

Unit 1

Part 1: A New Constitution for a Young Republic

Preamble

Essay by Forrest McDonald

Emoluments Clause

Article I, Section 9, Clause 8

No State Title of Nobility

Article I, Section 10, Clause 1

Guarantee Clause

Article IV, Section 4

Ratification Clause

Article VII, Clause 1

Attestation Clause

Article VII, Clause 2

Preamble

Essay by Forrest McDonald (pp. 43–46)

The Preamble of the Constitution was an afterthought composed by Gouverneur Morris, a delegate from Pennsylvania and member of the Committee of Style. Though the Preamble does not have any substantive legal meaning, it is nevertheless a powerful statement of the purpose of the Constitution and a reminder of the principles of the Declaration of Independence that undergird the document.

As Forrest McDonald explains, the very first words of the Preamble—“We the People of the United States”—show a marked departure from the Articles of Confederation. The Constitution’s introductory words indicate that the people of the United States were members of one united country rather than representatives from different states forming a pact between states (as was the case under the Articles of Confederation). The use of “We the People” was also necessary considering the ratification procedure. The Preamble did not list the name of each state, because the Constitution would go into effect whenever the popularly elected ratifying conventions of nine states approved it. It was not obvious which nine would ratify first, and the Framers did not want to add names retroactively.

Some criticized the language for failing to list the states. Patrick Henry suggested that the absence of the list of states indicated that the Constitution created a national, consolidated government. Governor Edmund Randolph responded that “the government is for the people; and the misfortune was, that the people had no agency in the government before.”

The Preamble presents six purposes of the Constitution. Of these six, two are immediate requirements of safety and security common to every sovereign nation: “insure domestic tranquility” and “provide for the common defense.” Two look forward to building a particular society that upholds the rule of law and fosters prosperity and well-being for all of its citizens: “establish Justice” and “promote the General Welfare.” The other two objectives grandly express the Founders’ hopes for their nation’s and their people’s future: The Constitution is meant to “form a *more perfect union*” and “secure the blessings of liberty to ourselves *and our posterity.*”

“To form a more perfect Union” does not mean that the Founders thought that they could create a truly perfect government. Rather, the phrase meant a better and stronger union than the one that had existed under the Articles of Confederation. The second objective, “to establish justice,” implies that justice did not exist under the previous government. Gouverneur Morris chose the words carefully: While court systems existed prior to the Constitution, state governments violated individuals’ rights. The Constitution would guard against this behavior with an independent judiciary and separate prohibitions of certain state practices.

The third purpose, “to insure domestic Tranquility” was vital because, during this time, Americans were accustomed to rebelling against unpopular governments. The Constitution would prevent uprisings such as the Whiskey Rebellion (1794) and Fries’s Rebellion (1799). To insure tranquility, the new Constitution would give Congress authority over the state militias and guarantee to each state a republican form of government. The fourth objective, “to provide for the common defense,” was the reason the United States came into being. However, Americans were wary of strong standing armies, which could enslave the country as well as defend it. The Founders sought both to ensure a strong defense and to provide for these concerns about standing armies.

The fifth purpose, “to promote the general Welfare,” was not a broad grant of power to the federal government. “General” means applicable to the whole, not to any particular state or special interest. Thus, the Preamble limits government by ensuring that it always acts in the interests of the whole rather than for particular states or interests. The sixth and final purpose is to “secure the Blessings of Liberty to ourselves and our Posterity.” This broadly refers to the whole Constitution insofar as it establishes a limited government to protect individual liberties.

The Preamble, furthermore, points back to the principles and rights proclaimed in the Declaration of Independence. Far from negating the principles leading to the American Revolution, the Constitution fulfills them. The Preamble as a whole declares that the Constitution was designed to secure the rights of life, liberty, and the pursuit of happiness proclaimed in the Declaration.

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Make a Real-Life Connection

Read the Preamble aloud. Ask students whether they have heard these words before and, if they have, where they have heard them. (in school, on television) *Ask: Why do you think the Preamble is so well known?* (Answers will vary. Students may say that the Preamble expresses the ideas behind the formation of the United States Constitution.)



Make a Real-Life Connection

Ask: In his discussion of the Preamble, Forrest McDonald explains what the phrase “general Welfare” meant to the Framers of the Constitution. What did they understand the phrase to mean? (It was a limitation on government’s power. Government could address certain general interests rather than regional or parochial ones.) *How is the word “welfare” used today?* (persons’ general well-being, social programs intended to promote well-being)



Active Reading

Read aloud the opening of the Preamble. *Ask: What impression do these words make on you?* If necessary, prompt students by asking: *What do these words say about the people of the United States?* (Students may say that the people of the United States are now one.) Read aloud the opening of the Articles of Confederation on pages 43 and 44. *Ask: What impression do these words make on you?* (Students may say that all people in one state are one and that each state is separate.)



Write About It

Point out that McDonald discusses the relationship between the Declaration of Independence and the Constitution. Have students read both documents and write a paragraph on how the purposes in the Preamble compare to the discussion of government in the second paragraph of the Declaration of Independence. (The Declaration sets forth the end of government; the Constitution creates the structures by which the Constitution will fulfill the promises of the Declaration.)



Discussion Questions

1. How does the Preamble show that the Constitution is different from the Articles of Confederation? (The Articles of Confederation tied the states together only loosely, but the Preamble represents the states as a united body through the phrase “We the People.” The Preamble also places the political strength of the government with the people, which differs from the Articles of Confederation.)

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**Active Reading**

Ask: Why does the Constitution require Congress's consent when an official receives a title or gift from a king or other world leader? (Requiring Congress to consent to the receipt of these gifts informs Congress about the gifts, prevents the likelihood that these gifts are mere bribes, and guards the republican character of America.)

**Discussion Question**

Point out that Delahunty quotes David Ramsey, an 18th century historian, as saying that equality is the "life and soul" of republicanism. Ask: **What are some ways that the United States government tries to treat all people equally?** (Answers will vary. Examples: the law protects everyone equally. All people have certain due processes. Citizens have the right to vote.)

State Title of Nobility – Article I, Section 10, Clause 1

Essay by Robert Delahunty (pp. 175–176)

While the Emoluments Clause forbids the federal government from granting titles of nobility, Article I, Section 10, Clause 1 forbids state governments from granting such titles. Together, these clauses help to maintain the republican character of the United States government.

The Articles of Confederation prohibited Congress and the states from awarding titles of nobility. Even before the Articles of Confederation, however, states had renounced the power to grant such titles. Thus, prohibiting state titles of nobility was not controversial.

**Make a Real-Life Connection**

Provide students with some examples of noble titles. These include prince, knight, king, queen, duke, duchess, count, and princess. Ask: **Can you think of some examples of people who have a noble title in their names?** (Answers will vary.) **Where are these individuals from?** (Answers will vary. Help students reach the conclusion that all people mentioned are from countries other than America.) **What does this tell you about noble titles and America?** (America is a republican government. It does not pick its officers according to a hereditary bloodline. It does not award titles, and her citizens do not receive titles.)

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Before You Read

Ask: What is a guarantee? (a promise) **What are some guarantees that a government would make to its people?** (Responses may vary. Students may say that government protects its people from foreign invasion and treats people equally under the law.)



Active Reading

Help students understand how a republican government differs from a pure democracy and a monarchy. Point out that a pure democracy lacks magistrates. This means that the mob makes all decisions, including executive and judicial ones. **Ask: Why is this dangerous?** (The people who make up the majority would make all decisions. The majority could deny the rights of the minority.) Point out that the absence of a monarchy was a requirement of a republican government. **Ask: What is the difference between a monarchy and a republic?** (In a monarchy, the ruler holds power for life. A ruler who has lifetime tenure has little incentive to rule justly or in the people's best interest, because the people would have no check on him. Elections are the chief mode to ensure accountability. In a republic, the people can remove their representatives if they fail to perform the duties of their offices properly.)



Write About It

Your book mentions that the rule of law prevents certain types of laws: ex post facto laws and bills of attainder. This will be discussed in greater detail in Lesson 8. Have students research the meaning of an ex post facto law and bills of attainder and provide a historical example of each. (Ex post facto laws are laws that make something illegal after the fact. Bills of attainder are laws directed at one person or at groups of persons. These laws do not accord with the rule of law, because the rule of law requires that laws be general rules of action, not retroactive punishments of past behavior or narrowly defined acts that do not apply to everyone. Examples will vary.)

Ratification Clause – Article VII, Clause 1

Essay by Charles Kesler (pp. 298–301)

The Ratification Clause formally accepted the Constitution as a replacement for the Articles of Confederation. This was a bold decision because the original purpose of the Constitutional Convention was to revise, not replace, the Articles of Confederation.

More significantly, the Framers required popular conventions of nine states to ratify the Constitution instead of relying on Congress, state legislatures, or the cumbersome procedures of the Articles of Confederation. The Constitution's ratification

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**Active Reading**

Point to Madison’s distinction between a treaty and a constitution, discussed on pages 299–300. **Ask: What makes a constitution different from a treaty?** (In a treaty, there are no questions of constitutionality. If one party breaches an article of a treaty, then the other parties no longer have the obligation to comply with the treaty. In a constitution, actions that oppose the constitution are invalidated, and there is no similar ability to withdraw from the pact.)

**Discussion Questions**

1. **Why is it important to have decisions made on the basis of majority approval instead of unanimous approval?** (Unanimous approval might never be achieved; allowing majority approval prevents the tyranny of the minority, where one state in withholding its approval could prevent the greater security and happiness of the other 12 states.)
2. **Kesler explains that one of the purposes of Article VII was to encourage the states that did not ratify the Constitution to come aboard. How do you think Article VII does this?** (Students may say that the states that did not ratify the Constitution may have worried about their safety and prosperity without it. Not wanting to be isolated, they would therefore officially become part of the United States.)

Attestation Clause – Article VII, Clause 2*Essay by Matthew Spalding (pp. 301–302)*

The Attestation Clause is the final clause of the Constitution of 1787. It was written immediately before the delegates signed their name to the document.

When the Convention reconvened on September 17, 1787, Benjamin Franklin delivered an address endorsing the Constitution even with its perceived imperfections. Delegates did not sign on behalf of their particular states; they simply signed their names, which was an expression of unanimity. William Jackson, although not a delegate, signed to attest to the delegates’ signatures.

As Matthew Spalding explains, the way in which the Constitution was dated—“the Seventeenth Day of September in the Year of our Lord” 1787, and “of the Independence of the United States of America the Twelfth”—uniquely situates the Constitution in Western civilization and American history. Along with the Constitution, only the Articles of Confederation and the Northwest Ordinance are dated according to the “Year of Our Lord” and the anniversary of the Declaration of Independence. By choosing to date the Constitution in this way, the Framers situated the document in context of the religious tradition of Western civilization and linked the Constitution to the principles articulated in the Declaration of Independence.

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2. To become the plan for government for the United States, the Constitution had to be ratified by
 - a. all states
 - b. nine states.**
 - c. 11 states.
 - d. 12 states.

3. The only state that did not participate in the Constitutional Convention was
 - a. New York.
 - b. Virginia.
 - c. New Hampshire.
 - d. Rhode Island.**

Fill in the blank: Write the correct word or words in each blank.

1. In Article IV, Section 4, the Guarantee Clause assures the states protection from _____ and also guarantees _____. (**foreign invasion and domestic violence, "a Republican Form of Government"**)

2. A pure democracy had no _____. (**magistrates**)

3. Where the signers subscribed their names, the states are listed in _____ order. (**geographical**)

4. Unlike the Articles of Confederation, the Constitution established a strong _____ government to protect the citizens. (**federal**)

5. The Preamble stresses that ultimate political authority lies with the people, not the states, by starting with the phrase _____. (**"We the People"**)

6. _____, the secretary of the Convention, signed to attest, or authenticate, the delegates' signatures. (**William Jackson**)

Short Answer: Write out your answer to each question.

1. Why did Patrick Henry object to the Preamble? (**Patrick Henry thought that since the Constitution failed to list states, its intention might be to form a consolidated government.**)

2. Who signed the Constitution to attest to the delegates' signatures? (**William Jackson**)

3. Who composed the Preamble? (**Gouverneur Morris**)

4. What are the six purposes of the Constitution, as stated in the Preamble?
 - **to form a more perfect union**
 - **establish justice**
 - **insure domestic tranquility**
 - **provide for the common defense**
 - **promote the general welfare**
 - **secure the blessings of liberty to ourselves and our posterity**

5. What was the purpose of the Emoluments Clause? **(to shield the republican character of the United States against corrupting foreign influences)**

6. During the debates over ratification of the Constitution, what were the three criteria of republicanism under the Guarantee Clause?
 - **popular rule (majority of voting citizens)**
 - **that there be no monarch**
 - **rule of law**

7. Which was the ninth state to ratify the Constitution? **(New Hampshire)**

True / False: Indicate whether each statement is true or false.

1. The prohibition on federal and state titles of nobility was designed to affirm and protect the republican character of the American government. **(True)**

2. The Preamble was placed in the Constitution as an afterthought. **(True)**

3. Article VII was the last and shortest of the Constitution’s articles. **(True)**

4. Article VII’s bold dismissal of the Articles of Confederation’s rule of unanimous approval emphasized the break from the Articles to a Constitution as supreme law of the land. **(True)**

5. The Emoluments Clause has been in court extensively. **(False. To our knowledge, the Emoluments Clause has never been litigated.)**

6. The Founders intended to create a pure democracy. **(False)**

7. All the Delegates signed the Constitution **(False. Three Delegates did not sign.)**

Part 2: The Supremacy of the Constitution

Debt Assumption Clause

Article VI, Clause 1

Supremacy Clause

Article VI, Clause 2

Oaths Clause

Article VI, Clause 3

No Religious Test

Article VI, Clause 3

Debt Assumption – Article VI, Clause 1

Essay by Jeffrey Sikkenga (pp. 289–291)

To finance the War of Independence, American states and the Continental Congress sold bonds to anyone who would buy them, leaving the new country in debt. During the Convention, delegates considered a proposal giving Congress the power to discharge the debts incurred by the states and the previous Congress. Since this debt was incurred before the signing of the Constitution, a question arose: Would the new government necessarily inherit the obligations of the previous government? There was also a related question: Should Congress assume this debt or the states retain it?

Under Article XII of the Articles of Confederation, Congress was liable for “monies borrowed and debts contract by” the old Continental Congress. Thus, the Articles provided precedent for the new government to inherit the debts incurred under the previous form of government. Elbridge Gerry objected that under the proposed wording, the new Congress would have the power but not the obligation to pay back the debt. Edmund Randolph agreed that without the explicit power enumerated in the Constitution, the new government did not have the authority to pay off the previous debts.

James Madison, however, disagreed. He argued that the new government had the obligation to pay the debts from the previous government and that this obligation existed whether or not the Constitution empowered the new government to pay. Furthermore, states did not have the power to engage in external affairs, which included the power to repay foreign bondholders. Thus, the new national government would inherit the power to repay foreign bondholders directly from the Articles and would not need an explicit grant of power from the new Constitution. In *The Federalist*, Madison maintained that the Debt Assumption Clause was not a legal or constitutional necessity; rather, it was included to satisfy foreign creditors of the United States. Ultimately, the new federal government fulfilled the obligations inherited from the Articles of Confederation without serious constitutional controversy.

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The Supremacy Clause is often seen as the source of the principle that states cannot regulate or control federal activities. In *McCulloch v. Maryland* (1819), Chief Justice John Marshall declared that supremacy allowed the federal government to “remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their influence.” While the federal government can prevent states from interfering with federal operations, this does not mean that the Supremacy Clause is the source of Congress’s power to protect federal operations. The basis of Congress’s powers is the constitutional enumeration of powers, not the Supremacy Clause.

Finally, the Supremacy Clause differentiates treaties from laws: that is, treaties made “under the Authority of the United States” and federal laws made “in pursuance” of the Constitution. This language ensured that treaties made by the United States prior to ratification of the Constitution take precedence over conflicting state laws. This does not, however, mean that treaties are “supreme” if they are not pursuant to the Constitution. Treaties that are properly executed are a part of the law of the United States and are on par with other federal laws.



Before You Read

Point out that each state has its own constitution and laws governing the state. It is possible that state law will differ from federal law. **Ask:** *What happens when a state law is in conflict with a valid federal law? Which law applies?* (The federal law will trump the state law.)



Active Reading

Read about the first strategy for resolving state and national conflict on page 291. It states that one way to avoid conflict is to give each government exclusive jurisdiction over a respective sphere. **Ask:** *Do you think this would work? Why or why not?* (Most students will say no, that it won’t work because some overlap between state law and federal law is inevitable.)



Check Understanding

Explain that the Supremacy Clause represents the Framers’ vision that the United States needed a strong but limited federal government. **Ask:** *How does the Supremacy Clause both give the federal government power and limit how that power can be used?* (Sample answer: The Supremacy Clause gives the Constitution supreme authority over state laws, but the Constitution allocates power to the executive, the legislature, and the courts in such a way that the document ultimately rests on the will of the people, who may in turn amend the document.)

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Work in Pairs

Pair up students and have them research an instance where the federal government has required specific oaths (for example, during the Revolutionary War). Have them write a summary of the oath and explain the reasons why such an oath was necessary.



Discussion Questions

1. How does the Oaths Clause show the balance of power among the branches of government? (All branches of the government are considered equal insofar as they all have an obligation to follow, support, and defend the Constitution. The Constitution is not the province of only one branch.)
2. What does the Oaths Clause reveal about the Framers' perception of individual responsibility? (The Oaths Clause places a personal burden on each individual in public office to act in an appropriate manner and to uphold the principles of the Constitution at all times.)

Religious Test – Article VI, Clause 3

Essay by Gerard V. Bradley (pp. 296–297)

The clause banning religious tests for federal office further attests that, regardless of one's religious affiliation or lack thereof, the Constitution is the supreme law of the land. Political obligations and religious affiliation are important, but in the end, political actors within the constitutional order must give complete loyalty to and solemnly pledge to support the Constitution of the United States. Article VI of the Constitution ensures that America's legal system—especially the federal and state courts—is defined by and focused on the Constitution.

The Article VI ban on religious tests is the one explicit reference to religion in the unamended Constitution. According to the ban, federal officers cannot be subjected to a formal religious test to hold office. The ban applied only to federal officers, but states could impose religious tests on their officials—and they did (the modern Supreme Court has ruled that religious tests on the state level are unconstitutional). Such a religious test often required a person seeking office to be Christian or even a Protestant.

The No Religious Test ban was hotly debated during the debates on ratification of the Constitution. Some focused on the clause to support the objection that the Constitution was too secular. Some supported religious tests to ensure good character in office. But defenders of the Constitution argued that the religious test ban was necessary to support religious liberty and to enable the best citizens to serve in the national government. Ultimately, the Framers supported the ban on such a test and instead required an oath to the Constitution.

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3. The original, unamended Constitution contains how many explicit references to religion? **(one)**
4. Why were the states in debt before the signing of the Constitution? **(To pay for the War of Independence, the states and the Continental Congress sold millions of dollars in bonds.)**
5. What did Edmund Randolph think about the new Congress assuming past debt? **(He argued that the new government was bound only by the Constitution. Since this issue was not specifically addressed, the federal government was in the uncomfortable position of not having the authority to pay off the debt.)**
6. What is the main purpose of the Supremacy Clause? **(to resolve conflicts between national and state laws and maintain the primacy of the Constitution)**
7. What does it mean when a federal law trumps a state law? **(It means that federal law takes precedence over the state law.)**
8. What is the main purpose of the Oaths Clause? **(to ensure that officials are bound to the Constitution)**
9. Give an example of someone who must swear to uphold the Constitution. **(Answers will vary but may include any individual elected or appointed to public office, an office of honor or profit in the civil service, or uniformed services.)**
10. Why did the Framers of the Constitution support the ban on religious tests to hold office? **(They considered it an aspect of religious liberty.)**
11. How did the states and the Continental Congress finance the War of Independence? **(They sold millions of dollars in public bonds to soldiers, ordinary Americans, and investors in America and abroad.)**

True / False: Indicate whether this statement is true or false.

1. The Oaths Clause helps to fulfill the Framers' plan to integrate the states into the electoral, policymaking, and executive functions of the federal union, subject to the limits of the Tenth Amendment. **(True)**