

# Widener University Delaware Law School

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## Are 'We the People' Meeting Our Responsibilities?

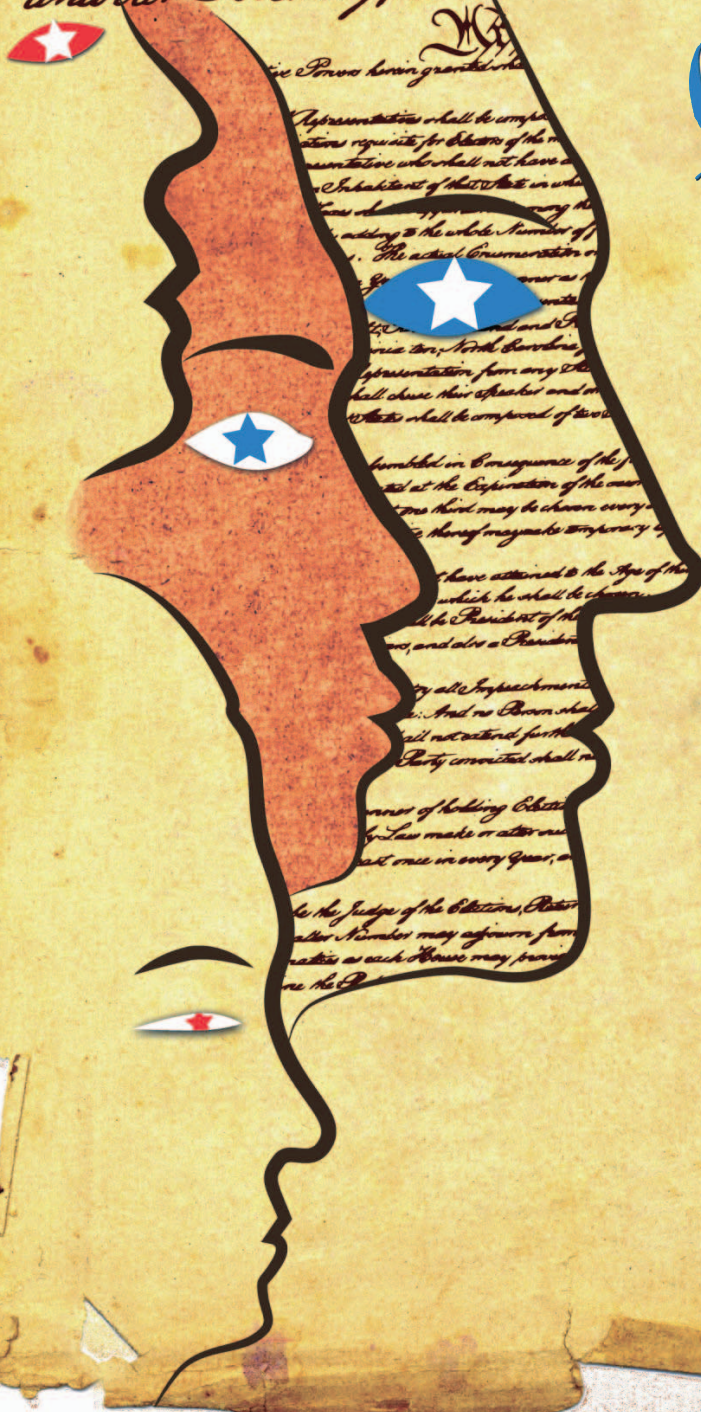
Alan E Garfield



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# We the People

insure domestic Tranquility, provide for the common defence and our Posterity, do ordain and establish this Constitution



On Sept. 17, 1787, 38 of the 41 delegates present at the conclusion of the convention in Philadelphia signed the constitution, thus beginning a process that in some senses continues to this day. Officially, it took the original 13 states three years to ratify the Constitution. But the experiment of putting "We the People" in charge isn't over yet. Wednesday, the 227th anniversary of the signing, is a perfect opportunity to judge how the experiment is doing. Once again, Widener University School of Law and The News Journal present a series of essays examining our progress.

## Are 'We the People' meeting our responsibilities?

ALAN GARFIELD



The "We the People" who established the Constitution "to form a more perfect Union" passed away long ago. The responsibility for perfecting the Union thereafter passed from one generation of Americans to the next as each became the "We the People" of its time.

Today, that's all of us. We are the current generation of "We the People" charged

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## Do we still benefit from the two-party system?

CHUCK DURANTE



When the nascent United States carried out history's first peaceable transfer of national governing power to the opposition, the change was made possible by a strong new political party.

Had not the Democratic-Republican Party organized to oppose, then oust John Adams' Federalists, it is realistic to surmise that Thomas Jefferson would

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# Garfield: Partisanship is paralyzing current political system

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with steering the nation through the rocky shoals of our own era. We will decide whether the ship of state our children inherit is as sound as the one we boarded.

So how are we doing? Are we, as the Constitution's Preamble provides, securing the "Blessings of Liberty to ... our Posterity"? Or are we failing to fulfill our obligation to future generations?

Too often, the latter seems true. Our political system, paralyzed by partisanship, is stuck in neutral. And it's not just politicians at fault. Americans themselves are deeply divided between red and blue. The most strident among us think their counterparts in the other party are endangering the nation's welfare. Such acrimony and distrust make it impossible to find common ground even when it's in the country's best interest.

Can we afford this perpetual state of paralysis? Can we fulfill our obligations to the next generation if we drift aimlessly? Can we find a way forward notwithstanding our differences?

Those are this year's Constitution Day questions. Yes, the questions are a bit rhetorical and have a dose of cynicism. But no, the purpose of this Constitution Day exercise is not to wallow in our nation's woes. Instead, it is to reawaken in us that spirit of collaboration that made it possible, 227 years ago, to adopt the Constitution.

That's not to say that a miracle occurred on Chestnut Street in Philadel-

**Political parties are not even mentioned in the Constitution, and James Madison warned against the "mischiefs of faction."**

phia or that the Constitution is a perfect document written by infallible men. Far from it. It took a bloody civil war and a constitutional amendment to fix the Constitution's biggest defect. And the Constitution today contributes to our paralysis with a system of checks and balances that invites gridlock.

But by creating a nation in which the people are sovereign, the Constitution has given us the power to put the nation back on course. If we want our leaders to address the nation's most pressing problems constructively, we can make it happen. In a popular sovereignty, we lead the way.

And why not have the citizens of Delaware, the first state to ratify the Constitution, set the example? Delawareans led the nation in 1787. Why can't we now show the way to finding common ground for some of our most contentious issues? Why can't we demonstrate how it's possible to respect one another's legitimate concerns and still find room for compromise? Why can't we model how civic discourse can be conducted in a manner that builds trust

rather than destroys it?

Over the next few days, Delawareans will address these questions on the following topics:

Glaciers are melting, species are dying, storms are destroying our coastlines, and yet we can't even agree if anything is wrong. The Constitution doesn't address environmental issues, but surely one obligation of this generation of Americans is to ensure that the planet will be habitable for future generations. But moving forward can have implications for people's jobs and the quality of their lives. And we can't solve anything without the help of people from around the world. So what do we do?

There is no right to a quality education in the Constitution. But we can hardly "promote the general Welfare," as the Constitution's Preamble requires, if we don't give our children the tools to succeed in this complex and competitive world. Yet this costs money which might mean higher taxes or diverting resources from other worthy programs. And money alone cannot solve the problem without communities that encourage and appreciate learning. But transforming communities is no easy task. So how do we move forward?

The Preamble says that the Constitution was ordained to "establish Justice." But is our current criminal justice system doing so? We have the one of the highest incarceration rates in the world and a vastly disproportionate number of inmates are people of color. Are we confident that this system is promoting justice? Can we make the system more just without sacrificing

our safety?

The Preamble asks us to not only "provide for the common defence" but also to "secure the Blessings of Liberty." But what happens when achieving more security comes at the price of less liberty? This is especially true in the age of big data when vast troves of information about individuals can easily be stored and dissected by private parties and government. How do we strike the right balance?

In effective democracy requires an engaged and informed citizenry, protection for the right to vote, government transparency, and a vibrant press. Are we acting in ways that protect and advance these interests or doing the opposite? Are we more concerned with advancing partisan agendas than the people's agenda? Indeed, political parties are not even mentioned in the Constitution, and James Madison warned against the "mischiefs of faction." Are our parties now a help or hindrance to our democracy's health?

These are all intergenerational problems. They can be addressed only if the current generation of "We the People" cares about the interests of future generations. After all, for this generation of Americans global warming may be annoying. For future generations, it could be devastating.

As we celebrate Constitution Day, let us reaffirm our commitment to "secure the Blessings of Liberty to ourselves and our Posterity" and be grateful to previous generations who did the same.

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