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E, the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common

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No.6 We the People: Thoughts on the Preamble to the U.S. Constitution

“We the People” are familiar, and memorable, words in the lexicon of American history. As the opening words of the U.S. Constitution, they trumpet the beginning of a new nation—a united people—under an entirely new form of government, much the same way that the Declaration of Independence declared Americans a new people, free and independent of their ties to Great Britain. For Americans, “We the People” has been recognized as American scripture, the foundational statement of U.S. government. But during the debates over the ratification of the Constitution, “We the People” was one of the most contentious clauses in the Constitution.

Samuel Adams, the Massachusetts firebrand who co-founded the Sons of Liberty, metaphorically “stumble[d] at the Threshold” of the new edifice [i.e., the new Constitution]. Instead of a confederation of states, Adams met with a national government—a consolidated government that was empowered to act directly on the people. No longer would the states provide a protective barrier between the people and the central government, which had been the case under the Articles of Confederation.

In Virginia, Patrick Henry asked who authorized the delegates to the Constitutional Convention to say “We, the People” instead of “We, the States”? “States,” he asserted, “are the characteristics, and the soul of a confederation.” If the states were not to be party to this new compact, the Constitution must form “one great consolidated National Government.” Edmund Pendleton, president of the Virginia ratifying Convention, asked Henry, “Who but the people can delegate powers? Who but the people have a right to form Government?” “The expression is a common one, and a favorite one with me,” Pendleton noted.

Federalists like James Wilson of Pennsylvania defended the “We, the People” phrase. The people, he argued, would be sovereign under the new Constitution, which “is announced in their name” and “receives its political existence from their authority.” Some Federalists argued that the full phrase, “We, the People of the United States,” indicated that the people acted “in their capacities as citizens of the several members of our confederacy.” If the Philadelphia Convention delegates had wanted to form one consolidated government, they would have used the phrase “We, the People of America.” Other Federalists—James Madison, for instance—maintained that the new government would be partly federal and partly national.

The ratification process was to partake of two kinds of actions. The sovereignty of the people would be drawn upon within the context of specially elected state ratifying conventions, not in ordinary sessions of the state legislatures. This method of ratification would guarantee that a future legislature would be unable to alter or abolish the Constitution. Furthermore, Federalists did not list all of the states in the preamble as was done in the Articles, because it was agreed that the Constitution would go into effect among the ratifying states once nine state conventions had adopted the new form of government. Having states listed in the preamble that had not ratified the Constitution would be inappropriate.

The debate over the introductory phrase easily transformed into a debate over the nature of the new government and whether a bill of rights was necessary to guard the liberties of the people. James Wilson argued that “We, the People” was a far firmer foundation upon which to preserve the rights of the people than Magna Charta, in which the king reluctantly granted his subjects certain rights from his beneficence. American rights were derived from the sovereignty of the people. Alexander Hamilton, writing as “Publius” in *The Federalist* No. 84, agreed. “We, the People of the United States” was “a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.”

Patrick Henry, however, argued that a bill of rights was absolutely necessary. Everything, he said, depended on the interpretation of that phrase: “We, the People.” Those three little words, he predicted, would introduce “a revolution as radical as that which separated us from Great Britain.” American rights and liberties were endangered and the sovereignty of the states would be relinquished.

James Wilson: Speech in the Pennsylvania Convention 28 November 1787

I had occasion, on a former day . . . to mention that the leading principle in politics, and that which pervades the American constitutions, is, that the supreme power resides in the people; this Constitution, Mr. President, opens with a solemn and practical recognition of that principle: “WE, THE PEOPLE OF THE UNITED STATES, in order to form a more perfect union, establish justice, &c. DO ORDAIN AND ESTABLISH this constitution, for the United States of America.” It is announced in their name, it receives its political existence from their authority—they ordain and establish. What is the necessary consequence? Those who ordain and establish have the power, if they think proper, to repeal and annul. . . . Its establishment . . . renders this truth evident, that the people have a right to do what they please, with regard to the government. I confess, I feel a kind of pride, in considering the striking difference between the foundation, on which the liberties of this country are declared to stand in this Constitution, and the footing on which the liberties of England are said to be placed. The Magna Charta of England is an instrument of high value to the people of that country. . . . Let it speak for itself. The king says, “we have *given* and *granted* to all archbishops, bishops, abbots, priors, earls, barons, and to all the freemen of this our realm, these liberties following, to be kept in our kingdom of England forever.” When this was assumed as the leading principle of that government, it was no wonder that the people were anxious to obtain bills of rights, and to take every opportunity of enlarging and securing their liberties. But, here, sir, the fee simple remains in the people at large, and, by this Constitution, they do not part with it.

John Smilie: Speech in the Pennsylvania Convention 28 November 1787

I shall proceed to make a few remarks upon those words in the Preamble of this plan, which he [James Wilson] has considered of so super-excellent a quality. Compare them, sir, with the language used in forming the [Pennsylvania] state constitution, and however superior they may be to the terms of the Great Charter of England, still, in common candor, they must yield to the more sterling expressions employed in this act. Let these speak for themselves.

“That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.”

“That all power being originally inherent in, and consequently derived from the people; therefore all officers of government . . . are . . . at all times accountable to them.”

“That government is . . . instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or set . . . of . . . men”

But the gentleman takes pride in the superiority of this short Preamble when compared with Magna Charta. . . . I hope the rights of men are better understood at this day than at the framing of that deed, and we must be convinced that civil liberty is capable of still greater improvement and extension than is known even in its present cultivated state. True, sir, the supreme authority naturally rests in the people,

but does it follow that therefore a declaration of rights would be superfluous? Because the people have a right to alter and abolish government, can it therefore be inferred that every step taken to secure that right would be superfluous and nugatory? The truth is that unless some criterion is established by which it could be easily and constitutionally ascertained how far our governors may proceed . . . this idea of altering and abolishing government is a mere sound without substance. Let us recur to the memorable Declaration of the 4th of July 1776. Here it is said:

“We hold these truths to be self evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”

Now, sir, if in the proposed plan, the gentleman can show any similar security for the civil rights of the people I shall certainly be relieved from a weight of objection to its adoption, and I sincerely hope, that as he has gone so far, he will proceed to communicate some of the reasons (and undoubtedly they must have been powerful ones) which induced the late Federal Convention to omit a bill of rights, so essential in the opinion of many citizens to a perfect form of government.

Samuel Adams to Richard Henry Lee, Boston 3 December 1787

I confess, as I enter the Building I stumble at the Threshold. I meet with a National Government, instead of a Foederal Union of Sovereign States. I am not able to conceive why the Wisdom of the Convention led them to give the Preference to the former before the latter. If the several States in the Union are to become one entire Nation, under one Legislature, the Powers of which shall extend to every Subject of Legislation, and its Laws be supreme & controul the whole, the Idea of Sovereignty in these States must be lost. Indeed I think, upon such a Supposition, those Sovereignties ought to be eradicated from the Mind; for they would be Imperia in Imperio justly deemd a Solecism in Politicks, & they would be highly dangerous, and destructive of the Peace Union and Safety of the Nation. . . .

“The Republican Federalist” V, *Massachusetts Centinel* 19 January 1787

Let us once more particularly attend to the system itself. It begins, “We the People of the United States, in order to form a more perfect union,” &c. “do ordain and establish this Constitution for the United States of America”—In other words, *We the people, do hereby publickly declare the violation of the faith which we have solemnly pledged to each other—do give the most unequivocal evidence, that we cannot ourselves, neither can any others, place the least confidence in our most solemn covenants, do effectually put an end in America, to governments founded in compact—do relinquish that security for life, liberty and property, which we had in the Constitutions of these States, and of the Union—do give up governments which we well understood, for a new system which we have no idea of—and we do, by this act of ratification and political suicide, destroy the new system itself, and prepare the way for a despotism, if agreeable to our rulers.* All this we do, for the honour of having a system of consolidation formed by us the people. This is not *magnifying*, for such are the facts, and such will be the consequences.

Patrick Henry: Speeches in the Virginia Convention 4-5 June 1788

4 June

That this is a consolidated Government is demonstrably clear, and the danger of such a Government, is, to my mind, very striking. . . . Sir, give me leave to demand, what right had they to say, *We, the People*. My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorised them to speak the language of, *We, the People*, instead of *We, the States*? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States. . . . The people gave them no power to use their name.

5 June

The fate of this question and America may depend on this: Have they said, we the States? Have they made a proposal of a compact between States? If they had, this would be a confederation: It is otherwise most clearly a consolidated government. The question turns, Sir, on that poor little thing—the expression, *We, the people*, instead of the States of America. I need not take much pains to shew, that the principles of this system, are extremely pernicious, impolitic, and dangerous. . . . Here is a revolution as radical as that which separated us from Great Britain. It is as radical, if in this transition,

our rights and privileges are endangered, and the sovereignty of the States be relinquished: And cannot we plainly see, that this is actually the case?

Edmund Pendleton: Speech in the Virginia Convention 5 June 1788

Where is the cause of alarm? We, the people, possessing all power, form a Government, such as we think will secure happiness. . . . Gentlemen, we have put the introduction of that method in the hands of our servants; who will interrupt it from motives of self-interest. What then?—Who shall dare to resist the people? . . . But an objection is made to the form: The expression *We, the people*, is thought improper. Permit me to ask the Gentleman [Patrick Henry], who made this objection, who but the people can delegate powers? Who but the people have a right to form Government? The expression is a common one, and a favorite one with me. . . . If objection be, that the Union ought to be not of the people, but of the State Governments, then I think the choice of the former, very happy and proper. What have State Governments to do with it? Were they to determine, the people would not, in that case, be the judges upon what terms it was adopted.



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