



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

STATE HEARING FOLLOW-UP QUESTIONS 2016–2017

Unit One: What Are the Philosophical and Historical Foundations of the American Political System?

1. How did the different principles and ideas of classical republicanism and natural rights philosophy influence the Founders' thoughts and views about government?

- What might be the possible consequences for society if either individual rights or the common good are emphasized at the expense of the other?
- How are the principles and ideas of classical republicanism and natural rights philosophy represented in our governmental institutions and public policies today?

Suggested follow-up questions:

- a. Why did classical republicans emphasize the “office” of the citizen and the duties associated with it?
- b. Explain the classical republican view of civic virtue, and cite an example of an ancient Roman who embodied those characteristics.
- c. Is it fair to say that classical republicans emphasized duties at the expense of rights? Why or why not?
- d. Why was the Roman Republic both an example and a warning to America’s founding generation?
- e. If you were asked to create a government that reflects principles of both classical republicanism and natural rights philosophy, which elements of each would you use? Why?



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2. In the Declaration of Independence, Thomas Jefferson stated that “governments are instituted among men, deriving their just powers from the consent of the governed.” From what source do the people derive the right to establish government?

- How is “consent of the governed” related to the concept of popular sovereignty?
- Does natural rights philosophy justify a right to revolution? Why or why not?

Suggested follow-up questions:

- a. What is the relationship between “consent of the governed” and the ratification of the U.S. Constitution and its subsequent amendments?
- b. Do Americans today give their consent to be governed? If they do, how do they demonstrate their consent? If they do not, how do they demonstrate their refusal to be governed?
- c. What is the significance of asserting the concept of popular sovereignty?
- d. In what way, if any, is the idea of the social contract related to the right to establish government?
- e. How do citizens today exercise popular sovereignty?



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3. In his historic argument in the writs of assistance case in 1761, James Otis challenged the English idea of what constituted a constitution. He contended that a constitution could be understood as an instrument for limiting the legislative power of Parliament. What was the English conception of a constitution that Otis challenged?
- In what ways, if any, were the basic ideas held by Americans contrary to those held by the British?
 - Were the colonists justified in believing that British policies violated basic principles of constitutional government? Why or why not?

Suggested follow-up questions:

- a. Can you explain the meaning of England's "unwritten" constitution? How, if at all, does it limit the legislative powers of Parliament?
- b. Why did the Founders prefer a written constitution over an unwritten constitution? Do their reasons apply today?
- c. Why would Otis's conception of a constitution have had broad appeal to American colonists?
- d. Do you believe that Otis's conception of a constitution found favor in the Constitutional Convention? Why or why not?
- e. How did the Framers of the Constitution understand the concept of constitutional limitations?



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Unit Two: How Did the Framers Create the Constitution?

1. In Federalist 51, James Madison wrote, “In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.”* What is the challenge of both empowering and limiting government?

- What role does civic virtue play in both empowering and limiting governmental power?
- What are the “auxiliary precautions” that Madison referred to in Federalist 51, and what are their significance to constitutional government?

* Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. J.R. Pole (Indianapolis, IN: Hackett Publishing Company, Inc., 2005), 281.

Suggested follow-up questions:

- a. Why did Madison believe that the great challenge confronting the Framers of the Constitution was obliging government to control itself?
- b. Do you believe that the challenge described by Madison remains the great challenge confronting constitutional government today? Why or why not?
- c. In what ways can the people exert control over the government?
- d. How do checks and balances contribute to limited government?
- e. How does the enumeration of powers contribute to limited government?



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2. In Federalist 1, Alexander Hamilton observed, “It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.”* Do you agree or disagree with Hamilton’s opinion about the American experiment? Why or why not?

- Does Hamilton’s remark reflect social contract theory? Why or why not?
- Is Hamilton’s observation relevant to today’s thinking about government? Why or why not?

* Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. J.R. Pole (Indianapolis, IN: Hackett Publishing Company, Inc., 2005), 1.

Suggested follow-up questions:

- a. In what ways did history influence the Framers of the Constitution to exercise “reflection and choice” in writing the Constitution?
- b. How does the Constitution invite the citizenry to participate in the maintenance of “good government?”
- c. Is it or is it not in the nature of humans to create good government? Why or why not?
- d. In our time, the lack of political civility is widely perceived as undermining the quality of government. Do you agree or disagree? Why?
- e. How is political civility linked, if at all, to good governance?



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3. **“What truly distinguishes the founding generation, in contrast to our own, is their lack of reverence for existing constitutional systems, and their willingness to experiment. They rejected the parliamentary system then emerging in Britain, improvised on existing state constitutional experiments, and created a new federal republic with a system of separated powers.”*** What might be the benefits and costs of Americans’ current reverence for our constitutional system? Explain your position.

- What experiences did the Founders have that led them to think differently about government?
- What new ideas about government, if any, did the founding generation embrace?

* Jack M. Balkin, “Sanford Levinson’s Second Thoughts about Constitution Faith,” *Tulsa Law Review*, 48 no. 2, (2013): 1–17.

Suggested follow-up questions:

- a. What ideas about government did the Federalists embrace?
- b. What ideas about government did the Anti-Federalists embrace?
- c. Should your generation, like the founding generation, embrace experimentation in government? Why or why not?
- d. What are the advantages and disadvantages of a system of separated powers?
- e. What are the advantages and disadvantages of a federal form of government with powers distributed between the national and state governments?



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Unit Three: How Has the Constitution Been Changed to Further the Ideals Contained in the Declaration of Independence?

1. **President Lyndon B. Johnson signed the Voting Rights Act into law on August 6, 1965, saying, “Today is a triumph for freedom as huge as any victory that has ever been won on any battlefield. Yet to seize the meaning of this day, we must recall darker times.”* Why did Congress think it was necessary to pass the Voting Rights Act?**
 - How did the decision in *Shelby County v. Holder* in 2013 impact voting rights? How have recent court decisions impacted voting rights?
 - How should the government deal with issues of voter fraud and disenfranchisement?

* Lyndon B. Johnson, “Remarks on the Signing of the Voting Rights Act” (speech, Capitol Rotunda, Washington D.C., August 6, 1965), <http://millercenter.org/president/speeches/speech-4034>.

Suggested follow-up questions:

- a. Is voting a right or a privilege? Why?
- b. What, if any, are the consequences of low voter turnout?
- c. Approximately twenty countries have compulsory voting. Should the United States enact compulsory voting? Why or why not?
- d. What policies, if any, can increase voter turnout?
- e. Should felons who have served their sentences be allowed to vote? Why or why not?



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2. **John Bingham, the author of the Fourteenth Amendment, argued, “Is it not essential to the unity of the Government and the unity of the people that all persons, whether citizens or strangers, within this land, shall have equal protection in every State in this Union in the rights of life and liberty and property?”* Why was Bingham’s statement controversial in 1866? Is it still controversial today? Why or why not?**
- What are the “privileges and immunities” of citizens?
 - What is meant by “equal protection of the laws?”

* Cong. Globe 39th Cong., 1st Sess. 1090 (1866), <https://memory.loc.gov/ammem/amlaw/lwcglink.html#anchor39>.

Suggested follow-up questions:

- a. Should some rights be considered more fundamental than others? Why or why not?
- b. What is the doctrine of incorporation?
- c. What are some examples of rights that the Supreme Court has identified as fundamental?
- d. How did the Fourteenth Amendment change federalism in the United States?
- e. Why must a state or Congress show a compelling interest in order to regulate a fundamental right?



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3. In *Ex parte Milligan* (1866) Justice David Davis stated, “The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances.”* Do you agree with Justice Davis’s opinion? Why or why not? What are the facts surrounding this case?

- Under what circumstances, if any, should a president declare martial law?
- Should suspected terrorists held at Guantanamo Bay, Cuba, be tried in civilian or military courts? Why or why not?

* *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866).

Suggested follow-up questions:

- a. What are the similarities and differences between civilian and military courts?
- b. Should American citizens suspected of terrorism have the same rights as citizens suspected of other violent crimes? Why or why not?
- c. Should suspected terrorists born outside of the United States have the same rights as American citizens? Why or why not?
- d. When, if ever, should an armed conflict within the United States justify imposing military law?
- e. When, if ever, should presidents exercise the power to suspend the writ of habeas corpus?



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Unit Four: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

1. Justice Stephen Breyer said, “I write an opinion and you write a dissent. I read what you say and I think, ‘Did I really say that? Oh dear. He has a good point. I better rewrite what I did. I better be certain that my argument is as good as I thought it was the first time.’ The impact of your dissent will be, at the least, to make me write a better decision.”* Do you agree with Justice Breyer’s opinion about the value of dissents? Why or why not?

- What purpose, if any, does the dissent serve in furthering justice?
- What are some of the most important dissents in American history, and why are they important?

* Brian Lamb, Susan Swain, and Mark Farkas, eds., *The Supreme Court: A C-SPAN Book Featuring the Justices in Their Own Words* (New York: PublicAffairs, 2010), 142.

Suggested follow-up questions:

- a. What are the disadvantages, if any, of dissents?
- b. If a majority of the people disagrees with a Supreme Court decision, in what ways, if any, can they change the ruling?
- c. During Chief Justice John Marshall’s tenure on the Supreme Court, he discouraged dissents. As a result, many of the Court’s major decisions were unanimous. What are the advantages and disadvantages of Marshall’s judicial philosophy?
- d. What checks on the power of the Supreme Court, if any, are there?
- e. Should terms limits be imposed on Supreme Court justices? Why or why not?



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2. In January of 1918, President Woodrow Wilson announced his Fourteen Points, which advocated for freedom of the seas, free trade, an international organization dedicated to collective security, and an active, global role for the United States. What relevance, if any, does President Wilson’s foreign policy have for current times and the power of the executive?

- President Wilson argued that a person whose primary identity is with a particular group in America “has not yet become an American.”* Do you agree or disagree? Why?
- During President Wilson’s time in office, a number of important issues regarding citizens’ rights to freedom of expression were judged by the U.S. Supreme Court. Do you agree or disagree with the decisions of the Court? Why?

* Woodrow Wilson, “Address to Naturalized Citizens at Convention Hall” (speech, Philadelphia, May 10, 1915), <http://www.presidency.ucsb.edu/ws/?pid=65388>.

Suggested follow-up questions:

- a. How should a president decide whether to send troops into a foreign land?
- b. What limits, if any, should be placed on presidential power during times of war or conflict?
- c. What role, if any, should the United States play in global affairs today?
- d. What are the advantages and disadvantages of the United States belonging to the United Nations?
- e. Were Wilson’s Fourteen Points realized in the Versailles Treaty? Why or why not?



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3. Former congressman Lee Hamilton once said, “Congress is the most important link between the American people and their national government.”* Do you agree with Congressman Hamilton’s statement? Why or why not?

- What are the advantages and disadvantages of the two-year congressional term?
- What disagreements about representation were made at the Philadelphia Convention? Are any of these arguments relevant today? Why or why not?

* Lee H. Hamilton, “Ten Things I Wish Political Scientists Would Teach about Congress” (Pi Sigma Alpha Lecture, American Political Science Association annual meeting, Washington, D.C., August 31, 2000), <http://centeroncongress.org/ten-things-i-wish-political-scientists-would-teach-about-congress>.

Suggested follow-up questions:

- a. In what ways can people ensure their views and interests are given due consideration by their representatives in Congress?
- b. What are some examples of how Congress impacts our daily lives?
- c. How do congressional committees serve as a conduit to reflect the views and interests of the American people?
- d. What institutional checks exist between the two chambers of Congress?
- e. What impact, if any, does the high cost of financing political campaigns have on the average member of Congress?



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Unit Five: What Rights Does the Bill of Rights Protect?

1. In *Brandenburg v. Ohio* the Supreme Court created a two-part test for limiting free expression. Speech can be limited if it is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”* What are the advantages and disadvantages of using this test to limit free expression, and how should this test apply to posts on social media?
 - Does the decision in *Tinker v. Des Moines Independent Community School District* apply to student speech on social media sites? Why or why not?
 - Should public schools limit student speech posted on social media sites that criticizes teachers or administrators? Why or why not?

* *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Suggested follow-up questions:

- a. Should public schools limit speech about candidates running for president?
- b. What responsibilities, if any, do users of social media have in limiting their right to free speech?
- c. Do “safe zones” on college campuses violate the First Amendment? Why or why not?
- d. Does speech that threatens the police violate the *Brandenburg* test?
- e. Should public schools limit speech that is deemed offensive? Why or why not?



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Unit Five: What Rights Does the Bill of Rights Protect?

2. Chief Justice John Roberts stated, “The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.”* Do you agree or disagree with the decision of the Supreme Court? Why?

- When is it reasonable, if ever, to conduct a search and seizure without a warrant? Why?
- Does the government have a compelling interest in collecting and storing Internet communications? Why or why not? Should the collection of such information by the government require a warrant? Why or why not?

* Riley v. California, 573 US _ (2014).

Suggested follow-up questions:

- a. Should a public school administrator who has a reasonable suspicion that a student has violated a law or a school rule be allowed to listen to the student’s stored phone conversations or view the student’s text messages? Why or why not?
- b. Should social media users have any expectation of privacy?
- c. Are the limits placed on the power of the National Security Agency to collect data on American citizens appropriate? Why or why not?
- d. Should police be permitted to place a tracking device on a suspect’s car without a warrant? Why or why not?
- e. Should police be allowed to search your garbage without a warrant? Why or why not?



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3. Political and social movements in American history have been successful because of the right of assembly. President Abraham Lincoln wrote in a letter that “the right of peaceable assembly” is part of the “Constitutional substitute for revolution.”* Do you agree or disagree with President Lincoln? Why? What is the history of freedom of assembly in America?

- What historical or contemporary evidence is there, if any, that political and social movements have led to significant changes in laws or policies?
- What limits, if any, should be placed on the right to freedom of assembly?

* Abraham Lincoln to Alexander H. Stephens, 19 January 1860, in Gilbert A. Tracy, ed., *Uncollected Letters of Abraham Lincoln* (Boston and New York: Houghton Mifflin Company, 1917), 127.

Suggested follow-up questions:

- a. Should citizens' taxes be used to pay for police protection of an extremist group's right to peacefully assemble? Why or why not?
- b. Does keeping protesters in a designated area limit assembly and free speech? Why or why not?
- c. Should protesters be allowed to shout down speakers with whom they disagree? Why or why not?
- d. What responsibilities, if any, do people who want to participate in a protest have?
- e. What significant issue or issues might lead you to exercise your right to assemble?



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Unit Six: What Challenges Might Face American Constitutional Democracy in the Twenty-first Century?

1. What is the history of United States immigration policy, and how effective have these policies been? What changes, if any, would you suggest to U.S. immigration policy? Why?

- The Immigration Reform and Control Act of 1986 made it illegal to hire or recruit undocumented immigrants. Do you agree or disagree with this policy? Why?
- What are the advantages and disadvantages of immigration?

Suggested follow-up questions:

- a. Should the United States build a wall separating the U.S. from Mexico? Why or why not?
- b. Should the United States accept refugees from Middle Eastern countries? Why or why not?
- c. Should states have more power to decide immigration policy? Why or why not?
- d. Does any nation have the right to limit immigration? Why or why not?
- e. What test, if any, should immigrants have to pass in order to enter the United States legally?



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2. The political theorist Robert Dahl stated, “As it turned out, in most of the older, stable democratic countries of today, where democratic institutions evolved during the nineteenth and early twentieth centuries and endured, variants of parliamentary government, not presidential government, came to be the accepted constitutional arrangement.”* Why have so many advanced and stable democratic countries chosen parliamentary government rather than presidential government? What evidence can you offer to support your opinion?

- What are the advantages and disadvantages of a presidential government that is not part of the legislative branch?
- What are the advantages and disadvantages of a parliamentary government?

* Robert A. Dahl, *On Democracy* (New Haven and London: Yale University Press, 1998), 123–24.

Suggested follow-up questions:

- a. What are the advantages and disadvantages of a strong executive?
- b. What are the advantages and disadvantages of a strong legislative branch?
- c. What are the advantages and disadvantages of having the head of state, such as a president or prime minister, selected by the national legislature rather than by a majority vote of the people?
- d. What are the advantages and disadvantages of a two-party political system?
- e. What are the advantages and disadvantages of proportional representation?



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3. The U.S. Constitution says very little about the relationship between the national and state governments and American Indian nations. However, Chief Justice John Marshall’s Supreme Court decided cases that helped define that relationship and formed the basic framework of federal Indian law in the United States. Do you agree or disagree with the opinions in the “Marshall Trilogy?”* Why?

- According to David E. Wilkins, “tribal citizens who live within reservations enjoy tribal, state, and federal citizenship.”** What are the advantages and disadvantages of treble citizenship?
- If tribal law conflicts with United States constitutional law, which law should prevail? Why?

* *Johnson v. M’Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia* 31 U.S. 515 (1832).

** David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 3rd ed. (Latham, MD: Rowman & Littlefield Publishers, Inc., 2011), 113.

Suggested follow-up questions:

- a. What relations, if any, should state governments have with Native American nations?
- b. Should the United States still be bound by treaties it signed with the Indian tribes in the 1800s? Why or why not?
- c. There have been times when federal policy was intent on destroying tribal cultures; at other times, its avowed policy was to support and strengthen Native American cultures. Why has the federal government long had an ambivalent record regarding indigenous cultures?
- d. What responsibility, if any, should schools have for teaching students about Native American nations?
- e. Which of the three Marshall decisions do you believe to be the best guide for formulating policy with Indian nations? Why?