

FIRST PERSON PLURAL

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One is the loneliest number you will ever do,¹ but *we* is the loneliest word in American law. Let me explain.

From its founding documents to the pronouncements of the contemporary Supreme Court, the legal system of the United States of America routinely speaks in first person plural. *We hold these truths to be self-evident . . . 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.* When speaking ex cathedra, this honorable Court speaks as *we*. The appearance of the first personal singular – *I*, *me*, *my* – is the surest sign of defeat among the Justices. In my country, 'tis of thee, *we* beats *me*.

But the very nature of the English language conceals how isolating the use of first person plural in law can be. Many languages draw sharp distinctions not known in English. Number in English, limited to singular and plural, includes dual or even trial forms in other languages. An even more striking difference arises from the treatment of first person pronouns and verbs. A significant number of languages distinguish between the inclusive and exclusive forms of the first person plural (and of first person dual and trial, to the extent numbers beyond singular and plural exist in those languages). A more formal articulation of the inclusive/exclusive distinction follows:

First person inclusive includes the speaker and may or may not include a non-speech act participant. Some languages have an “inclusive dual” form, even though dual may not be specified in any other part of the grammar. This form refers only to speaker and hearer and excludes a non-speech act participant. First person exclusive includes the speaker and a non-speech act participant, but excludes the hearer.²

Another way of conceptualizing the inclusive/exclusive distinction hinges on

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²*Hear* THREE DOG NIGHT, *One, on* THREE DOG NIGHT (ABC-Dunhill, MCA Records 1969).

³THOMAS E. PAYNE, DESCRIBING MORPHOSYNTAX: A GUIDE FOR FIELD LINGUISTS 45 (1997).

defining first person plural as a first-and-second person combination or as a first-and-third person combination. In any language, first person plural (or dual) necessarily requires the speaker to refer to at least one other person besides herself. At an absolute minimum, in a language in which plural number begins with two rather than three (or even four, in those rare languages that contain trial number), first person plural combines the speaker (first person singular) with either second person singular or third person singular. In other words:

- * First person singular plus second person = inclusive first person plural
- * First person singular plus third person only = exclusive first person plural

In a language lacking dual number, the inclusive first person plural may include at least one other individual besides the addressee. But the exclusive first person plural (or dual or trial) necessarily excludes the addressee.³

English draws no distinction between the inclusive and exclusive forms of the first person plural. With a single exception, the Marathi language of western India, no Indo-European language draws that distinction. English *we*, German *wir*; Swedish *vi*; Icelandic *við*, French *nous*, Spanish *nosotros*, and Italian *noi* can either include or exclude the listener.

Outside the Indo-European world, however, the inclusive/exclusive distinction abounds. At least one non-Indo-European language that developed under the strong influence of English as a superstrate language contains inclusive and exclusive expressions of first person plural.⁴ Tok Pisin, an official language of Papua New Guinea, leverages the syntax of Melanesian languages to transform the English words *you*, *me*, and *fellow* into distinct inclusive (*yumi* – an amalgam of *you* and *me*) and exclusive (*mifela* – an amalgam of *me* and *fellow*) forms of the first-person plural pronoun. Tok Pisin's morphological similarity to English creates an informal mnemonic by which native speakers of English can remember the otherwise exotic phenomenon of inclusive and exclusive first person plural pronouns: *yumi* designates inclusive first person, while *mifela* designates exclusive first person. In the woeful but workable tradition of travel guide phonology, *you-me* and *me-fellow* will do.

The broader family of Austronesian languages (which includes Melanesian languages) exhibits the inclusive-exclusive distinction on a nearly universal basis. Malay and Indonesian distinguish between the inclusive pronoun *kita* and the

³The linguistic explanations that follow, except where indicated otherwise, are derived from http://en.wikipedia.org/wiki/Inclusive_and_exclusive_we.

⁴See http://en.wikipedia.org/wiki/Tok_Pisin.

exclusive pronoun *kami*. By saying “We (*kami*) will go shopping, and then we (*kita*) will eat,” a host can clearly communicate that his guest should not accompany him to the market, but that the guest is invited to dinner. Likewise, Tagalog boasts *kami* and *tayo* as its exclusive and inclusive forms of the first person plural.

The Samoan language, another member of the Austronesian family, displays an intriguing variation on this theme.⁵ Like Malay and Tagalog, Samoan has two separate roots for *we*: inclusive *'ita* and exclusive *'ima*. Samoan then combines those roots with the dual suffix *-ua* or the plural suffix *-tou* to form a full complement of dual and plural pronouns meaning *we*, *you all*, and *they*:

<i>Samoan pronouns</i>	Singular	Dual	Plural
First person	a'u		
Emotional	'ita		
Inclusive		'ita'ua	'itatou
Exclusive		'ima'ua	'matou
Second person	'oe	'oulua	'outou
Third person	ia	'ila'ua	'ilatou

The inclusive pronoun *'ita* may be used on its own as a singular pronoun. *'Ita* means *I*, but in a sense that implicitly asks the listener's indulgence for the speaker's emotional involvement in the subject. By using *'ita* instead of *a'u*, a Samoan speaker effectively involves her addressee in statements about herself.

The Sino-Tibetan language family also plays with the inclusive/exclusive distinction, albeit inconsistently. Standard Mandarin uses the pronoun *wǒmen* 我們 (*we*), the plural of the pronoun *wǒ* 我 (*I*), in an indefinite fashion comparable to the way English speakers use *we*. Northern dialects of Mandarin, however, adopt an additional pronoun, *zǎmen* 咱們, which is inclusive, and retains *wǒmen* 我們 to denote *we* in its exclusive sense. Taiwanese accomplishes a similar feat by manipulating the enclitic *-n*, which indicates plural number in pronouns. The exclusive pronoun *goán* is the plural of *goá* (*I*), whereas the inclusive pronoun *lán* combines the plural suffix *-n* with a root influenced by *lí* (*you*). For a native speaker of Taiwanese who hopes to be included within a conversational strand, *goán* is the loneliest pronoun.

Most modern Dravidian languages (except Kannada) retain the

⁵See ULRIKE MOSEL & EVEN HOVDHAUGEN, SAMOAN REFERENCE GRAMMAR 121 (1992); see also PAYNE, *supra* note 2, at 45.

inclusive/exclusive distinction, a trait traceable to in proto-Dravidian. For instance, in Malayalam, നമ്മൾ (nammal) denotes the inclusive form of *we*; ഞങ്ങൾ (ñāññal) represents the exclusive form. In Tamil, the forms are inclusive *nām* and exclusive *nāñka!*.⁶ University of Oklahoma law professor Srividhya Ragavan, a native speaker of Tamil, reports the following forms within her dialect:

<i>Nan</i>	=	I (first person singular)
<i>Nambo</i>	=	you and I (inclusive first person plural)
<i>Nango</i>	=	other(s) and I (exclusive first person plural)
<i>Ni</i>	=	you (second person singular)
<i>Ningo</i>	=	you (second person plural or polite)

This remarkable sequence sheds light on the morphology, sociolinguistics, and phonology of Professor Ragavan's dialect. The enclitic *-go* designates a plural, much as *-n* does in Taiwanese. Exclusive first person plural *nango* is merely the plural form of singular *nan*, while *ningo* represents the plural form of the singular second person pronoun, *ni*.⁷ As with French *vous* or Swedish *ni*,⁷ the second person plural does extra duty as the polite form. Finally, Tamil *nan* becomes *nam-* under the phonetic influence of the suffix *-bo*. The alveolar /n/ sound invariably becomes the labial /m/ in the presence of the voiced stop /g/. For comparison's sake, the Japanese loanword ハーンバガ *must* be pronounced *haambaga* rather than *haanbaga*, even though the katakana character ン ordinarily designates the phoneme *n*.⁸

The Cherokee language, rightly renowned as the only Amerind language with its own writing system and the only language anywhere whose writing system is the work of a single individual,⁹ also boasts a highly elaborate and expressive set of pronouns. Linguist Steven Pinker admires how “the complex Cherokee pronoun system” provides distinct forms for “‘you and I,’ ‘another person and I,’ ‘several other people and I,’ and ‘you, one or more other persons and I,’ which English crudely collapses into the all-purpose pronoun *we*.”¹⁰ Like Samoan, Cherokee not only

⁶ See http://en.wikipedia.org/wiki/Tamil_language.

⁷ Cf. MONTY PYTHON AND THE HOLY GRAIL (1975) (portraying “The Knights Who Say *Ni*”).

⁸ Deciphering the meaning of ハーンバガ is left as an exercise for the (hungry) English-speaking reader.

⁹ See RUTH BRADLEY HOLMES & BETTY SHARP SMITH, BEGINNING CHEROKEE 7-8 (1992).

¹⁰ STEVEN PINKER, THE LANGUAGE INSTINCT: HOW THE MIND CREATES LANGUAGE 24 (1994).

contains three numbers – singular, dual, and plural – but also distinguishes between the inclusive and exclusive forms of the first person dual and plural.

Within North America, Cherokee is hardly alone in distinguishing between exclusive and inclusive first person plural. (Cherokee *is* lonely in the sense that it is the last extant Southern Iroquoian language.) All Algonquian languages draw this distinction. In Shawnee, for instance, the exclusive first person plural pronoun is *niilawe*, and the inclusive first person plural pronoun is *kiilawe*, by obvious analogy to the first person singular pronoun *niila* and the second person singular pronoun *kiila*. All Algonquian languages also draw the inclusive/exclusive distinction in the pronominal inflection of their verbs. Although use or nonuse of the distinction follows no discernible pattern in New World languages, distinct pronouns indicating inclusive versus exclusive first person plural appear in South American languages such as Quecha and Guaraní.

From Austronesia to the Andes, many of the languages of the greater Pacific rim take care to distinguish the inclusive from the exclusive use of the first person plural. By contrast, nearly the entire Indo-European family, at least west of Maharashtra (the heart of the Marathi-speaking population), pays no heed and adopts undifferentiated first person plural pronouns. What light, if any, does this global linguistic divide shed upon the project of legal interpretation, especially constitutional interpretation, in a country that leads the world in absorbing newcomers and in projecting its values – by force, by market power, or by sheer, mere numbers – across the globe?

At an absolute minimum, in a constitutional system whose highest court has exhibited increasing willingness to consult foreign precedent,¹¹ the American constitutional tradition has begun to transcend the relatively narrow cultural and linguistic confines of the “English-speaking peoples.”¹² Although the Supreme

¹¹See generally, e.g., David Fontana, *Refined Comparativism in Constitutional Law*, 49 UCLA L. REV. 539 (2001); Sarah K. Harding, *Comparative Reasoning and Judicial Review*, 28 YALE J. INT’L L. 409 (2003); Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 HARV. L. REV. 109 (2005); Sanford Levinson, *Looking Abroad When Interpreting the U.S. Constitution: Some Reflections*, 39 TEX. INT’L L.J. 353 (2004); Osmar J. Benvenuto, Note, *Reevaluating the Debate Surrounding the Supreme Court’s Use of Foreign Precedent*, 74 FORDHAM L. REV. 2695 (2006); Matthew S. Raalf, Note, *A Sheep in Wolf’s Clothing: Why the Debate Surrounding Comparative Constitutional Law Is Spectacularly Ordinary*, 73 FORDHAM L. REV. 1239 (2004)..

¹²*Adamson v. California*, 332 U.S. 46, 67 (1947); *Wolf v. Colorado*, 338 U.S. 25, 28 (1949); cf. *Hurtado v. California*, 110 U.S. 516, 528 (1884) (“[A] process of law, which is not otherwise forbidden, must be taken to be due process of law, if it can show the sanction of settled usage both in England and in this country; but it by no means follows, that nothing else can be due process of law.”).

Court has never conclusively adjudicated the constitutionality of legislation declaring English to be the official language of a state,¹³ Congress has (with the Supreme Court's apparent blessing), prohibited the states from treating proficiency in English as a precondition to the franchise.¹⁴ It also appears that failing to provide adequate education to children whose native language is not English violates Title VI,¹⁵ even if federal law gives individual families no power to enforce this provision through private lawsuits.¹⁶ The Supreme Court has recognized that a prosecutor's motivation "for excusing . . . jurors related to their ability to speak and understand Spanish [might] raise a plausible, though not a necessary, inference that language might be a pretext for what in fact were race-based peremptory challenges."¹⁷ And the right to teach and learn languages other than English, sanctified as a substantive expression of due process nearly a century ago, remains the law of the land.¹⁸

On the other hand, the United States has achieved a far more mixed legal legacy among native speakers of languages that draw the inclusive/exclusive distinction. In one of its first cases interpreting the nativist immigration laws of the 1920s, the Supreme Court held that persons of Japanese descent (and presumably those originating from other east Asian countries) could not attain citizenship under an immigration statute limiting naturalization to "free white persons" and "persons of African nativity or descent."¹⁹ The Court then extended that holding to persons of Asian Indian descent.²⁰ By contrast, with respect to the Philippines, the site of one of the United States' more regrettable colonial misadventures, the Supreme Court did invalidate a territorial law that effectively prohibited the recording of financial accounts in Chinese.²¹

Finally, the long and often unhappy interaction between American constitutional law and the native peoples of North America has often contested the

¹³ See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 44 (1997).

¹⁴ See 42 U.S.C. § 1973b(e)(1) (2000); *cf.* *Briscoe v. Bell*, 432 U.S. 404, 405-06 & n.2 (1977) (reporting "overwhelming evidence" that showed "the ingenuity and prevalence of discriminatory practices that have been used to dilute the voting strength and otherwise affect the voting rights of language minorities"); *New York v. United States*, 419 U.S. 888, 888 (1974) (summarily affirming a three-judge district court's decision to invalidate an English-only election).

¹⁵ See 42 U.S.C. § 2000d (2000); *Lau v. Nichols*, 414 U.S. 563 (1974).

¹⁶ See *Alexander v. Sandoval*, 532 U.S. 275, 285 (2001).

¹⁷ *Hernandez v. New York*, 500 U.S. 352, 363 (1992).

¹⁸ See *Bartels v. Iowa*, 262 U.S. 404, 409-11 (1923); *Meyer v. Nebraska*, 262 U.S. 390, 396-403 (1923).

¹⁹ See *Ozawa v. United States*, 260 U.S. 178 (1922).

²⁰ See *United States v. Thind*, 261 U.S. 204 (1923).

²¹ See *Yu Cong Eng v. Trinidad*, 271 U.S. 500, 507-08 (1926).

degree to which the “the Courts of the conqueror” may and should stay the hand of cultural extermination.²² At its best, the Supreme Court has “perceive[d] plainly that the constitution . . . does not comprehend Indian tribes in the general term ‘foreign nations;’ not we presume, because a tribe may not be a nation, but because it is not foreign to the United States.”²³ It is safe to say that the long project of “domesticating” Indian law – that of fully incorporating the United States’ obligations to native America into the Constitution and the American constitutional tradition – remains a work in progress.²⁴

In the meanwhile, the prevalence of the inclusive/exclusive distinction among so many languages that have contributed to the linguistic and cultural mosaic of the United States answers the lingering question: Whom does American constitutional law address and include when its foundational documents and central interpretive institution speak in the first person plural? When the Declaration of Independence “hold[s] these truths to be self-evident,” it is amply clear that the *we* of the Declaration’s second sentence excludes the intended audience – the great European powers that might otherwise have intervened on behalf of the British crown’s effort to retain its colonies in North America. The Supreme Court’s ubiquitous *we* falls even more squarely on the exclusive side of the *yumi/mifela* divide within first person plural.

The final – and by far the most important – piece of contested linguistic turf is therefore the opening sentence, even the first word, of the Constitution itself. Who exactly belongs within the phrase, *We the People*? Who constituted the audience that the document’s framers intended to address? As a matter of original intent, the idea of an inclusive *We the People* seems remote, and sadly so. On his careful reading of the document as a whole and the early tradition that it inspired, Justice Thurgood Marshall suggested that the Constitution’s framers intended no such thing as comprehensive inclusion: “In their declaration of the principles that were to provide the cornerstone of the new Nation, therefore, the Framers made it plain that “we the people,” for whose protection the Constitution was designed, did not include those whose skins were the wrong color.”²⁵ But they are dead and we

²² *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 588 (1823).

²³ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 19 (1831); *cf.* *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 547 (1832) (“[O]ur history furnishes no example . . . of any attempt on the part of the crown to interfere with the internal affairs of the Indians, farther than to keep out the agents of foreign powers, who, as traders or otherwise, might seduce them into foreign alliances.”). *See generally* Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381 (1993).

²⁴ *See generally* Philip P. Frickey, *Domesticating Federal Indian Law*, 81 MINN. L. REV. 31 (1996).

²⁵ *Regents of the Univ. of California v. Bakke*, 438 U.S. 265, 389 (1978) (Marshall, J., concurring in

are not, and any constitutional tradition worth protecting is a living tradition.

What shall *we* Americans ultimately make of first person plural within this nation's constitutional tradition? Too doleful a sentiment scarcely befits a constitutional tradition that increasingly tests itself by global standards.²⁶ Every nation displays a tablet of its virtues (and its vices) through its fundamental law. The United States is no exception. Within the American civic religion called constitutional law,²⁷ the possibility of ongoing change and eventual redemption reigns supreme. Nothing lies beyond reform and salvation – nothing, that is, except the past.²⁸ To lament that “[t]he harvest is past, the summer is ended, and we are not saved,” therefore seems downright un-American.²⁹ Indeed, that sentiment befits an altogether different tradition, one dominated by a cavalcade of *Thou shalt*³⁰ – the very embodiment of the second person singular.

the judgment in part and dissenting in part).

²⁶ See generally, e.g., David Fontana, *Refined Comparativism in Constitutional Law*, 49 UCLA L. REV. 539 (2001); Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 HARV. L. REV. 119 (2005); Sanford Levinson, *Looking Abroad When Interpreting the U.S. Constitution: Some Reflections*, 39 TEX. INT'L L.J. 353 (2004).

²⁷ See generally, e.g., SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988); AMERICAN CIVIL RELIGION (Russell E. Richey & Donald G. Jones eds., 1974); H. JEFFERSON POWELL, *THE MORAL TRADITION OF AMERICAN CONSTITUTIONALISM: A THEOLOGICAL INTERPRETATION* (1993); Thomas Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1 (1984); George Kannar, *The Constitutional Catechism of Antonin Scalia*, 99 YALE L.J. 1297 (1990); Symposium, *Religious Dimensions of American Constitutionalism*, 39 EMORY L.J. 1 (1990).

²⁸ Cf. 2 GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 997 (Pantheon Books 1972) (1944) (“Nothing is irredeemable until it is past.”), *quoted in* Daniel A. Farber, *The Outmoded Debate over Affirmative Action*, 82 CAL. L. REV. 893, 934 (1994).

²⁹ Jeremiah 8:20; accord DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

³⁰ Cf. *McCreary County v. ACLU*, 545 U.S. 844 (2005).