The Words We Live By: The Constitution in Context

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The most important words in American government are those that make up the U.S. Constitution. They are considered the “supreme law of the land,” and they form the foundation of all the rights and responsibilities of citizenship. But many of those words meant something different to the framers of the Constitution in 1787 than they do to Americans today. In teaching with founding documents such as the Constitution, it is important to help students understand both the context of the original language and how that language has subsequently been interpreted—by citizens as well as by the courts.

Examining the Preamble, the introductory paragraph to the Constitution, offers a good model for this type of analysis. To begin, ask students to compare George Washington’s working copy of the Preamble to the Constitution, first printed on August 6, 1787 (document 1), to the final version engrossed on parchment and signed by the framers on September 17 (document 2). Washington’s interlining and handwritten notes demonstrate that the framers went through many drafts to perfect the language we know today.

We the People . . .

These first three words of the Constitution are the most important. They clearly state that the people—not the king, not the legislature, not the courts—are the true rulers in American government. But who are “We the People”? This question troubled the nation for centuries. As Lucy Stone, one of America’s first advocates for women’s rights, asked in 1853: “‘We the People’? Which ‘We the People’? The women were not included.”1 Neither were white males who did not own property, American Indians, or African Americans—slave or free. Justice Thurgood Marshall, the first African American on the Supreme Court, described this limitation:

The men who gathered in Philadelphia in 1787 could not … have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and the descendant of an African slave.2

Through the amendment process, more and more Americans were eventually included in the Constitution’s definition of “We the People.” After the Civil War, the Thirteenth Amendment ended slavery, the Fourteenth Amendment gave African Americans citizenship, and the Fifteenth Amendment gave black men the vote. In 1920, the Nineteenth Amendment gave women the right to vote nationwide, and in 1971, the Twenty-sixth Amendment extended suffrage to eighteen-year-olds.

... of the United States, ...

The original draft of the Preamble referred to all thirteen states by name. But, in part because no one knew exactly which states would become the nine required to ratify the Constitution, the wording of the Preamble was condensed into the familiar words of today: “We the People of the United States.”

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We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.

ARTICLE I.
The title of this Government shall be, "The United States of America."

II.
The Government shall consist of supreme legislative, executive and judicial powers.

III.
The legislative power shall be vested in a Congress, consisting of two separate and distinct bodies of men, a House of Representatives, and a Senate; each of which shall, in all cases, have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

IV.
Sect. 1. The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sect. 2. Every Member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least seven years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first meeting, and until the number of citizens and inhabitants shall be taken in the manner herein after described, consist of forty-five Members, of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, six in Connecticut, five in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in the different States will alter from time to time, as some of the States may hereafter be divided, or others may be enlarged by addition of territory; as two or more States may be united, or new States will be created within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the proportion of the one to the other, for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writ of election from the executive authority of the State, in the representation from which they shall happen.
Page one of the U.S. Constitution. A high resolution scan of it is available online at www.archives.gov/national_archives_experience/charters_downloads.html.
In Order to form a more perfect Union, ... 

The first constitution of the United States, the Articles of Confederation, was a failure—or so many advocates of a stronger central government believed. Under the Articles, the states retained virtually all powers, and the national government was considered merely a “firm league of friendship” among them. George Washington was so despairing about this state of affairs that he wrote to a friend: “What a triumph for the advocates of despotism to find that we are incapable of governing ourselves.”

After only five years under the Articles, trade problems among the states prompted a conference at Annapolis, Maryland, in 1786. There, Alexander Hamilton made a motion, adopted by the conference, that a convention be held in Philadelphia in 1787 to amend “such defects as may be discovered to exist” in the Articles. The Continental Congress approved of the plan, resolving that such a convention be held “for the sole and express purpose of revising the Articles of Confederation.”

Once in Philadelphia, however, the convention delegates quickly scrapped the Articles altogether and began drafting a new constitution. Representing twelve states—all except Rhode Island—they convened on May 25, 1787. Under the leadership of George Washington, the delegates met behind closed doors for almost four months. Their final product was presented to Congress, which then submitted it to the states for ratification. The Constitution was ratified in 1788, and the new government took office in 1789 with George Washington as president. A revolution had been achieved without a single drop of blood. A more perfect union had begun.

... establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, ...

The Preamble sets forth the Constitution’s goals, but the Supreme Court has ruled that it is not an independent source of rights. For instance, one cannot file a lawsuit based on the Preamble, as the Court held in Jacobson v. Massachusetts (1905). However, Jacobson had refused to comply with a Massachusetts law mandating vaccination for small pox, claiming that the law violated his “liberty” as secured by the Preamble. The Court disagreed, saying: “Although ... one of the declared objects of the Constitution was to secure the blessings of liberty ... , no power can be exerted to that end by the United States, unless, apart from the Preamble, it be found in some express delegation of power, or in some power to be properly implied therefrom.”

... do ordain and establish ...

Under the terms of the Preamble, “We the People,” not the states, “ordain and establish” the Constitution. During the Constitutional Convention, James Madison said that the difference between a government established by state legislatures and one founded on the people directly was “the true difference between a league or treaty, and a Constitution.” But Patrick Henry, who refused to attend the convention because he “smelt a rat,” took exception to the Preamble’s language. He argued that the convention had exceeded its power by abandoning the Articles of Confederation. Asked Henry during the Virginia ratifying convention: “Who authorized them to speak the language of, We, the People, instead of We, the States? ... The people gave them no power to use their name.” But as specified in Article VII, the Constitution was ratified by the people through state conventions, not by the state legislatures. The Supreme Court pointed to this fact in McCulloch v. Maryland (1819). Chief Justice John Marshall wrote for the unanimous Court: “The government proceeds directly from the people; is ‘ordained and established’ in the name of the people ... . Its powers are granted by them and are to be exercised directly on them and for their benefit.”

... this Constitution for the United States of America.

The U.S. Constitution is the oldest written constitution of a nation still being used. From the beginning, Americans and others have disagreed about its relative merits. Federalists believed that, by creating a stronger national government, the Constitution would enable the United States to survive among the competing powers of Europe and provide a surer safeguard for liberty at home. Antifederalists feared that the new Constitution would create a new form of tyranny, especially since it lacked a bill of rights. Only by promising that the new Congress would make passage of a bill of rights its top priority did the Federalists secure ratification of the Constitution.

At the Constitutional Convention, Benjamin Franklin stated that he approved of the Constitution “with all its faults” because he did not think a better one was possible at that time. The oldest delegate to the convention at eighty-one, Franklin was too weak to give speeches and instead offered his opinions through written remarks delivered by a fellow Pennsylvania delegate. Perhaps Franklin’s last words at the convention gave the best assessment of the prospects of the new republic. As the other delegates were signing the Constitution, Franklin remarked to those nearby that, throughout the convention, he had wondered whether the sun carved on the back of George Washington’s chair was rising or setting. “Now,” he said, “I have the happiness to know that it is a rising and not a setting sun.”

**Notes**
