability to reason. The

written record of the English common law began after the Norman conquest and occupation of England by William the Conqueror in A.D. 1066.

Early Norman kings established royal courts that decided important legal cases. The king's judges traveled about the kingdom and noted the unwritten local customs that made up the "law of the land." In making their decisions, the judges tried to adopt laws that were the most common in the realm. They then cited their previous common law decisions when deciding later cases. The prior cases were precedents, rules for later courts to follow.

In one sense, the judges were "making" the law as they decided cases. Blackstone, however, insisted that the judges were using reason to "find" the "true common law."

By Blackstone's time in the ►



THE FIRST AMERICAN edition of Blackstone's four-volume *Commentaries on the Laws of England* was published in the early 1770s.

mid-1700s, thousands of court decisions and precedents made up the common law. Also, over the centuries, common law principles had become part of important English documents like the Magna Carta and certain acts of Parliament.

In addition, Blackstone depended on the writings of earlier legal scholars. For example, Henry de Bracton in the 1200s had written that everyone, even the king, must obey the common law. This established the key principle of the “rule of law.”

The common law was unique to England. Most of the other European nations developed codes of law modeled after the ancient code of Roman laws. Codes are collections of laws and legal procedures compiled by monarchs or enacted by legislatures.

In England, judges decided what the common law was through their decisions on cases. But as the English Parliament evolved, it passed its own laws called statutes. The com-

mon law judges at first complained that the statutes were interfering with their authority. Statutory law enacted by Parliament, however, eventually took on a higher legal authority than the common law.

Even so, Blackstone declared that no statutes were valid unless they conformed to God’s revealed and natural law. Making these statutes was the duty of the king and members of Parliament, which Blackstone proclaimed to be the best government of any nation past or present.

The Rights of Persons

Blackstone’s *Commentaries* was not a code of laws. It described what the common law said about nearly every aspect of English life. He divided his massive work into four general subjects or books.

In Book I, Blackstone identified the absolute rights of all persons, such as the right to life, health, reputation, habeas corpus (bringing a prisoner before a judge after arrest), and trial by jury. He also described the people’s right of private property, petition, and “having and using arms for their defense . . . as allowed by law.”

Blackstone made a long list of rights belonging exclusively to the king. For example, he could veto statutes passed by Parliament, acted as commander-in-chief of the military, and headed the Church of England.

In one of Blackstone’s most controversial statements, he wrote, “The king can do no wrong.” Later on, he explained that “the law will not suppose the king to have meant either an unwise or injurious action, but declares that the king was deceived.”

In Blackstone’s day, the House of Lords (the land-owning nobility), which met with the king, held most of the power in Parliament. The weaker elected House of Commons met separately. The vast majority of people could not hold a seat in Parliament or even vote for members of the House of Commons because both required owning property.

Blackstone clearly approved that “the power of Parliament is absolute and without control.” This concept was in sharp contrast to the views of English philosopher John Locke (1632–1704) and later Thomas Jefferson (1743–1826). They said the people held ultimate power and could change or abolish the government.

Blackstone wrote nearly 200 pages on the rights of the king and Parliament, but relatively little about rights meaningful to the common people. One area involved what the common law said about husbands and wives:

The husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband.

Concerning the rights of children, parents had a duty to provide for “their maintenance, their protection, and their education.” But a father “may have the benefit of his children’s labor while they live with him, and are maintained by him.”

A father also had the right to “correct his child” in a “reasonable manner.” At school, the schoolmaster possessed the “power of the parent,” which included the “restraint and correction” of the child.

Property and Civil Injuries

In Book II, Blackstone wrote what the common law said about property, especially the ownership and inheritance of land. For example, he discussed primogeniture, the idea going back to feudal times that only the eldest son could inherit an estate in order to keep the land intact.

In Book III, Blackstone discussed civil injuries (also called torts). This involves lawsuits between private individuals. Blackstone described a wide range of torts, including such acts as negligence, property damage, defamation, trespass, and nuisances like foul smells. He then identified the civil courts and trial procedures.

Blackstone wrote an entire chapter on trial by jury in civil cases, which actually developed before jury trials in criminal cases. He described a jury as “twelve free and lawful men” who were “neighbors and equals” of the defendant in a lawsuit. Jurors could be challenged for bias and had to swear to reach a unanimous verdict based on the “best evidence.”

Blackstone declared that jurors were “the best investigators of truth, and the surest guardians of public justice.” He called juries “the glory of the English law.”

Crimes and Punishments

In Book IV, Blackstone turned to a subject that affected the common people much more than the other parts of his *Commentaries*. Here he discussed crimes, criminal trials, and punishments.

Blackstone defined common law crimes against persons, which ranged from “high treason” against the king to the rape of a woman, “forcibly and against her will.” He also discussed property crimes such as arson, burglary, and pickpocketing.

In addition, Blackstone discussed crimes against the “public peace.” He defined an “unlawful assembly” as when “three or more do assemble themselves together to do an unlawful act.” He described a criminal statute against “tumultuous petitioning” that made it illegal to have more than 21 names on a petition. “Spreading false news” against “any great man of the realm” was a crime. So was “libel,” publicly defaming another in writing, pictures, or signs. This was a crime even if the words or images were true since it was the “provocation” to the public peace that mattered.

Blackstone went on to review the rules of a fair criminal trial by a jury of one’s peers, “the grand bulwark of his liberties.” Blackstone also restated a famous common law principle: “It is better that ten guilty persons escape than one innocent suffer.”

The common law, Blackstone wrote, called for severe punishments to deter crime, although he believed penalties should fit the crime. He found 160 felonies punishable by death, which included treason, murder, rape, burglary, and pickpocketing when the value of the theft was over 12 pence (pennies).

Capital punishment was usually by hanging, but in rare cases could be done by disemboweling, dismembering, and burning at the stake. Lesser crimes had many possible punishments such as fines, confiscation of property, imprisonment, branding, whipping, and exile to America.

Blackstone acknowledged that defects in the common law existed. The king and Parliament, he wrote, had the duty to correct them. In their hands, he concluded, rested the destiny of the common law, “the best birthright and noblest inheritance of mankind.”

*Although codes
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the common law
tradition survives.*

Blackstone and America

Blackstone wrote that the common law applied only to England, although Parliament could pass statutes to control its colonies. Even so, American colonies had used English common law since their founding and considered it their own “law of the land.”

As the conflict between the colonies and mother country heated up, American patriots often quoted Blackstone to demand their rights as Englishmen such as in this passage from his chapter on taxes:

For no subject of England can be constrained to pay an aid or taxes, even for the defense of the realm or the support of government, but such as are imposed by his own consent, or that of his representatives in Parliament.

The delegates to the Constitutional Convention often referred to the authority of Blackstone’s *Commentaries* during their debates. They adopted his strong support of the rule of law. Later, many rights described by Blackstone, such as trial by jury for both civil and criminal trials, were included in the Bill of Rights.

Jefferson and a few others did not want to adopt the English common law for their new nation. They argued for a comprehensive American code of laws similar to those in continental Europe.

An American code of laws gained little support because Blackstone’s *Commentaries* provided a familiar “Bible of the law” that most of the states and the federal government readily adopted. In this way, Blackstone may have had a greater, though unintended, influence on the law in United States than in England.

Out on the frontier, “Blackstone lawyers” learned the law by reading his *Commentaries* and serving as apprentices to attorneys. When American law schools were established in the 1800s, professors lectured on the common law as they were also finally doing at English universities because of Blackstone’s *Commentaries*.

Many chapters in the *Commentaries*, however, were not relevant to the United States. In addition, the U.S. Congress and state legislatures enacted increasing numbers of statutes. They created codes of laws, attempting to clarify, restate, or improve the common law. These codes held greater legal authority than the common law.

In 1870, Harvard Law School introduced a new method for studying the law. Students read and discussed ►

court cases interpreting code sections, individual statutes, and the common law. As this method of learning spread across the nation, Blackstone's influence in the U.S. began to fade. By 1900, few law students read Blackstone anymore. But some of Blackstone's language about the common law remains embedded in federal and state tort, property, and other laws.

Judging Blackstone

In Blackstone's lifetime, his greatest critic was the English political and legal reformer, Jeremy Bentham. A former student of Blackstone, Bentham pointed out numerous errors of reasoning, contradictions, and lack of precise legal definitions. They all added up, he said, to "nonsense on stilts." In fact, Bentham considered the common law itself irrational and "ancestor worship" and called for the adoption of modern codes.

Other critics charged that Blackstone based his entire work on a myth that the English common law originated with God rather than the acts of men. Many have criticized Blackstone for picking and choosing those elements of the common law that favored the monarchy and

property-owning classes while minimizing the rights of the common people. "Laws are made by superior people for inferior people to follow," he wrote.

Blackstone also failed to write much about contracts and commercial law even though the English Industrial Revolution was underway. He did say that commoners should have more representation in Parliament and that some of the criminal punishments were too harsh. But when he had a chance to introduce reforms as a member of Parliament, he was silent.

Sir William Blackstone also had his admirers. Lord Avonmore said of Blackstone and the common law: "He found it a skeleton and clothed it with life, color and complexion." He certainly accomplished a monumental service for his country. For the first time, he described the common law in English and in a way that was more understandable, even to his critics.

Although codes and statutes lay out the law in America today, the common law tradition survives. Some of the English common law remains in these modern codes. And when courts interpret statutes, these decisions become precedents, which

other courts must follow. Thus a huge body of law exists in court decisions. Much like Blackstone in his day, the American Law Institute, a group of legal scholars, publishes "restatements" of this case law in an attempt to clarify and simplify modern American law.

For Discussion and Writing

1. How was the English common law different from the code law in most of the rest of Europe?
2. Why did Blackstone's *Commentaries* have such a big influence on the early development of American law? Why did this influence fade by 1900?
3. Do you think Blackstone was a revolutionary or a conservative? Why?

For Further Reading

Blackstone's Commentaries on the Laws of England. The Avalon Project. Lillian Goldman Law Library. 2008. Yale Law School. URL: http://avalon.law.yale.edu/subject_menus/blackstone.asp. (This web site provides the complete text of Blackstone's *Commentaries*.)

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ACTIVITY

'Blackstone Lawyers'

Form small groups of frontier "Blackstone lawyers" who based their courtroom arguments in the early 1800s on what Blackstone said about the common law in his *Commentaries*.

- A. The "Blackstone lawyers" should answer the questions listed below, according to how they think Blackstone would answer them. Write down support for each answer from the article.
- B. The class should then discuss Blackstone's likely answers to the questions and how the students would answer them today.

How Would Blackstone Answer These Questions?

1. May a married woman buy land in her own name with money she has earned herself?
2. May a father demand all the job earnings of his children until they leave home on their own?
3. May a school teacher spank a student in order to correct his poor behavior?
4. May a newspaper insult the president with rumors that turn out to be true?
5. May a trial judge who is convinced of a criminal defendant's guilt overrule the jury that found the defendant not guilty?
6. May a law require the death penalty for stealing a horse?

ST. AUGUSTINE

AND THE ROLE OF RELIGION IN THE STATE

ST. AUGUSTINE, A CHRISTIAN THEOLOGIAN AND PHILOSOPHER, WAS ONE OF THE FIRST POLITICAL THINKERS TO OUTLINE THE TENSION BETWEEN THE SECULAR STATE AND RELIGIOUS FAITH. UNLIKE ARISTOTLE AND OTHER ANCIENT PHILOSOPHERS, ST. AUGUSTINE OFFERED WESTERN CIVILIZATION A CLEAR VISION OF THE RELATIONSHIP BETWEEN CHURCH AND STATE.

Augustine (A.D. 354–430) lived in a time of great change in the Roman Empire. These events had a profound influence on Augustine’s political thought.

Just a little more than 40 years before Augustine was born, the Roman Empire began embracing Christianity. For hundreds of years, Roman society had outlawed the Christian faith, and believers in Christianity had suffered persecution.

Following Emperor Constantine’s conversion to Christianity in A.D. 312, Christianity began to be tolerated. By the late 300s, Roman emperors favored Christianity over other faiths, and the religion enjoyed an elevated status in the Roman world.

The decline of the Roman Empire also proved influential to Augustine’s scholarly work. The once invincible empire—which had amassed great fortune, conquered millions of miles of land, and unified a set of cultural beliefs in its territories—was beginning to weaken. Neighboring armies were threatening Roman military might, and diverse cultures and ideas were splitting the empire.

The Life of Augustine

Born in Roman northern Africa, Augustine grew up studying the great



ST. AUGUSTINE, also known as Augustine of Hippo, has been called the last classical and first medieval scholar.

philosophical works of Plato, Cicero, and Aristotle. In *Confessions*, his autobiography, Augustine also recounts the strong effect that his mother, Monica, held throughout his life. In Augustine’s early years, Monica provided him with academic and religious direction. She motivated him to continue his studies in philosophy and rhetoric and also urged him to be a Christian.

Throughout his life, Augustine grappled with the problem of evil. He was always seeking an explanation for the wickedness of man, and he strove for a religious and political way to live a good life amidst evil. In early adulthood, Augustine rejected the Christian faith. Augustine’s interest in the problem of evil instead drove him to Manicheanism, a popular religion. Manicheanism emphasized the dualistic nature of human life—goodness and light were always pitted against wickedness and darkness. In Manichaeism, humanity existed in a black-and-white world. Only after generations of ascetic living and piety could goodness conquer wickedness.

After finishing his education, Augustine became a teacher of rhetoric, the art of persuasion. He traveled to Rome and Milan, gained

success as a teacher, and seemed destined for political office. But Augustine began to doubt Manichean thought. Its teachings seemed disjointed, too materialistic, and without a sound philosophical foundation. One day in A.D. 386, when Augustine was 33, he underwent a religious experience that called him to Christianity.

Augustine’s life was profoundly changed. He gave up his teaching post, returned to North Africa to follow his newfound faith, and became a priest. By A.D. 396, Augustine had become the Bishop of Hippo. (Today Hippo is the Algerian city of Annaba on the Mediterranean Sea.)

Augustine’s wisdom drew both Christians and pagans to him, and he often discussed religious and political issues. These discussions, and Augustine’s corresponding writings, greatly contributed to the understanding of Christianity and the Western intellectual tradition.

Augustine Fused Ancient Philosophy With Christianity

When Augustine converted to Christianity, he still maintained his interest in classical philosophy. The works of Cicero had caught Augustine’s eye from a young age, ►

and the Roman statesman had sparked Augustine's interest in political philosophy. Through Cicero, Augustine gained a greater understanding of Plato's political thought.

Plato believed that the material world was merely a copy of a more perfect world, which included a higher morality for humans. When humans morally ascend to unselfish goals, they are able to combat the evil in this world. This moral "ascent" is a frequent theme in Plato's philosophy and also in Christian scriptures.

Aristotle also influenced Augustine, as Augustine wrestled with Aristotle's conception of politics. Aristotle argued that humans are political creatures. As humans, we tend to gather into communities and only in these can we lead the good life.

Augustine wondered how religion, specifically Christianity, factored into the conception of man as a political creature. Does religious faith change a human's political motivations or his expectations for the community?

Augustine's theological and political writings attempted to join together his Christian faith and classical thought. By shaping classical philosophy in a manner that embraced religious faith, Augustine argued that the classical intellectual world was compatible with the Christian religion.

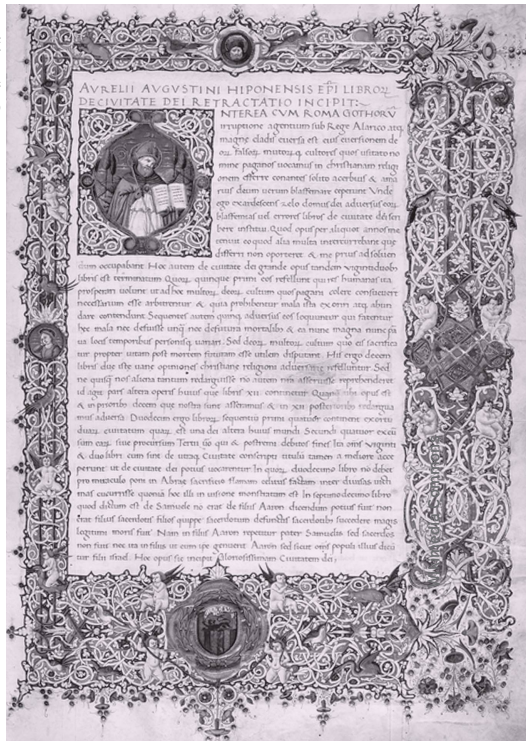
Two Societies

Augustine was a prolific writer. More than 100 of his works still survive today. His two greatest works are his *Confessions* and *City of God*.

Confessions tells his personal story. Much of it tells his odyssey from his sinful past to his redemption as a Christian. It explains that his struggle against sin is ongoing, and Augustine even admits: "I do not know to what temptation I will surrender next."

His *City of God* is considered the greatest political work of the early medieval period. It was prompted by the sacking of Rome by barbarian tribes in A.D. 410. Romans began to see the fragility of their

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AUGUSTINE'S *CITY OF GOD* responded to those Romans who blamed Christianity for causing Rome's decline.

state. Many politicians and academics blamed Christianity for Rome's vulnerability. Many viewed Judeo-Christian lifestyles as antagonistic to a well-ordered state, and it was believed that religion was hostile to the concepts of citizenship and prosperity. Religious faith was seen as a divisive political force that subverted civic allegiances. How could citizens protect the Roman way of life if their loyalty was split between God and the emperor?

To respond to these attacks against religion, Augustine wrote *City of God*. Augustine set out to clarify Christian teaching and thought. He also hoped to describe religion's proper place in society. This deep meditation about the intersection of "church and state" has had a profound effect on our Western culture. Defining the place of religion in politics is one of the most important issues that confront nations today.

In *City of God*, Augustine defines two competing societies: the City of Man and the City of God. Neither of these two "cities" represents physical communities. The City of Man describes the people in this world who love themselves above all else.

These people do not direct their lives toward justice or peace; instead, inhabitants of the City of Man direct their political efforts at fleeting material gains. Augustine contends that these efforts are disordered because worldly ambitions are inferior to efforts based on reason and virtue. In fact, the only reason that government exists is keep humans from being overwhelmed by their disordered and self-satisfying desires.

Augustine's City of God, on the other hand, seeks moral goodness. Although Augustine was a devout Christian, he believed that all people, regardless of faith, could be "citizens" of the City of God. They can be citizens of the City of God if they dedicate their lives to virtue and living well. People in the City of God are well-ordered and just. Because the inhabitants of the City of God align their political actions with moral goodness, instead of material wants, their community enjoys justice and happiness.

The two societies teach how important good character is to politics. For the state to flourish, people must do the right thing for the right reasons. If people are concerned

about moral political action, then the government will strengthen. If other interests such as money and personal prestige are more important, citizens will corrupt the government and make bad laws.

Religion, Citizenship, and Public Morality

Augustine described the political community as a “group of rational beings bound together to the objects of their loves.” He believed that people’s goals, and the highest loves in their hearts, would be represented in the state’s political choices. Augustine thought that humans are naturally led by their sinful desires and selfish goals, and as a result, societies were mostly wicked and unjust. Unlike Plato, who asserted an idealistic view of humans in his just state, Augustine offered a view of a just state that acknowledged the flaws in human living.

Although no lasting solution for social conflict exists because of human nature, Augustine taught that the government could minimize disorder. Government force and the law should be used to combat evil and severely rebuke wrongdoers. Through repressive action, the government could maintain peace.

For Augustine, the second and most important weapon against human selfishness was religion. Augustine decried the lack of morality in the public sphere, and he contended that the faithful should inject morality into civic life. By identifying and discarding immoral policies from the state, religion offers a service to civil society.

Augustine wrote of the importance of morality in public policy, and he disapproved of political actions that contradicted moral principles. He believed that religion functions as a check on the decision-making of the state. Only moral actions should qualify for the political arena, with rare exception.

Augustine believed that all citizens, especially the religious, owe obedience to earthly authorities. He

advocated a political order in which citizens lived virtuously, showed their patriotism, and trusted in the will of the ruler. Augustine believed that citizens should obey all laws, unless the laws directly interfered with religious duties. Citizens should only ignore the unjust laws of unjust rulers.

Law, Government, and Virtue

Augustine wrote that laws should be aimed at bringing about the common good. This understanding of law harkens back to Aristotle, who believed that the goal of politics is to produce responsible citizens and allow for greater exercise of happiness. The law should strengthen our virtues and honor human excellence.

For the state to flourish, people must do the right thing for the right reasons.

Augustine took Aristotle’s idea to the next step. Augustine declared that laws—and forms of government—should fit the particular place and population. If the majority population is virtuous, then democratic laws and political structures are best. But a democratic apparatus is not best if the city is corrupt. For this place and population, a single virtuous monarch may be the best path. Each political community is unique.

The most important facet of a community is its political leadership, Augustine wrote. This leadership must be virtuous and care more for moral goodness than for appeasing the material interests of the public. Just laws should be provided and executed by men of virtue, even if the type of government differs from state to state. It is important to note how Augustine’s concepts on government corresponded with the Roman Empire’s losing its grip on its territories.

Just War

One issue that greatly concerned Augustine was the morality of warfare. Cicero’s writings on just war greatly influenced Augustine’s thought. In the Roman Empire, it seemed as if battles were always occurring on some front. Sometimes Rome was seeking out other territories for acquisition in offensive wars. Other times Rome was defending itself from outside army attacking Roman land. Early political scholars attempted to outline when war was just.

Augustine recognized that fear of warfare always loomed even in a just government that minded its own business. Augustine wrote that these governments could be attacked by warmongering neighbors. For this reason, Augustine believed in defensive warfare, when justified. He did not support offensive warfare or even pre-emptive warfare (warfare undertaken to prevent future wars). Under this conception, only one army in the war can be fighting on behalf of justice. Augustine demanded that a state have the correct mind-set, motives, and actions when engaging in a war.

Augustine thought that warfare was only morally defensible if undertaken for the sake of peace. He hoped that states would be cautious about entering into a war. He wrote:

But the wise man, they say, will wage just wars. Surely, if he remembers that he is a human being, he will much rather lament the need to wage even just wars. For if they were not just he would not have to fight them and there would be no wars for him. The injustice of the opposing side is what imposes the duty of waging wars.

These considerations, which evolved from Cicero’s thinking, deeply influenced another great medieval philosopher, St. Thomas Aquinas(1225–1274), who also wrote extensively on just war. ►

Influence on Religion and Politics

St. Augustine stands as a pillar in the early Christian Church. He was responsible for reconciling opposing theological and social beliefs swirling in the medieval world. His writings adapted much of classical philosophy, especially Plato, into the Christian tradition. Hundreds of years later, another medieval scholar, St. Thomas Aquinas, adapted much of Aristotle into the Christian tradition.

Along with his great contributions to the Christian faith, Augustine remains a pivotal political thinker. His conceptions of law, public morality, and just war impacted later scholars such as Aquinas, Martin Luther, Thomas Hobbes, and Rene Descartes.

Additionally, the significant debate concerning where religion should exist in the state has its intellectual roots in Augustinian political thought. Modern courts, especially in the United States, are still determining the extent to which

religion should be reflected in our laws and political practices.

For Discussion and Writing

1. Do you think that the government should use legislation to encourage and protect morality?
2. Do you think that the American people are closer to Augustine's idea of the City of Man or the City of God? Why?
3. When did Augustine believe a nation was justified in going to war? Do you agree with Augustine? Explain.

ACTIVITY

Just War

In this activity, students examine the rationale behind different wars and see whether each war meets Augustine's criteria for a just war. (Several wars are described below. They are meant to further the activity and are not meant to be full descriptions of the causes of the wars. To extend the activity, consider having students individually re-search other wars.)

1. Form small groups.
2. Each group should reread the section "Just War" and discuss the **Wars**, listed below. In the discussions, do the following:
 - a. Decide whether each war meets Augustine's just war criteria, making it just for Americans to be fighting the war.
 - b. Decide whether in your opinion you think each war was justified.
 - c. Decide whether you think Augustine's just war criteria are useful in determining whether a war is just.

Wars

1. **American Revolution (1775–1783).** American colonists believed the British Parliament was treating them unfairly by, for example, imposing taxes without allowing American representation in Parliament. When British troops went to seize arms that Americans were stockpiling, the shooting began.
2. **War of 1812 (1812–1815).** Britain was fighting a war against France. It tried to stop the U.S. from engaging in trade with France. It also boarded American ships to remove British citizens (some were naturalized U.S. citizens) so they could fight in the war. Also, the U.S. was expanding into Indian land and the British supported the Indians. The U.S. declared war on Britain based on these grievances.
3. **Mexican-American War (1846–1848).** Texas had declared its independence from Mexico in 1836. Mexico still considered Texas part of Mexico. When Texas became a U.S. state in 1845, Mexico broke off relations with the U.S. The U.S. offered to buy California, a disputed border area between Texas and Mexico, and other land in the Southwest. Mexico refused. The U.S. sent troops into the disputed area, claiming it was part of Texas. Mexican troops fired on these troops, and Congress declared war.
4. **American Civil War (1861–1865).** When Abraham Lincoln was elected president in 1860, several Southern states declared that they were seceding from the Union. Shooting began on April 12, 1861 when Confederate forces attacked the U.S. Army's Fort Sumter in South Carolina.

About Constitutional Rights Foundation

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Standards Addressed

Paine

National High School U.S. History Standard 6: Understands the causes of the American Revolution, the ideas and interests involved in shaping the revolutionary movement, and reasons for the American victory. (1) Understands the social, political, and religious aspects of the American Revolution . . . (3) Understands differences and similarities between the Declaration of Independence and other documents on government . . .

California History Social Science Standard 10.2: Students compare and contrast the Glorious Revolution of England, the American Revolution, and the French Revolution and their enduring effects worldwide on the political expectations for self-government and individual liberty. (3) Understand the unique character of the American Revolution, its spread to other parts of the world, and its continuing significance to other nations.

California History Social Science Standard 11.1: Students analyze the significant events in the founding of the nation and its attempts to realize the philosophy of government described in the Declaration of Independence. (1) Describe the Enlightenment and the rise of democratic ideas as the context in which the nation was founded. (2) Analyze the ideological origins of the American Revolution, the Founding Fathers' philosophy of divinely bestowed unalienable natural rights . . .

Blackstone

National High School World History Standard 20: Understands the redefinition of European society and culture from 1000 to 1300 CE. (2) Understands the development of English government and its legal and political system (e.g., the Magna Carta and its tenets of the rule of law and constitutional liberties . . .

National High School U.S. History Standard 8: Understands the institutions and practice of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights. (1) Understands influences on the ideas established by the Constitution . . .

National High School Civics Standard 3: Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good. (2) Knows alternative ideas about the purposes and functions of law (e.g., custom, Supreme Being, sovereigns, legislatures) and different varieties of law (e.g., divine law, natural law, common law, statute law, international law).

National High School Civics Standard 8: Understands the central ideas of American constitutional government and how this form of government has shaped the character of American society. (1) Knows major historical events that led to the creation of limited government in the United States (e.g., Magna Carta (1215), common law . . .

National High School Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. (1) Understands how the rule of law makes possible a system of ordered liberty that protects the basic rights of citizens.

California History Social Science Standard 7.6: Students analyze the geographic, political, economic, religious, and social structures of the civilizations of Medieval Europe. (5) Know the significance of developments in medieval English legal and constitutional practices and their importance in the rise of modern democratic thought and representative institutions . . .

California History Social Science Standard 12.1 Students explain the fundamental principles and moral values of American democracy as expressed in the U. S. Constitution and other essential documents of American democracy. (1) Analyze the influence of . . . English . . . political thinkers such as . . . William Blackstone on the development of American government.

Augustine

National World History Standard 12: Understands the Imperial crises and their aftermath in various regions from 300 to 700 CE. (1) Understands political and social elements during the decline of the Roman and Han Empires . . .

California History Social Science Standard 7.1: Students analyze the causes and effects of the vast expansion and ultimate disintegration of the Roman Empire. (1) Study the early strengths and lasting contributions of Rome (e.g., . . . Roman . . . philosophy; preservation and transmission of Christianity) . . .

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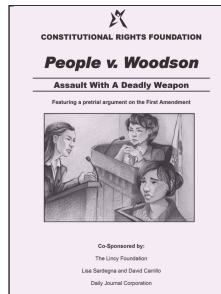
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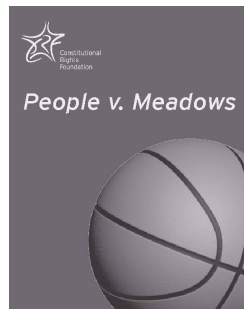
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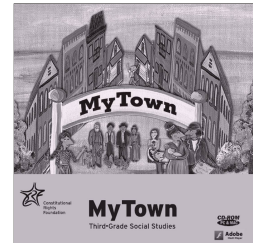
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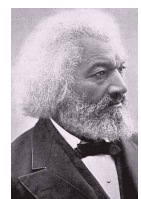
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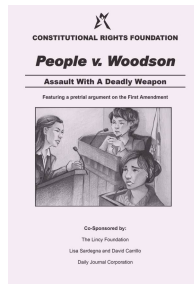
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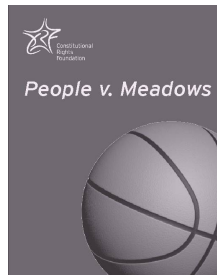
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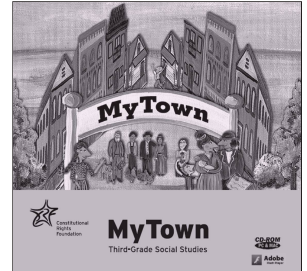
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