

THE BILL OF (TWELVE) RIGHTS: CONTINGENCY AND THE CONSTITUTION



Convention at Philadelphia, 1787. There were many different potential outcomes of this meeting of representatives in 1787.

Think of a time when a small change altered your entire day. Perhaps it was a time when you caught a bus to school just in the nick of time. Had you stopped to talk to a friend or neighbor for even half a minute on your way to the bus stop, you would have missed the bus.

That possibility of things going a different way is called *contingency*. In the example above, catching the bus on time was *contingent* on you not delaying yourself on the way to the bus stop. If you had missed the bus, then things could have gone a different way. Who knows how?

History is the same: we may be familiar with one set of events, but things could have turned out differently. Historians also call this presence of other possible outcomes contingency. And the story of the Constitution and the Bill of Rights is a story with many contingencies . . .

On March 4, 1789, soon after the ratification of the new United States Constitution, the members of the First Congress of the United States gathered in the recently renovated Federal Hall in downtown Manhattan in New York. Or at least some of them did. ▶

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**SPECIAL
NOTICE**



Federal Hall on Wall St. N.Y. and Washington's installation 1789. *How the first representatives of the new American government came to meet here could have happened differently.*

It would be weeks before enough representatives arrived for the newly formed Senate and House of Representatives to begin their work. Even though these political leaders had won their revolution against Britain and drafted and ratified the U.S. Constitution, questions remained about how the new national government would work.

During the ratification process of the Constitution, many Americans wanted revisions or amendments introduced to the Constitution. Some sought to create clearer limits on the powers of the federal government. It was up to this First Congress to try to hammer out what those amendments would be.

Today, a contemporary visitor to Federal Hall could, in just a few minutes, walk to the nearby National Museum of the American Indian, the African Burial Ground National Monument, the Museum of Jewish Heritage, or Zuccotti Park where the Occupy Wall Street movement began in 2011. These neighboring sites, and what they represent, could hardly have been imagined by the men who met in Federal Hall in 1789. They were not time travelers who knew the future of their new nation, nor were they representatives of all segments of colonial society. They were members

of an elite class of men who sought to address what they saw as the challenges of their time. Identifying and meeting these challenges was an uncertain process whose outcome was far from preordained.

In this essay we will examine the historical context surrounding the drafting of the Constitution's first amendments. A record of the first 12 proposed amendments is held at the New York Public Library. This essay will also consider how the first ten amendments that were ultimately adopted came to be known as the Bill of Rights.

Like the timing of arrivals of the senators and representatives to the First Congress, or your attempt to catch the school bus, the events that led to the creation of the Bill of Rights were not entirely predictable. They could have played out in a different way.

The American Revolution and its Uncertain Aftermath

The spring meeting of the nation's First Congress was part of a larger decision-making process. That process would decide the rules that would govern relations within the now independent United States, as well as between the new nation and other nations.

By challenging the power of the British king and Parliament, American revolutionaries had opened up space for other challenges to power. As John Adams of Massachusetts, who would later become one of the drafters of the Constitution, the first vice president and later the second president of the United States, put it in a letter to his wife, Abigail:

We have been told that our struggle has loosened the bands of government everywhere; that children and apprentices were disobedient; that schools and colleges were grown turbulent; that Indians slighted their guardians, and Negroes grew insolent to their masters.

To many revolutionaries, these threats to the established social order proved worrisome.

Leaders of the Revolution, like John Adams, generally favored a republic (a government of elected representatives) rather than a pure democracy (more decisions made directly by the people instead of their elected representatives) or a hereditary monarchy or aristocracy. But they only envisioned a republic in which some white men, mostly property owners, had the right to choose the rulers of the new nation.

They wrote about the new republic using language of equality and natural rights, but they did not apply these concepts to the majority of the population. For example, many of them thought that the new nation had a right to seize Indigenous land, sometimes through violence. Some of them, in fact, had become wealthy buying and selling land that had been taken from Indigenous communities. Enslaved people, too, were deprived of the equality and natural rights that the Revolution's leaders claimed as "unalienable" (that cannot be taken away by anyone) in the Declaration of Independence in 1776.

The Revolution's leaders, in general, were also opposed to granting political rights to women and poor white men who were not property owners. They argued that both groups were economically and intellectually dependent on propertied white men and, therefore, could not cast independent votes. Some of these ideas found their way into the new state constitutions that were written after the Revolution. Most of these constitutions included property requirements for voting.

Had the leaders applied the values of freedom, equality, and natural rights universally (to everyone), the new government they formed would have looked very different. This is another moment of contingency.

The Articles of Confederation

Before the ratification of the Constitution, the federal government was limited in what it could do by the Articles of Confederation, a set of rules written during the Revolution in 1777. The Articles prohibited many important national government functions, like collecting taxes.

War is expensive, and after the Revolution, the fact that the Articles of Confederation did not grant the federal government the power to collect taxes proved nearly catastrophic. Congress had sold government bonds to finance the war and paid soldiers and suppliers in notes (not cash) that could only be redeemed in the future. Without the right to raise taxes, the federal government could not pay any of these debts. A letter-writer expressed Congress's main problem with the Articles neatly to George Washington: "no money."

The ability of the national government to raise taxes and pay its debts was no abstract matter. In 1786, during the time period the Articles of Confederation were in effect, indebted farmers, some of whom had received only notes and little pay for serving in the Continental Army and state militias, occupied the courthouses in western Massachusetts. They were trying to prevent the seizure of their farms for failure to pay state taxes. The uprising, which became known as Shays' Rebellion, pitted the indebted farmers against Massachusetts's governor. Both sides claimed to be upholding the spirit of the Revolution.

Shays' Rebellion convinced many political leaders that the union was vulnerable under the weak Articles. Unless the nation strengthened the powers of the federal government, the union could dissolve. In 1787, representatives from every state except Rhode Island met in Philadelphia to revise the Articles.

The discussions around the Articles and Shays' Rebellion reveal moments of contingency. Had the Articles provided more power to the federal government, or had farmers in Western Massachusetts stayed home, this Philadelphia meeting would have likely unfolded very differently, or not at all.

The Constitutional Convention

The Constitutional Convention in the spring and summer of 1787 was not destined to happen. It was partly the result of a poor showing at a gathering earlier that year in which state delegates had hoped only to revise the Articles of Confederation, not replace them with an entirely new document. ►

At that earlier meeting, which representatives from only five of the thirteen states attended, the representatives set in motion what became the Constitutional Convention. They voted in favor of a resolution from Alexander Hamilton, a delegate from New York, that delegates from all the states would meet in Philadelphia and make necessary changes to “render the constitution of the Federal Government adequate to the exigencies of the Union.” Had delegates from the other eight states participated, the vote in favor of holding a Constitutional Convention might have turned out differently.

When representatives gathered in Philadelphia, they shared some views, but they also disagreed over many issues. The men who crafted the Constitution (the Framers) clashed at the convention over several key questions including: the balance of power between state governments and the federal government, expanding democracy or protecting private property, the representative power of small states versus big states, and the issue of slavery.

In drafting this new document many Framers wanted to create balance with the many already existing state constitutions, which they viewed as too democratic (granting too much power to regular people, rather than their representatives). As Massachusetts Representative Elbridge Gerry put it, the state constitutions had an “excess of democracy.”

Democracy, to most men at the Constitutional Convention, was a word with negative connotations. They associated democracy with a governing system in which regular people had an unacceptable amount of power. They preferred a republican system in which a portion of the people, in this case a small group of largely property-owning white men, chose the leaders who would then govern the entire nation.

The issue of slavery played a role in many debates at the convention. Though the words “slave” and “slavery” are not mentioned anywhere in the Constitution, the document references slavery many times. Framers deliberately used other language to describe enslaved people, like “persons.” But they could not avoid discussing slavery as it was a central economic institution and political question for the former colonies. The Constitution as ratified granted significant power to slaveholding states and the interests of slaveholders.

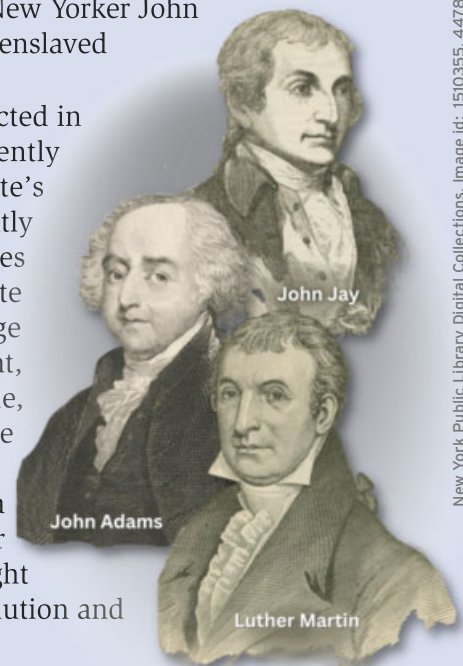
One example of this was the Three-Fifths Compromise. The Compromise granted slave states far greater power in the House of Representatives than free states. It allowed states to count three-fifths of their enslaved population when calculating the number of representatives allocated to each state in the House of Representatives. Although enslaved people could not vote, their bodies were used to expand the political power of enslavers.

The Framers' Attitudes Toward Slavery

The Framers held varied perspectives on slavery. About half of the participants in the Constitutional Convention were enslavers. Some of these men, like Thomas Jefferson of Virginia, later the third president of the United States, acknowledged the immorality of slavery in their speeches and writing but continued to own slaves themselves. Some enslavers, like New Yorker John Jay, would later advocate for gradual emancipation (policies that freed enslaved people after decades-long periods of continued servitude).

Other Framers demanded that slavery and the slave trade be protected in the Constitution. Powerful Southern representatives were vehemently opposed to any weakening of slavery. In response to one delegate's condemnation of the slave trade, John Rutledge of South Carolina bluntly said that “the true question at present is whether the Southern States shall or shall not be parties to the Union.” Rutledge implied that his state would not join a union that restricted the slave trade. George Washington, the nation's most revered political leader and first president, wore dentures partly made of teeth taken from enslaved people, illustrating the degree to which the extreme cruelties of slavery were woven into accepted political life.

Not all Founders supported slavery. John Adams was not a slaveholder and supported gradual emancipation. Others like Luther Martin of Maryland noted that allowing enslaved people to be brought into the new country was “inconsistent with the principles of the revolution and dishonorable to the American character.”



New York Public Library Digital Collections, Image id: 1510355, 4478573 1663221

In the Compromise, enslaved people were also to count as three-fifths of a person for the purposes of a head tax that each state was to pay the federal government. But the head tax was never implemented. The Three-Fifths Compromise was not the only win for enslavers in the Constitution, but it was perhaps the most significant because of its anti-democratic nature. It gave proslavery forces disproportionate power to push their own interests in government moving forward.

After four months of hashing out revisions and compromises, the details of which could have gone many other ways, the participants of the convention agreed on a draft of the Constitution. It was signed by every member of the Constitutional Convention but three.

Ratification

After the drafting of the Constitution came the process of ratification, in which electors in each state, voted on whether to ratify the Constitution. The question of whether to ratify the Constitution was hotly debated across the new nation's then thirteen states. As historians Edwin G. Burrows and Mike Wallace have put it: "no one, it seemed, could talk of anything else." Historian Pauline Maier described the excitement with which people approached the debates around ratification as similar to the last games of the World Series but with "greater intensity." It was a "nail biter," according to historian Jill Lepore.

In these discussions and debates, Federalists, who supported the ratification of the Constitution and a strong central federal government, faced off against those who opposed the ratification of the Constitution. Historians have referred to opponents of the ratification as "Anti-Federalists," but this was considered an insult at the time and was not a term that those against the Constitution would have used to describe themselves.

The popularity of the term "Anti-Federalists" in describing those who opposed the Constitution is partly a reflection of Federalists' wealth and power. The Federalists tended to be wealthier, more



Exciting scene in the House of Representatives, Jan. 31, 1865, on the announcement of the passage of the amendment to the Constitution abolishing slavery forever.

well-educated, and better connected than their opponents, and so they often influenced or directly financed press coverage of the constitutional debates and ratification process, including the adoption of the term Anti-Federalists.

Despite the power of the Federalists, the ratification of the Constitution was not guaranteed. Ratification was contingent on a large number of men who initially opposed the Constitution changing their minds. Opponents worried that the Constitution granted too much power to the federal government. In some places, like New York, the vote in favor of ratification only squeaked by with the assumption that a set of amendments, which later became the Bill of Rights, would be added on to further limit federal power.

The Amendments

After the "nail-biter" of a ratification process, we return to where we opened this essay: with the newly established First Congress arriving in New York in

The Two Amendments That Didn't Make the Cut

Two of the 12 proposed amendments presented to the House of Representatives in 1789 did not make the cut. The original First Amendment dealt with the number of representatives in Congress. It proposed a formula in which there would be at least 200 representatives.

The original Second Amendment specified when Congress could adjust its own pay. In essence, any change in pay that Congress would vote on could not take effect until after the next congressional election.

Neither of these two proposals were ratified by enough states to become amendments to the Constitution. But the original Second Amendment was eventually ratified in 1992 — over 200 years later! It is now the 27th Amendment to the Constitution.

August 1789 to begin the business of governing under the recently ratified Constitution. One of their first orders of business was to address the constitutional amendments that many Americans thought were so necessary to restrict federal power.

In August of 1789 the House of Representatives agreed to a list of 17 amendments and sent them to the Senate. The Senate rejected all of them before approving a revised list of 12 proposed amendments, a copy of which is preserved at the New York Public Library.

After another round of revisions, the 12 proposed amendments were sent to President Washington who in turn sent them on to the states (and Rhode Island and North Carolina, which were not yet states) for ratification. Different states ratified different amendments, illustrating that the amendments were understood by some as just a menu of possible changes, rather than a cohesive Bill of Rights to be adopted together. In the end, only ten of them received the necessary votes. Again, we see another contingency in how easily amendments other than the ones we are now familiar with could have been adopted and embraced.

Finally, the way that lawmakers, judges, lawyers, citizens, and residents have understood and used the Bill of Rights has changed over time. Today, we regularly refer to the ten amendments that were

ratified by the states as the Bill of Rights. These amendments are considered to be foundational for the protection of individual freedoms against the government.

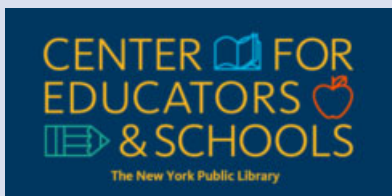
At the time that these amendments were written, however, they were not referred to as a Bill of Rights. Neither the amendments' supporters nor their detractors referred to them in this way. Some people, in fact, complained that the nation did not have a Bill of Rights even after the passage of these amendments. And many turned instead to the Declaration of Independence as an affirmation of the rights of the people with certain unalienable rights.

Our conception of the Bill of Rights was contingent on later events in U.S. history. It was not until the period known as Reconstruction after the Civil War (1865-1877) that these first ten amendments began to be labeled a Bill of Rights. During those years, with supporters of slavery driven from the national government, proponents of freedom and equality for African Americans began arguing that the Constitution guaranteed rights for individuals that neither the federal nor state governments could violate.

WRITING & DISCUSSION

1. Describe at least three examples of contingencies in the article.
2. Imagine the Constitutional Convention had included more delegates than just property-owning white men. How might the Constitution and Bill of Rights have turned out differently? Explain.
3. Why did historian Jill Lepore's call the ratification process a "nail-biter"? What does the term "nail-biter" tell you about the contingencies at play at the time?

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I. Compare and Contrast

First, with a partner, examine and discuss the copy of the original proposed 12 amendments below from 1789 from the New York Public Library:

Document and Transcription from *Treasures*: [Bill of Rights](#) | [The New York Public Library](#)

[Bill of Rights](#) in NYPL digital collections. (Audio Guide Transcript from *Treasures*: [Bill of Rights](#) | [The New York Public Library](#).)

Next, with your partner, examine and discuss the copy of the Bill of Rights, as adopted, from the Library of Congress:

A bill of rights as provided in the ten original amendments to the constitution of the United States in force December 15, 1791: [Bill of Rights \(Library of Congress\)](#).

Finally, write short answers the following questions:

- What differences do you notice between these two documents?
- How were the two proposed amendments that were not ratified different than the ten that were?
- Based on the essay that you read, why do you think the differences between the two documents exist?

Highlight at least one sentence to support your answer.

II. Write Your Own Amendment

Using either the Bill of Rights from 1789 or from 1950, write your own additional amendment to the Constitution. Think about what right(s) you think are important that you do not see reflected in whichever version of the document you chose. This could reflect a right that has been protected in the Constitution through later amendments, or it could be something that is still not protected constitutionally, but that you think should be. It could be:

an individual right, or
a right of a community or the environment, or
a responsibility of government.

Write a paragraph explaining why you think the right that you drafted is important and how you see it relating to the other parts of the draft of the Bill of Rights that you have chosen.



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TLAXCALAN: THE INDIGENOUS DEMOCRACY OF MEXICO



Rodrigo Gutiérrez painted “The Tlaxcalan Senate” in 1875. It depicts the republican government in central Mexico from 300 years earlier.

In the 16th century, the Aztecs led a powerful empire in central Mexico. The history of the Aztecs’ defeat by the Spanish Captain-General Hernán Cortés and his *conquistadores* (soldiers) is well known. Lesswell known are the Tlaxcalans (pronounced *Tuh-lash-kallanz*). As the Aztecs built their empire, conquering other native peoples of central Mexico, they never conquered the Tlaxcalans. The Tlaxcalans also had something very rare in the world at that time: democracy.

To understand the Tlaxcalans’ story, we can first look at the growth of their rivalry with the Aztecs (who called themselves the Mexica). Sometime in the 1200s, several waves of migrants traveled south from northern Mexico and/or the American Southwest. (Archaeologists tend to agree on this.) They settled in central Mexico. Among them were the Aztecs and the Tlaxcalans, who spoke the same Nahuatl language as each other.

The Aztecs built the city of Tenochtitlan (pronounced *Teh-nosh-titlan*), which is now the site of Mexico City. The Tlaxcalan people built the city of Tlaxcala, roughly 76 miles east of Tenochtitlan. The name Tlaxcala refers to “place of maize.” Maize was a type of corn that the people may have brought to the area.

Tlaxcalan and towns around the city formed one city-state. A city-state is a sovereign (self-ruling) city. In ancient Greece, the city-states of Athens and Sparta were rivals. In Italy in the 15th and 16th centuries, cities like Venice and Florence were city-states, too.

The Italian city-states were also republics. In a republic, leaders are elected by a group of people. This contrasts with monarchy in which kings and queens inherit their power. In a democratic republic, like the United States, the people rule through their representatives. All eligible voters have the right to vote for candidates in regular elections.

While the city-states of Italy established their republics, halfway around the world Tlaxcala established its own kind of democratic republic. Let’s look at how their republic worked.

Elections and Government

We have evidence of the democracy in Tlaxcala from the writings of Spanish priests and writers. The Tlaxcalans chose men to be candidates for governing who showed accomplishment. They favored military heroes. Even immigrants of a different ethnicity could become candidates for leadership.

The Tlaxcalans valued responsibility to the people and service to the city-state. Candidates had to appear before the public and endure insults and even physical abuse. The purpose was to uncover anything that would make them unfit for office. Personal ambition would be a disqualifying characteristic. Candidates underwent ordeals of fasting, bloodletting, as well as moral instruction.

Scholars are still not sure who voted to confirm a candidate. But even the common people had a voice in choosing or rejecting candidates. Sometimes 4,000 people participated in making political decisions.

The Tlaxcalan Council administered the government. They appointed military leaders, voted on important matters like war and peace, and served as judges. The Council was made up of 50 to 200 men. They relied on speeches and persuasion and strived for consensus (general agreement) to make decisions. They did not follow the orders of the wealthy and powerful as the Aztecs did.

Archaeologists are still excavating the site of Tlaxcala. Perhaps we will learn more about the people who voted for the city-state's government. In Mesoamerican societies, women played important roles in religious rituals. (Mesoamerica is the region that extends from present-day central Mexico through Central America.) Women were also master weavers, which was important to the economy. At least one woman served as a chief of an indigenous town. Through archaeology, we may learn more about the role of women in Tlaxcala, too.

Equality in Tlaxcalan

Archaeological evidence shows that Tlaxcalan society was an egalitarian society. An egalitarian society is one in which people have equal power or equal wealth. There were different social classes in Tlaxcala, but they were not far apart in wealth. The Aztecs, Mayans, and other peoples of Mexico at the time were not egalitarian.

Tlaxcalans built the wealth of their city-state through taxes on citizens. The Aztecs and other empires built their wealth mainly through collecting tribute, or a heavy tax, from the indigenous people they conquered.



The equality among the Tlaxcalan people can be seen in their houses. Archaeological evidence shows that virtually all Tlaxcalan houses were roughly the same. Each home had two or three rooms built of similar stonework, with packed-earth floors and a patio. Ornate, good-quality pottery and stone tools were common in all the households. Luxury items like gold jewelry were rare.

Unlike Tenochtitlan, there were no pyramids, huge temples, monuments to rulers, or palaces in Tlaxcala. Every home there — even those of the leaders — was about 2,700 to 3,000 square feet. On the other hand, the Aztec elite also lived in luxurious, large palaces. The Aztec Emperor Moctezuma II's palace in Tenochtitlan was enormous. It is estimated to have been about 160,000 square feet or more. (Moctezuma II was the emperor at the time of Cortés's invasion.)

Each neighborhood in Tlaxcala, too, had its own small temple or shrine built from simple platforms where local festivals took place. The priests in each neighborhood would be visible to the residents. Tenochtitlan was different. It had large, monumental pyramids as temples in which the priests conducted secret rituals.

Some scholars today believe that Aztec attempts to dominate them contributed to why the Tlaxcalans were egalitarian. Archaeologist Lane Fargher says that Aztec pressures made the developers of Tlaxcalan, "build their society in its neighborhoods." They wanted to strengthen their Tlaxcalan identity.



This image is part of a larger canvas depicting the history of the conquest of the Aztec empire from the Tlaxcalan perspective. It was made at the request of the Spanish colonial city council of Tlaxcalan in the late 1500s.

Read on to see how the Aztecs and Tlaxcalans clashed.

Wars and Rituals

The Aztecs were successful in conquering other indigenous peoples. By the 14th century, they had established a large empire. From Tenochtitlan, they expanded their territory through central Mexico. They demanded tribute.

The Tlaxcalans were strengthened when they welcomed refugees of different ethnic groups who had been defeated by the Aztecs. Many of these thousands of refugees then served in the Tlaxcalan army. With this strength, the Tlaxcalans resisted the Aztecs and could not be conquered.

The Aztecs blocked trade to the city of Tlaxcala by surrounding it and cutting off the flow of supplies into the city. They controlled trade of the Tlaxcalans' basic necessities, particularly salt and cotton. As hard as that was for the Tlaxcalan people, they still managed to survive and keep their independence. They produced plentiful corn and maintained trade networks for obsidian, a highly valued stone, with other indigenous people in the region.

After many wars, it was clear to the Aztecs that Tlaxcala would not fall. The Tlaxcalan people were powerful rivals rather than subjects of the Aztecs. Over the years, both sides then settled into a sort of ritual combat known as "flower wars."

In these wars, the object was not for both sides to destroy each other. Instead, small armies showed off their military power through a combination of

elaborate rituals and some real fighting. Fewer people died than in full-scale combat. The Aztecs also frequently captured prisoners who would then be used as human sacrifices in religious ceremonies.

The Arrival of Cortés

In 1519, Hernán Cortés launched an expedition from Cuba. Driven by a desire for gold, Cortés sought to verify stories about the fabulous wealth of the Aztecs.

In April, he landed at a place he called Veracruz with about 450 Spanish conquistadores, 16 horses, cannons, and muskets. He first encountered the Totonac people who inhabited their own city-state near Veracruz. The Totonac *cacique* (chief) agreed to help Cortés overthrow the Aztecs. He told Cortés how the Aztecs had conquered and cruelly oppressed the Totonacs. He also warned Cortés of the fierce army of Tlaxcala.

In August, Cortés began to march inland toward Tenochtitlan. The Tlaxcalans came to meet him with an army of 30,000 or more soldiers. Cortés and about 400 conquistadores were joined by about 1,300 Totonac warriors. The Tlaxcalans battled Cortés with bows and arrows, spears, darts, and other stone-age weapons. The Spanish fought with firearms and soldiers on horseback who charged at the enemy with steel swords and lances.

After three days of fighting, the vastly outnumbered Spanish lost more than 40 men, but they burned Tlaxcalan villages, killing thousands. Cortés and his men then set up camp outside Tlaxcala.

The Tlaxcalan Council Debate

Surprised by the military power of the Spanish, the Tlaxcalan Council debated what to do next. In the 1550s, the Spanish scholar Francisco Cervantes de Salazar recounted the dialogue of the debate. He was not an eyewitness, so he based his writing on the available sources at the time.

De Salazar wrote that the military leader Xicotenga (pronounced *Shi-ko-tenga*) spoke to the Council. Xicotenga told them how an alliance with the Spanish would be good. It would help the Tlaxcalans “take on Moctezuma, our capital enemy!”

Another member of the Council rose to support Xicotenga. He thought that surely the Spanish had come “in the name of a powerful god!”

But the Council had not reached consensus, yet. Xicotencatl (pronounced *Shi-ko-ten-katuhl*) was an elderly, respected member of the Council. He distrusted the Spanish and thought they were “given to vices,” which are immoral habits. “They are lazy and like to sleep in their clothes,” he said.

Xicotencatl added that an alliance would cause other peoples to look down on the Tlaxcalans. He said they would lose their independence and their “good name.” According to him, they would no longer strike “so much fear in the hearts of our enemies.”

In the end, Xicotenga won the argument. About 60 men came through the gates of the city to negotiate with Cortés. This surprised Cortés who was used to negotiating with single monarchs or chiefs.

Cortés wrote that Tlaxcalan government “resembles very much the [Italian] republics of Venice, Genoa, and Pisa for there is no supreme overlord.” He estimated the population of the Tlaxcalan city-state at 150,000. Today’s scholars believe the population could have been more like 300,000.

The Defeat of Moctezuma II

Cortés left Tlaxcalan in November 1519. He was accompanied by several thousand indigenous warriors. Many of them were Tlaxcalans. They engaged the Aztecs in combat. Wounded Spanish soldiers could find refuge in Tlaxcalan. A smallpox epidemic devastated Tenochtitlan.

Cortés organized a siege on Tenochtitlan in August 1521. Around 20,000 Tlaxcalan warriors joined the few hundred conquistadores. Tens of thousands of other indigenous enemies of the Aztecs joined, too.

Roughly 250,000 Aztec nobles, warriors, and civilians died. They succumbed to disease, starvation, and



The British Museum

This 17th century portrait depicts Moctezuma II, Aztec emperor in 1519 when Hernán Cortés landed in Veracruz.

combat. Relatively few Spanish soldiers died. But many Tlaxcalan warriors were killed.

Tlaxcalan Democracy After the Conquest

The Tlaxcalans continued their alliance with the Spanish. They helped the Spanish in their conquest of greater Mexico and Central America. In exchange, the Tlaxcalans received Spanish military protection.

The Tlaxcalans built themselves a new capital city, too. They based it on a Spanish plan with a grid of streets and a central plaza. The plaza was surrounded by shops, government buildings, a monastery, and a church.

The first Franciscan friars arrived from Spain in 1524. Unlike in other Spanish colonies, most ▶

Tlaxcalans willingly accepted conversion to the new Catholic religion. Tlaxcalan nobles learned to read and write Spanish.

In the new capital city, the Tlaxcalans had a remarkable degree of independence. The candidates for governor came from the surrounding towns. The governor and officials were all native people, and they were elected by native people. They were in charge of the local government, economy, celebrations, and courts.

A class of Tlaxcalan nobles arose who adopted Spanish ways. Like the Spanish, many became slaveholders. In the 1530s, however, the Tlaxcalans outlawed slavery.

In the capital, there was a great marketplace used by natives and Spanish alike. Maize was used to make tortillas and became the basis of the economy. Poor people made a coveted red dye from an insect that they sold in the marketplace.

The End of Tlaxcalan Self-Rule

Tlaxcalan democratic self-rule lasted only a few decades in the mid-1500s. Epidemics of European diseases like smallpox and measles caused the Tlaxcalan population to decline.

Meanwhile, Spanish colonists increased. They introduced cattle that ran wild, ruining Tlaxcalan crops. They also demanded tribute. When Tlaxcalans were unable to pay the tribute, the colonists took control of more of their land.

To pay off their debts to colonial landlords, the Tlaxcalans frequently became laborers. By 1600, the Spanish representative of the monarchy appointed the indigenous governor of Tlaxcala. As direct colonial rule took hold, the Tlaxcalan republic faded away.

Mexico declared its independence from Spain in 1810. At that time, many Mexicans looked upon the Tlaxcalans as traitors because they had allied with Cortés. Some still hold this view.

Today, the city of Tlaxcala sits on the site of the old city-state. The region is the state of Tlaxcala, Mexico's smallest state. Only recently have historians and archaeologists uncovered the indigenous democratic republic that once flourished there.

WRITING & DISCUSSION

1. What elements of democracy did the Tlaxcalans exercise before and after the Spanish conquest of Mexico?
2. Was Xicotencatl right when he warned that alliance with Cortés would cause the Tlaxcalans to lose their independence and their “good name”? Why or why not? Use evidence from the article in your answer.
3. What do you think are the advantages of democracy over hereditary monarchs? Use examples from Tlaxcalan society in your answer.

Author: Carlton Martz is a retired high school social studies teacher and high school librarian and a longtime contributor to *Bill of Rights in Action*. Carlton has also visited archaeological sites in the American Southwest, Mexico, Egypt, China, and Iran.

ACTIVITY: Rival Societies

Central Mexico of the 16th century was a diverse place. In a small group, discuss the similarities and differences between the Aztecs with the Tlaxcalans in the following areas:

Government	Economy
Religion	City life

Be ready to have a spokesperson for your group present your findings to the class.

After each of the above areas have been discussed, write two paragraphs that explain the differences between the Aztecs and the Tlaxcalans.

Enrichment Activity

Compare and contrast Tlaxcalan democracy with ancient Athens in Greece or the Republic of Florence in Renaissance Italy.

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Standards Addressed

The Bill of (Twelve) Rights: Contingency and the Constitution

McREL National U.S. History Standard 8: Understands the institutions and practices 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. **High School Benchmark 1:** Understands influences on the ideas established by the Constitution (e.g., the ideas behind the distribution of powers and the system of checks and balances; the influence of 18th-century republican ideals and the economic and political interests of different regions on the compromises reached in the Constitutional Convention). **High School Benchmark 3:** Understands the Bill of Rights and various challenges to it (e.g., arguments by Federalists and Anti-Federalists over the need for a Bill of Rights . . .).

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. (2) Analyze the ideological origins of the American Revolution, the Founding Fathers’ philosophy of divinely bestowed unalienable natural rights, the debates on the drafting and ratification of the Constitution, and the addition of the Bill of Rights.

Tlaxcalan: The Indigenous Democracy of Mexico

HSS Framework, Ch. 11 (Grade Seven), p. 214: The Aztec Empire emerged in the fifteenth century. Initially, students focus on the following question: Why did the Aztec Empire gain power over people and territories? The Aztecs, a people who originally migrated from northern Mexico, owed a strong cultural debt to the Maya, Teotihuacán, and the Toltec cities in Mesoamerica. The Aztecs won their power by warfare. They unified much of central Mexico by defeating all other powerful cities and states. They created a state based on ingenious methods of farming, collection of tribute from conquered peoples, and an extensive network of markets and trade routes.

California HSS Standard 7.7: Students compare and contrast the geographic, political, economic, religious, and social structures of the Meso-American and Andean civilizations. (3) Explain how and where each empire arose and how the Aztec and Incan empires were defeated by the Spanish.

McREL World History Standard 29: Understands the economic, political, and cultural interrelations among peoples of Africa, Europe, and the Americas between 1500 and 1750. **Middle School Benchmark 1:** Understands the consequences of European interaction with indigenous populations of the Americas.

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People v. Cobey

Murder and Manslaughter

Featuring a pretrial argument on the Fourth Amendment Grades 6-12

People v. Cobey is the trial of Jamie Cobey, a horticulturist living in a semi-rural town in the high desert. Cobey is charged with the homicide of Cobey's landlord and next-door neighbor, Erik Smith. The prosecution will argue that Cobey should be convicted of first-degree murder or the lesser-included offense of voluntary manslaughter.

The relationship between Cobey and Smith had deteriorated in recent years. The tension between the two intensified once the pandemic eviction moratorium went into effect, and Smith wanted to evict Cobey and Cobey's elderly mother for non-payment of rent. After Smith shut off the power to Cobey's home, Cobey's mother died on April 22. In the early afternoon of April 29, Erik Smith opened his mailbox and was bitten by a Mojave rattlesnake that was within the mailbox.

The prosecution alleges that on the morning of April 29, Jamie Cobey intentionally placed the rattlesnake with its rattle removed in Smith's mailbox so that the snake would fatally bite Smith. Prosecution produces several witnesses to support its case.

The defense argues that Jamie Cobey lacked the specific intent for first-degree murder, the sudden quarrel or heat of passion needed for voluntary manslaughter, and the act of placing the rattlesnake inside the mailbox.

The pretrial argument centers on the Fourth Amendment protection against unreasonable search and seizure. The question is whether Erik Smith's use of a smart camera provided by law enforcement to capture an image of snake-feeding tongs on the property of Jamie Cobey constituted a search under the Fourth Amendment and therefore required a search warrant, or whether it fell outside the warrant requirement.

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People v. Croddy

Burglary, Aiding and Abetting and Accessory After the Fact

Featuring a pretrial argument on the Fifth Amendment Grades 6-12

People v. Croddy is the trial of Lee Croddy who hosts a popular YouTube channel. Croddy has been charged with two counts: (1) aiding and abetting in the commission of first-degree burglary by another, and (2) accessory after the fact. Croddy posts videos on Youtube in which Croddy discusses topics Croddy believes are suppressed by the government. One favorite topic of Croddy's is government cover-ups related to UFOs. Croddy attracted the attention of an enthusiastic fan, Remi Montoya. For almost a year, Montoya and Croddy communicated frequently in non-public Twitter group chats.

During one group chat, Croddy shared a short video clip that included an image of government documents. The documents contained personal information about an official named Drew Marshak who allegedly had information about UFOs. A few days later, Montoya stole a briefcase from Marshak's home and copied files from Marshak's computer. In a brief confrontation, Montoya hit Marshak in the face. Montoya later pleaded guilty to first-degree burglary and assault on a peace officer.

The prosecution alleges that Lee Croddy aided and abetted Montoya in the burglary. The prosecution will present evidence that Croddy showed a video with Marshak's information to Montoya and others in the group chat while instructing Montoya to "take what's ours" from Marshak and that Montoya acted under Croddy's influence. The prosecution further alleges that Croddy let Montoya spend the night in Croddy's home after the burglary, knowing that Montoya had committed a crime.

The defense argues that Lee Croddy did not knowingly aid or abet Montoya in any crime. The defense will present evidence that Croddy merely intended to build camaraderie within a political movement for government transparency through Croddy's videos, chat messages, and text messages. Therefore, the defense argues that Croddy did not have the intent to aid or abet Montoya's criminal acts. Furthermore, Croddy had no knowledge of the crimes after they occurred, and so was not an accessory after the fact.

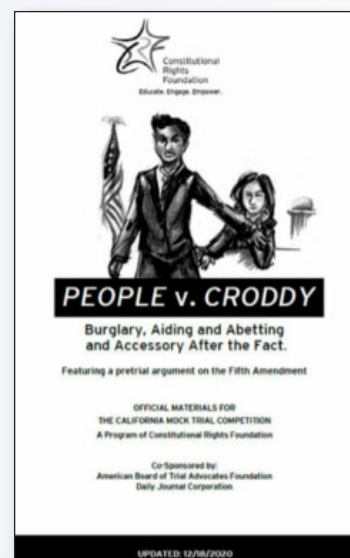
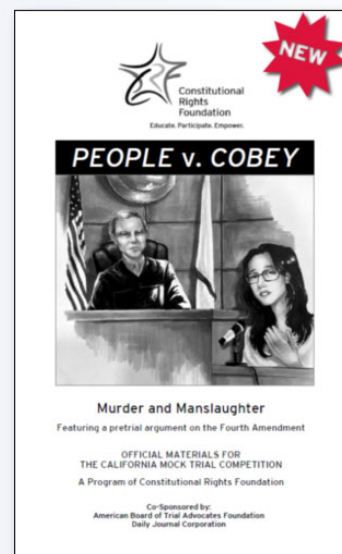
The pretrial issue centers on the Fifth Amendment protection against self-incrimination and as set forth in *Miranda v. Arizona*. The issue is whether or not the circumstances surrounding Lee Croddy's interaction with the police amounted to custodial interrogation. If so, the circumstances would require the protection of the Fifth Amendment and would have required the officer to read the defendant the Miranda warnings prior to interrogation.

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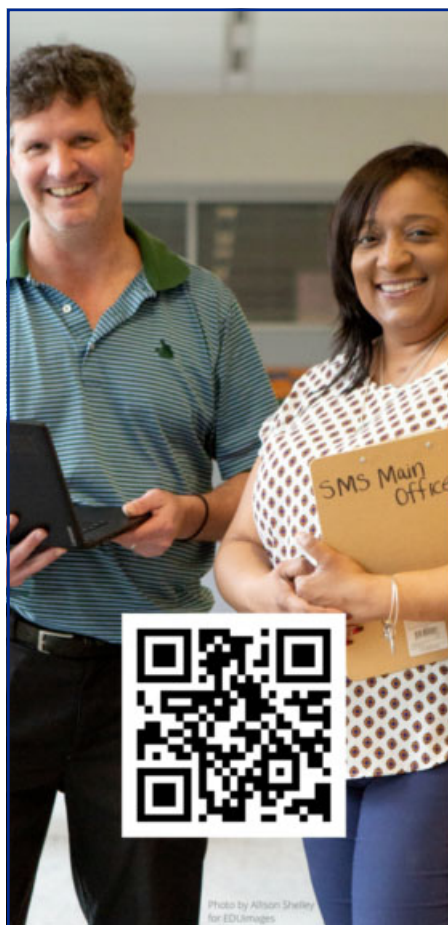
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