

The Breakfast Club

Constitutional Minute for 2 August 2025

The Problem of “We the People”

Grab a snack and something to drink; this is a long one.

I counted more than 40 books on Amazon with “We the People” in the title, by writers on both the political Left and Right. The books are almost all nonfiction but interestingly they included one fictional account. It portrayed a time in the future when a technology is discovered that allows a person “to program their own body and mind to achieve untold enhancement.” There’s a catch: the technology only works on children. “Children grew smarter, faster, and stronger than the Adults and demanded equal rights. The Adults fought back.” War ensues. I doubt I’ll buy the book, but I’m intrigued to learn how the story ends.

Amazon also markets a variety of apparel and accoutrements bearing the phrase; and judging from the variety, it’s a popular expression these days. Almost every American knows those three words begin our U.S. Constitution, but few Americans know how they got there and what they meant in 1787, when the Constitution was drafted and what that might mean today. I’m afraid we also, occasionally, find those three words used as a cudgel without regard to their true history and meaning.

Let’s dive in.

Popular sovereignty in the Bible

Noah Webster defines “sovereign” as:

1. A supreme lord or ruler; one who possesses the highest authority without control. Some earthly princes, kings and emperors are sovereigns in their dominions.
2. Supreme; superior to all others; chief. God is the *sovereign* good of all who love and obey him. (Webster, 1828 “Sovereign”)

Lest we forget, God, as Creator, is the ultimate sovereign over everything that exists in the universe, including the government of the United States of America. In Genesis 1:26, 28, however, God gives human beings “dominion” over “the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.” The word “dominion” is generally recognized as synonymous with “sovereignty,” and thus we see that God is willing to share or delegate his sovereignty, at least as it applies to “every living thing that moves on the earth.”

During the Hebrew Republic, "the people" were not sovereign, but they were not just a passive populace; they were, under their God, "the active source of political legitimacy and power."

In a theocracy, by definition, God remains the recognized sovereign, but "in a government by men, over men," (Madison, Federalist 51) there must be an earthly sovereignty, lodged somewhere. After rejecting rule by God and demanding a king, the kings of Israel and Judah were chosen in different ways; some were chosen by God Himself,¹ others by dynastic succession or regicide and some by popular acclaim, i.e. at least a modicum of popular sovereignty. The example of the Hebrew Republic was a great influence on the Founders' political thought.²

Popular sovereignty in History

By default, the people were sovereign in the Greek city-state democracies (508 BC to 322 BC). They sat in the councils, made the laws, sat on the juries, elected their fellow citizens to these bodies and they determined who was or could become a citizen. This sovereignty was, however, simply a cultural understanding; there seems to have been no official recognition of the people's sovereignty in any legal document.

The Roman statesman, Cicero (106 BC– 43 BC), was the first political philosopher to articulate the concept of popular sovereignty, and his book, *De res Publica* (About the Republic), was read by all classically educated gentlemen of America's founding era.

But as democracies and republics gave way to empires, emperors and kings, the idea of sovereignty being lodged in the citizens was pushed aside.

It began a modest comeback in the 14th Century.

[Marsilius of Padua](#) (c. 1270 – c. 1342) is credited with being the first to describe popular sovereignty in a textbook. In his 1324 book, *Defensor pacis*, he states:

The absolutely primary human authority to make or establish human laws belongs only to those men from whom alone the best laws can emerge. But these are the whole body of the citizens, or the weightier part thereof, which represents that whole body. (quoted, Heater, 2004, p. 46.)

A summary of Marsilius' conclusions can be found [here](#).

Following on the heels of Marsilius was [Bartolus of Sassoferrato](#) who, in his 1330 book *Treatise on City Government*, "reasoned that the Roman status of citizenship together with the principles of Roman law justified the idea that the people as a whole should be

considered to hold the sovereign power in the state.” (Id.) “Only when the people are sovereign can they be truly free.” (Id.)

The great German political theorist, Johannes Althusius (1563- 1638), also located sovereignty in the people.³ Algernon Sidney (1623–1683), John Locke (1632-1704), and Jean-Jacques Rousseau (1712-1778), all read by the Founders, did likewise.

Popular Sovereignty in the Founding Period

“[A]ll power is vested in, and consequently derived from, the people;...magistrates are their trustees and servants and at all times amenable to them.” So wrote Virginian George Mason in May, 1776, when composing what is now Section 2 of the Virginia Declaration of Rights. Thirteen years later, James Madison tried, unsuccessfully, to have this truth carried forward into his proposed U.S. Bill of Rights.

At the Virginia Ratifying Convention in June, 1788, James Madison explained: "Should all the states adopt [the Constitution], it will be then a government established by the thirteen states of America, not through the intervention of the legislatures, but by the people at large.... The existing system [i.e., the Articles of Confederation] has been derived from the dependent derivative authority of the legislatures of the states; whereas, [the new Constitution] is derived from the superior power of the people."

In Federalist 78, Alexander Hamilton explains that the Constitution is “a creature” of the people.

Ben Franklin reminds us that elected representatives are “the servants of the people, sent together to do the people's business, and promote the public welfare.”

George Washington concurs: "The power under the constitution will always be in the people. It is intrusted for certain defined purposes, and for a certain limited period, to representatives of their own choosing; and, whenever it is executed contrary to their interest, or not agreeable to their wishes, their servants can and undoubtedly will be recalled."

That its people were the repository of political power in a society was a universally recognized truth among America’s Founders, even while at times departing from that truth. One example: while most of the new state constitutions enacted during the period 1776-1780, were put to a vote of the people, Virginia’s was not, it was simply declared to be in effect. This was challenged in court seven years later; the court said, in effect, “too late.”

From September 8 – 11, 1787, the Committee on Style and Arrangement met to put the various motions agreed to into a readable style. Gouverneur Morris of Pennsylvania is recognized as the primary drafter and initially chose to open the Preamble with the words:

"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, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity."

It was quickly argued that it would be impossible to know in advance which of the states would ultimately ratify the proposed Constitution, and the Preamble was quickly changed to a slightly longer (53 words vs. 40) and now familiar version:

"We, the People of the United States, in Order to form a more perfect Union, to 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."

There is a lot to be learned in the Preamble, but that is for another time. One brief but important note: the Preamble grants no power whatsoever to any branch of the new government. Thus, in 2001, when U.S. Representative Dennis Kucinich (D-OH) justified his bill proposing a "Department of Peace" be established based on the Preamble's goal of insuring "domestic Tranquility" he was completely out of line.⁴

Back to our story...

Despite the foothold popular sovereignty had made in America, elsewhere in the 18th Century world the idea was still an anomaly, an outlier; the Age of Monarchies still predominated. "The people" generally quietly kept their place as some Sovereign King's faithful and obedient subjects.

But after the U.S. Constitution was enacted, first the French, and then citizens of other countries, began either replacing or weakening their kings.

"We the People" Today

Before we can make effective use of the phrase "We the People" we should better define it.

First, who, really, is this "We the People" today?

Is it the 340.1 million inhabitants of the United States?⁵ Absolutely not. In 2023, there were 47.8 million foreign-born residents legally living in the United States⁶ and the 340 million number also ignores the estimated eleven million illegal immigrants living among us.⁷

Is it the 174 million registered voters in the U.S?⁸ We are getting closer, closer to “We the People” of 1788, but a case can be made that being registered to vote should not automatically make one a member of “We the People.” Many registered voters do not bother to vote or engage in any way with the government America’s Founders established. Is this what Gouverneur Morris meant by “We the People?”

Is it the 170 million Americans who currently hold a valid U.S. passport?⁹ Clearly not; some of these passport holders overtly express hatred for this country.

Can we limit membership to those who are “politically active?” In which party?

Are Antifa or BLM rioters still part of “We the People?” Or do they by their riotous, unlawful actions revoke their membership?

Is an American citizen who spends much of the year living in Europe still part of “We the People?”

Or are there some other criteria that distinguishes this group? (Note: I consider myself one of “We the People;” do you?)

Bottomline: With 1788 as the example, I think we are forced to admit that anyone entitled to vote in our elections must be considered part of “We the People,” despite their beliefs.

Second, what beliefs do “We the People” hold?

A Fox News poll in June of this year found that only 58% of Americans are proud of their country.¹⁰

Only 22% of Americans say they trust the government in Washington to do what is right.¹¹

While support for Socialism appears to be declining, now down to 36% from 40% on the last Pew Research poll, support for Capitalism is in a similar decline.¹²

In the face of \$36 Trillion in official federal debt, “[r]oughly half of adults (51%) now say they prefer a bigger government with more services, while 47% prefer a smaller government and fewer services.”¹³ Which cadre should members of Congress listen to?

Some claim we are in a “post-Truth” world.¹⁴ If so, is there *anything* we can agree upon?

Third, and perhaps most importantly, who can legitimately speak for “We the People?”

Does putting “We the People” on a legal-looking document make it more “official,” more binding, more effective?

More specifically: If an individual or even hundreds of citizens together claim “We the People” have a right to control our own grand jury system, must a district court assist them in setting up such a system or giving them control of the lawfully appointed one?

When someone complains that “We the People” were not consulted before a city council takes a certain action, must the elected officials immediately reverse course or at least conduct a poll their constituents?

“We the People” are indeed the sovereign power in this country; our Founders and their Declaration of Independence confirm it. “We” have the power to alter or completely abolish our government, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to us seem most likely to effect our safety and happiness; it is both our *right* as well as our *duty*.¹⁵

But we don’t act like it. We no longer even agree what “safety and happiness” requires.

Yes, We the People are the proper sovereigns in the United States, we are the power behind our “people’s Constitution,” and the “people’s government,” and if we could ever correct our woeful ignorance of these truths and agree as to what constitutes “the common good” we might someday act as “We the People.”

I’ll lay the majority of the blame for this ignorance and apathy on the government-run education system, which teaches students, briefly, about the Constitution, but only enough to pass the SOL test, and then the knowledge is apparently forgotten.

Maybe requiring each citizen to pass the U.S. Citizenship Test before they can register to vote, and again every five years thereafter, would be a step in the right direction.

When you think about it, “We the People” may have become a popular fiction. Or perhaps we could say it is truth shrouded in dense fog.

As we approach another Constitution Day on September 17th, perhaps we should take time to ponder the phrase “We the People, and -- do we dare? -- even talk about it?

For further study:

- *We the People, Great Documents of the American Nation*, Jerome Angel, ed., 1997.
- *50 Core American Documents: Required Reading for Students, Teachers, and Citizens*, Christopher Burkett, ed., 2014.

- *Our Nation's Archives; The History of the United States in Documents*, Eirk Braun, ed., 1999/2009.
- *The U.S. Constitution, A Reader*, Hillsdale College Politics Faculty, ed., 2012.
- *We Still Hold These Truths, Rediscovering Our Principles, Reclaiming Our Future*, by Matthew Spalding, 2009.
- *A Brief History of Citizenship*, by Derek Heater, (New York: New York University Press, 2004).
- *The Development of American Citizenship, 1608-1870*, by James Kettner, (Omohundro Institute of Early American History and Culture and the University of North Carolina Press, 1978).

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club. Contact: gary@constitutionleadership.org; 757-817-1216

Previous Constitutional Minutes can be accessed [here](#) (but not for much longer!)

¹ See 1 Samuel 9:15.

² See *The Republic of The Israelites an Example to the American States*, by Rev. Samuel Langdon, 1788.

³ *Politica. An Abridged Translation of Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples* ed. and Trans. Frederick S. Carney. Foreword by Daniel J. Elazar (Indianapolis: 1995 Liberty Fund).

⁴ Kucinich re-introduced the bill consistently until 2011. To demonstrate that Constitutional ignorance is truly bipartisan, a Republican co-sponsored the bill in 2008.

⁵ https://en.wikipedia.org/wiki/Demographics_of_the_United_States

⁶ <https://www.pewresearch.org/short-reads/2024/09/27/key-findings-about-us-immigrants/>

⁷ <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>

⁸ <https://www.census.gov/newsroom/press-releases/2025/2024-presidential-election-voting-registration-tables.html>

⁹ <https://rusticpathways.com/inside-rustic/online-magazine/how-many-americans-have-a-passport>

¹⁰ <https://www.foxnews.com/politics/fox-news-poll-6-10-proud-u-s-today-most-more-than-decade>

¹¹ <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/>

¹² <https://www.pewresearch.org/politics/2022/09/19/modest-declines-in-positive-views-of-socialism-and-capitalism-in-u-s/>

¹³ <https://www.pewresearch.org/short-reads/2025/05/06/americans-see-a-role-for-the-federal-government-in-many-domains-but-some-large-partisan-divisions-persist/>

¹⁴ <https://www.bc.edu/bc-web/sites/bc-magazine/summer-2020/features/welcome-to-post-truth-america.html>

¹⁵ Thomas Jefferson, Declaration of Independence, July 4, 1776.