

PREAMBLE

We the People of the United States, in Order to form a more perfect Union, 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, do ordain and establish this Constitution for the United States of America.

The Preamble was placed in the Constitution more or less as an afterthought. It was not proposed or discussed on the floor of the Constitutional Convention. Rather, Gouverneur Morris, a delegate from Pennsylvania who as a member of the Committee of Style actually drafted the near final text of the Constitution, composed it at the last moment. It was Morris who gave the considered purposes of the Constitution coherent shape, and the Preamble was the capstone of his expository gift. The Preamble did not, in itself, have any substantive legal meaning. The understanding at the time was that preambles are merely declaratory and are not to be read as granting or limiting power—a view sustained by the Supreme Court in *Jacobson v. Massachusetts* (1905). Nevertheless, the Preamble has considerable potency by virtue of its specification of the purposes for which the Constitution exists. It distills the underlying values that moved the Framers during their long debates in Philadelphia. As Justice Joseph Story put it in his celebrated *Commentaries on the Constitution of the United States*, “its true office is to expound the nature and extent and application of the powers actually conferred by the Constitution.” Alexander Hamilton, in *The Federalist* No. 84, went so far as to assert that the words “secure the Blessings of Liberty to ourselves and our Posterity” were “a better recognition of popular rights, than volumes of those aphorisms, which make the principal figure in several of our state bills of rights.” An appreciation of the Preamble begins with a comparison of it to its counterpart in the compact the Constitution replaced, the Articles of confederation. There, the states joined in “a firm league of friendship, for their common defence, the security of their liberties, and their mutual and general welfare” and bound themselves to assist one another “against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.” The agreement was among states, not people, and the military protection and the liberties to be secured were of the states as such. The very opening words of the Constitution mark a radical departure: “We the People of the United States.” That language was at striking variance with the norm, for in earlier documents, including the 1778 treaty of alliance with France, the Articles of Confederation, and the 1783 Treaty of Paris recognizing American independence, the word “People” was not used, and the phrase “the United States” was followed immediately by a listing of the states (“viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations,” and so on down to Georgia).

The new phraseology was necessary, given the circumstances. The Constitutional Convention had provided that whenever the popularly elected ratifying conventions of nine states approved the Constitution, it would go into effect for those nine, irrespective of whether any of the remaining states ratified. In as much as no one could know which states would and which would not ratify, the Convention could not list all thirteen. Moreover, names could scarcely be added to the Preamble retroactively as they were admitted. Even so, the phrase set off howls of protest from a number of opponents of ratification, notably Patrick Henry. Henry charged that the failure to follow the usual form indicated an intention to create a “consolidated” national government instead of the system that James Madison described in *The Federalist* No. 39 as being “neither

a national nor a federal constitution; but a composition of both.” Henry’s assertion was made in the Virginia ratifying convention and was promptly and devastatingly rebutted by Governor Edmund Randolph: “The government is for the people; and the misfortune was, that the people had no agency in the government before If the government is to be binding on the people, are not the people the proper persons to examine its merits or defects?”

The Preamble’s first-mentioned purpose of the Constitution, “to form a more perfect Union,” was likewise subjected to misreading by Anti-Federalists. “More perfect” may strike modern readers as a solecism or as an ambiguous depiction, for “perfect” is now regarded as an absolute term. At the time of the Framing, however, it had no such connotation. For example, Sir William Blackstone, in his widely read *Commentaries on the Laws of England*, could assert that the constitution of England was perfect but steadily improving. Thus a more perfect union was simply a better and stronger one than had preexisted the Constitution. Yet a New York Anti-Federalist who wrote under the pseudonym Brutus professed to believe that to carry out the mandate it would be “necessary to abolish all inferior governments, and to give the general one compleat legislative, executive and judicial powers to every purpose.” Madison disposed of that patent exaggeration in *The Federalist* No. 41 by demonstrating that “the powers proposed to be lodged in the new federal government, are as little formidable to those reserved to the individual states as they are indispensably necessary to accomplish the purposes of the union.” [A]ll those alarms which have been sounded, or a mediated and consequential annihilation of the state governments, must, on the most favourable interpretation, be ascribed to the chimerical fears of the authors of them.

In the second stated objective, to “establish Justice,” the key word is “establish,” clearly implying that justice, unlike union, was previously nonexistent. On the face of it, that implication seems hyperbolic, for the American states and local governments had functioning court systems with independent judges, and trial by jury was the norm. But Gouverneur Morris chose the word carefully and meant what he wrote; he and many other Framers thought that the states had run amok and had trampled individual liberties in a variety of ways. The solution was twofold: the establishment of an independent Supreme Court and the provision for a federal judiciary superior to those of the states; and outright prohibition of egregious state practices. The third avowed purpose, to “insure domestic Tranquility,” was in a general sense prompted by the long-standing habit of Americans to take up arms against unpopular government measures and was more immediately a response to **PREAMBLE** *The Heritage Guide to the Constitution* Shays’s Rebellion in Massachusetts (1786–1787) and lesser uprisings in New Hampshire and Delaware. The most important constitutional provisions directed toward that end give Congress ultimate control over the militias (*see Article I, Section 8*) and guarantee each state a republican form of government and protection against domestic violence (*see Article IV, Section 4*). One should bear in mind that two rebellions broke out during the first decade under the Constitution, the Whiskey Rebellion (1794) and Fries’s Rebellion (1799), both of which were speedily crushed without the shedding of blood. The fourth purpose, to “provide for the common defense,” is obvious—after all, it was the reason the United States came into being. But the matter cannot be dismissed lightly. For the better part of a century Americans had been possessed by a fear of “standing armies,” insisting that armed forces adequate to defend the nation would also be adequate to enslave it. Besides, ordinary Americans could believe that, since the War for Independence had been won over the best fighting force in Europe under the aegis of the Confederation, further provision was unnecessary as well as dangerous. Anti-Federalists clearly thought along those lines. By and large, those who agreed had seen little of the fighting during the war, whereas veterans of actual combat and people who had served in Congress or the administration during the darkest hours of the war knew differently. They expected that other wars would occur and were determined to be prepared to fight them. The Framers

did, however, take fears of standing armies into account, hence their commitment to civilian control of things military. The fifth purpose, to “promote the general Welfare,” had a generally understood meaning at the time of the Constitution. The concept will be developed fully in the discussion of the Spending Clause of Article I, Section 8, but a few comments are germane here. The salient point is that its implications are negative, not positive—a limitation on power, not a grant of power. By definition “general” means applicable to the whole rather than to particular parts or special interests. A single example will illustrate the point. In the late 1790s Alexander Hamilton, an outspoken advocate of loose construction of the Constitution as well as of using the Necessary and Proper Clause to justify a wide range of “implied powers,” became convinced that a federally financed system of what would soon be called internal improvements—building roads, dredging rivers, digging canals—was in the national interest. But, since each project would be of immediate advantage only to the area where it was located, none could properly be regarded as being in the general welfare. Accordingly, Hamilton believed a constitutional amendment would be necessary if internal improvements were to be undertaken. James Madison, in his second term as President, would veto a congressional bill on precisely that ground. The sixth purpose of the Constitution is to “secure the Blessings of Liberty to ourselves and our Posterity.” In broad terms the securing of liberty is a function of the whole Constitution, for the Constitution makes possible the establishment of a government of laws, and liberty without law is meaningless. Special provisions, however, in Article I, Sections 9 and 10, and Article III were designed to prevent specific dangers to liberty about which history had warned the Framers. Those in Section 9 were drawn from the example of English history: the prohibitions against suspending the writ of habeas corpus, against bills of attainder and ex post facto laws, and against granting titles of nobility. In addition, Article III, Section 2, guaranteed trial by jury in criminal cases, and Section 3 defined treason extremely narrowly and prohibited corruption of the blood. These protections of liberty are of individual liberty, not of the states’ liberty as under the Articles of Confederation. The restrictions in Article I, Section 10, apply to the state governments and were born of more recent history. The states are forbidden, among other things, to issue paper money, to make anything but gold and silver legal tender, or to pass bills of attainder, ex post facto laws, or laws impairing the obligation of contracts. All these mischievous kinds of laws had in fact been enacted by the states since the Declaration of Independence.

That brings us back to another point about the “general Welfare” and enables us to arrive at a broader understanding of the Preamble than *The Heritage Guide to the Constitution*. **PREAMBLE** is possible through a provision-by-provision analysis. Some historians have argued that the philosophy or ideology of the Constitution was at variance with that of the Declaration; indeed, several have described the adoption of the Constitution as a counter-Revolution. But consider this. The Declaration refers to God-given rights to life, liberty, and the pursuit of happiness. The Preamble introduces a document whose stated purpose is to secure the rights of life and liberty. And what of happiness? Once again the word “Welfare” is crucial: in the eighteenth century the definition of welfare included well-being, but it also and equally encompassed happiness. The Preamble as a whole, then, declares that the Constitution is designed to secure precisely the rights proclaimed in the Declaration. The Constitution was therefore not the negation of the Revolution; it was the Revolution’s fulfillment.

Forrest McDonald

See Also Article I, Section 8; Article I, Section 9; Article I, Section 10; Article III, Section 2; Article III, Section 3; Article IV, Section 4 (Guarantee Clause);

Significant Case

Jacobson v. Massachusetts, 197 U.S. 11 (1905)