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**The People and the Ratification Debate Over The Constitution**  
**(An essay that is part of a series on *The Consent of the Governed*)**

**by**

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In declaring the purposes of establishing a new government under the newly-drafted Constitution, the Preamble is elegant in its simplicity: "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 three words – "We the People" – at the beginning arguably are the most important of all the 4543 words contained in the Constitution signed in Philadelphia on September 17, 1787. After a long, hot summer of debate, we can be sure that the Constitution's first three words were not chosen casually. The Constitution's framers were well aware of the import of beginning the Preamble with "We the People. Indeed, by the time the delegates met in Philadelphia, the phrase already had appeared in two state constitutions, New Hampshire and Massachusetts.

The Convention that produced the Constitution was attended by only 55 delegates, not all of whom were in attendance throughout. And the Constitution of 1787 was signed by only 39 of them. So, for the new governing document to gain legitimacy as a source of authority for what was to become the fundamental law of the land, "We the People" needed to be more than a felicitous opening. It needed to be the means for what the small group of men meeting in Philadelphia had wrought to be accepted as an expression of the sovereign will of the people. Consistent with Lockean social contract theory familiar to the framers, it needed to be transformed into the embodiment of the "consent of the people."

How to accomplish this? The Constitution contained within itself the direction. Article VII provided: "The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the states so ratifying the Same." So at least three-fourths of the states would be required to ratify the Constitution for it to become effective. But more importantly for present purposes, the framers bypassed the legislatures then existing in each state in favor of special conventions comprised of delegates elected by the people themselves.

This ratification process meant that the Constitution, from its inception, would be rest on a firmer foundation of popular sovereignty as an expression of "We the People" than if ratification had been left to agreement among the existing state governments. This was a key difference between the new Constitution and the Articles of Confederation which it would supplant: the government under the Articles was established by a compact among the states and drew its authority from the states.

Thus, as James Madison put it in Federalist No. 39, the Constitution "is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose." While the Constitution required nine states to approve qua states, as Madison went to declare in No. 39, the ratification vote in each of the special state conventions would be "derived from the *supreme authority* in each State, the authority of the people themselves." [Emphasis added.] In other words, the conventions in the several states, called specifically for the purpose of considering ratification of the Constitution with delegates elected for that specific purpose, necessarily would be expressions of the sovereign will of the people.

The battles in the state conventions between the Federalists and the Anti-Federalists were heated. In general, the Federalists – like James Madison, Alexander Hamilton, and John Jay, the authors of the pro-ratification Federalist Papers – contended that the Constitution, embodying the people's collective will, established an effective government that, at the same time, protected liberty by virtue of separation of powers. The Anti-Federalists contended the Constitution infringed too much on state sovereignty, thereby impeding the states from protecting individual rights. But the important point for present purposes is that the vigorous debates by delegates elected to conventions for the specific purpose of deciding ratification constituted the means of expressing the people's sovereign will.

In sum, the state ratifying conventions, and the vigorous debates among the elected delegates in those conventions, were the devices by which the Constitution itself envisioned that the

new government would rest on a foundation of popular consent. The conventions were how "We the People" gave our assent to be governed by a new Constitution, which, by its own terms in Article VI, is " the supreme Law of the Land."

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