



We the People
THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act approved by the United States Congress.

STATE HEARING FOLLOW-UP QUESTIONS 2014–2015

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

- 1. The Virginia Declaration of Rights was the first written enumeration of the rights of citizens and the fundamental principles of government in the newly independent United States. What ideas drawn from the natural rights philosophy were incorporated into the Virginia Declaration of Rights?**
 - What ideas drawn from classical republicanism are included in the Virginia Declaration of Rights?
 - What rights that Americans enjoy today under both their state and federal bills of rights were declared first in the Virginia Declaration of Rights?

Suggested follow-up questions:

- a. How would you explain the concept of social contract and how is that concept expressed in the Virginia Declaration?
- b. What ideas expressed in the Virginia Declaration also appear in the Declaration of Independence?
- c. What do you consider to be the greatest challenge to individual rights today and what do you think should be done about it?
- d. In what ways, if any, did the Virginia Declaration influence the United States Constitution?
- e. George Mason's draft of the Virginia Declaration proposed to grant religious dissenters "toleration" under the law, but Madison persuaded the convention to make "the free exercise of religion" a matter of right. Why was that change in wording significant?



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2. Compare and contrast the essential political ideas of classical republicanism and natural rights philosophy.

- What values from natural rights philosophy were most influential on the founding generation? Why?
- What values from classical republicanism continue to have wide appeal today? Why?

Suggested follow-up questions:

- a. What might be the consequences to individuals and society of too great an emphasis on the common good at the expense of individual rights? Why?
- b. What might be the consequences to society of too great an emphasis on individual rights at the expense of the common good? Why?
- c. How would you explain social contract theory and what is its relationship to the legitimacy of government?
- d. How would you explain civic virtue and how important is it in today's world? Why?
- e. Classical republicanism held that moral education must be "learned" and that included instruction in what was called "civil religion." Do you agree or disagree? Why?



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3. What were the most important differences between the basic tenets (ideas) of feudalism and the basic ideas that developed out of the Reformation and the Renaissance?

- In what ways, if any, did new ideas born of the Reformation and Renaissance give rise to what James Madison called “the new science of politics”?
- In what ways did natural rights philosophers and Protestant religion contribute to the rise of capitalism?

Suggested follow-up questions:

- a. How did feudalism contribute to the idea that government is based on contractual relationships?
- b. What were the essential ideas of the new economic system of capitalism?
- c. Why did people begin to view the individual differently with the development of capitalism than they had in the classic republics or during feudalism?
- d. How and why did the Reformation and the Renaissance stimulate new interest in science and technology?
- e. How and why did the Reformation and the Renaissance pose a threat to established institutions and to traditional authority?



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Unit Two: How Did the Framers Create the Constitution?

1. “The Constitution was ordained and established not by the States in their sovereign capacities, but emphatically, as the Preamble of the Constitution declares, by the people of the United States.”* In what ways, if any, did that mark an important departure from establishment of the Articles of Confederation?

- In what ways is the United States Constitution different from legislative codes, and why are those differences important?
- What is the significance of using the words “We the People” in the Preamble?

* *McCullock v. Maryland*, 17 U.S. 316 (1819) at 407

Suggested follow-up questions:

- a. What goals or ambitions does the Preamble establish for the United States?
- b. How would you explain “the blessings of liberty”?
- c. President Franklin Roosevelt once said that the U.S. Constitution was “a layman’s document, not a lawyer’s contract.”* Do you agree or disagree? Why?
- d. The Preamble, strictly speaking, is not a part of the Constitution, but “walks before it”. What important ends, if any, does the Preamble serve?
- e. What is the relationship, if any, between “We the People” of the Preamble and sovereignty?

*President Franklin D. Roosevelt, Address on Constitution Day, Sept. 17, 1937. www.presidency.edu/us/index.php?pid=15459.



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2. “The creation of the Northwest Territory out of the western lands was one of the few successful exercises of power during the years in which the Articles of Confederation were in place.”* Do you agree or disagree with this assertion? Why? What evidence can you offer to support your position?
- What do you consider to be the most important principles set forth in the Northwest Ordinance? Why?
 - What do you consider to be the signal failures of the Articles of Confederation? Why?

*G. Edward White. *Law in American History. Vol. 1.* New York: Oxford University Press, 2012, 172.

Suggested follow-up questions:

- a. The Northwest Ordinance stated that slavery would forever be prohibited, yet it allowed slaves who escaped to the Northwest Territory to be recaptured and returned to their owners. How might that contradiction be explained?
- b. How did the Northwest Ordinance further the idea of public education?
- c. How did the Northwest Ordinance establish provisions for the orderly admission of new states to the Union?
- d. The Northwest Ordinance is often considered to be the most lasting and important achievement of the government under the Articles of Confederation. Why?
- e. What do you consider to be the most lasting and significant contributions of the Northwest Ordinance? Why?



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3. **“No society, certainly not a large and heterogeneous one, can fail in time to explode if it is deprived of the art of compromise, if it knows no ways of muddling through. No good society can be unprincipled; and no viable society can be principle-ridden.”*** Do you agree or disagree with this opinion? Why? What evidence can you offer to support your response?

- What compromises were made at the Constitutional Convention of 1787? At what costs? For what benefits?
- How would you distinguish between someone who is “unprincipled” and someone who is “principle-ridden”. What is the significance of those differences?

*Alexander M. Bickel, *The Least Dangerous Branch*, 64, 1962. Quoted in *American Legal Quotations*. Fred R. Shapiro, ed. 1993. New York: Oxford University Press, 180.

Suggested follow-up questions:

- a. What was the Great Compromise and why are some of its provisions still controversial today?
- b. Evaluate the argument that, echoing Locke, equal representation of slaves ought to have been allowed, because government is instituted to protect property.
- c. Evaluate the argument that the idea of state equality in the Senate represented a step away from a strong national government back to the Articles of Confederation.
- d. Compromise is often called “an art”. Is that an apt description? Why or why not?
- e. Why do you think that it is so difficult for Americans to compromise over some of today’s major public issues?



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

- 1. “America’s first eleven amendments had all aimed to limit the federal government and the Twelfth had neither added nor detracted from federal authority. By contrast the Thirteenth expanded the federal government’s role in broad language.”* Do you agree or disagree with this scholar’s assertion? What evidence can you offer to support your position?**
 - Why and in what ways has Section 2 of the Thirteenth Amendment proved to be especially significant?
 - In what ways, if any, did the Thirteenth Amendment extend to limits on private, as well as public actions.

* Akhil Reid Amar. *America’s Constitution: A Biography*. New York: Random House, 2005, 361.

Suggested follow-up questions:

- a. Why did the Thirteenth Amendment prove to be insufficient to protect the rights of former slaves?
- b. In what ways, if any, did the Thirteenth Amendment “complete the Emancipation Proclamation”?
- c. What is the significance of the Thirteenth Amendment’s prohibition of slavery not only “within the United States, or in any place subjection to their jurisdiction”?
- d. How would you define “involuntary servitude”? Why did the Thirteenth Amendment prohibit “involuntary servitude” as well as “slavery”?
- e. What are some examples of “appropriate legislation” that Congress has passed to enforce rights guaranteed by the Thirteenth Amendments?



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2. What are the basic differences between the adversary system of justice used in the United States and the inquisitorial system used in most European nations?

- The theory of the adversary system is that through observing the presentation of evidence and agreement favorable to each party, the truth will become apparent to the jury or judge making the decision. How well has that theory been substantiated in practice? What evidence can you offer to support your response?
- What procedural safeguards in the Fifth and the Fourteenth Amendments ensure a fair trial for defendants in the adversarial legal system?

Suggested follow-up questions:

- a. The adversary system has been called a “fight theory of justice”. Is that an apt description? Why or why not?
- b. In what ways are the roles of judges in the adversarial and inquisitorial systems alike and how are they different?
- c. How would you explain procedural due process rights and why are they especially important in the adversary system?
- d. Some critics allege that the adversary system makes an American trial an expensive and uncertain undertaking. How would you respond to that criticism?
- e. If you were a criminal defendant, would you rather be tried under the adversary or the inquisitorial system of justice? Why?



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3. In *Federalist 51*, James Madison claimed that “The government must be structured and designed so that the three constitutional branches and their relationships will have the ability to keep each other in their proper places.”* What is judicial review and how does it try to keep the other branches in “their proper places”?

- In writing *Marbury v. Madison* (1803), what were the major arguments Chief Justice Marshall gave to justify judicial review?
- Why has judicial review remained controversial to the present day?

**Federalist 51* in *The Federalist Papers in Modern Language*. Mary E. Webster, ed. Bellvue, Washington, 1999. Merrill Press, 210.

Suggested follow-up questions:

- a. The Supreme Court has said that it will only intervene in “clear cases” and only “When constitutional issues cannot be avoided.” How successfully has the Court been able to do that? What evidence can you offer to support your response?
- b. What arguments against judicial review do you think are or might be valid? Why?
- c. All courts in the United States both federal and state may exercise the power of judicial review. How important is that widespread power? Why?
- d. Evaluate the argument that judges’ errors in interpreting the Constitution cannot be corrected at the ballot box, only by constitutional amendment.
- e. Should the executive and legislative branches, as well as the judiciary, have the power to declare what the Constitution means? Why or why not?



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

1. Article One Section 8 has been acclaimed as “one of the most important sections of the Constitution.”* Do you agree or disagree? Why?

- What historical experiences led to the length and the specificity of Article One Section 8?
- How would you explain “the necessary and proper clause” included in Article I Section 8? Why do you think it was added to the other more specific powers granted to Congress?

*Edward S. Corwin. *The Constitution and What It Means Today*. Revised by Harold W. Chase and Craig R. Ducat. 1978, Princeton, New Jersey; Princeton University Press, 38.

Suggested follow-up questions:

- a. Does the “necessary and proper clause” contradict the principle of limited government? Why or why not?
- b. What are the benefits and the dangers of placing “elastic powers” in the hands of a representative government?
- c. How would you distinguish between the enumerated and the implied powers of Congress?
- d. How was the power of enforcement added to the Constitution and why has this power proven to be significant?



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2. Since the presidency of Franklin Roosevelt there has been an increasing use by presidents of executive orders and signing statements to establish national policy. To what extent, if any, does this practice violate the principle of separation of powers contained within the Constitution?

- What are the advantages and disadvantages of the use of executive orders and signing statements?
- Should the president be able to refuse to carry out a law he/she believes to be unconstitutional? Why or why not?

Suggested follow-up questions:

- a. Why did the Framers struggle to invent a wholly new executive?
- b. How can the powers of the president be limited?
- c. The president is also the head of his political party. What responsibilities does that imply?
- d. Why does Article II require the president to openly nominate candidates he proposes for various offices? What purposes do open nominations serve?
- e. A president's popularity and authority problems tend to be particularly acute in the last two years of office. Some reformers believe it would be better if presidents served just one six year term. Do you agree or disagree? Why?



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3. The United States Supreme Court has been called “a Constitution – guarding court”* as well as “a court of last resort”. Do you agree or disagree with this assessment of the role of the Supreme Court?**

- What checks exist on the power of the Supreme Court? What examples of how those checks have been used can you provide?
- Should there be term limits on Supreme Court justices? Why or why not?

* Leslie Friedman Goldstein. “Constitutionalism as Judicial Review: Historical Lessons from the U.S. Case”, in *The Supreme Court and the Idea of Constitutionalism*. Steve Katz *et. al.*, eds. 2009 Philadelphia: University of Pennsylvania Press.

** *Federalist* 22:14.

Suggested follow-up questions:

- a. How would you distinguish between original and appellate jurisdiction?
- b. Why does the Supreme Court issue written and signed decisions? What purposes do they serve?
- c. What is the relationship, if any, between the right of appeal and the protection of individual rights?
- d. How would you explain a writ of “certiorari” and what purposes does such a writ serve?
- e. Why does the Supreme Court refuse to issue advisory opinions?



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

- 1. The rights declared in the Fourth Amendment “are not mere second class rights but belong in the catalogue of indispensable freedoms.”* Do you agree or disagree? What evidence can you offer to support your response?**
 - What historical experiences led to the adoption of the Fourth Amendment?
 - Unrestricted search and seizure has been called “one of the first and most effective weapons in the arsenal of every arbitrary government.”** Do you agree or disagree? What evidence can you offer to support your response?

*Robert H. Jackson. *Brinegar v U.S.*, 338 US 160, 180-81 (1949) (dissenting).

** Robert H. Jackson. *Brinegar v U.S.*, 338 US 160, 180-81 (1949) (dissenting).

Suggested follow-up questions:

- a. What privacy rights are protected by the Fourth Amendment and how and why have those rights been expanded?
- b. Why do you think the Fourth Amendment singles out “papers” for special mention?
- c. In what ways does probable cause protect both the individual and society?
- d. The Fourth Amendment prohibits “unreasonable searches and seizures.” Under what conditions would a search be “reasonable” versus “unreasonable”?
- e. How would you explain the exclusionary rule and what purposes is it intended to serve?



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2. “The court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms and either of which, if expanded to a logical extreme, would tend to clash with the other.”* Why has the Court continued to struggle to find a neutral course? What basic values and principles have been in contention?
- Why might the two clauses, if expanded, clash with one another?
 - What criteria should be used to determine what religious practices should be protected and which practices government may limit?

**Walz v Tax Commissioner*, 397, 664, 669 (1970)

Suggested follow-up questions:

- a. What historical experiences of the colonists made both “established churches” and “free exercise of religion” of special concern to them?
- b. What new issues regarding “establishment” and “free exercise” have been raised by the Affordable Care Act?
- c. Do the provisions of the First Amendment imply government hostility to religion? Why or why not? What examples can you provide to support your answer?
- d. In what ways is teaching about religion in schools different from the teaching of religion? Should either be permitted? Why or why not?
- e. In what ways are the Establishment and the Free Exercise clauses alike? In what ways are they different?



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3. “The jury summed up – indeed embodied – the ideals of federalism, populism and civic virtue that were the essence of the original Bill of Rights.”* Do you agree or disagree with this opinion? What evidence can you offer in support of your response?

- What purposes are served by the right to be tried by a jury of your peers?
- Evaluate the Anti-Federalists’ claim that “judges unencumbered (unrestrained) by juries have been, ever found much better friends to government than to the people.”

*Akhil Amar and Les Adams, *The Bill of Rights Primer*. New York: Skyhorse Publishing, 2013, 134.

Suggested follow-up questions:

- a. What criteria for a fair trial are set forth in the Sixth Amendment?
- b. What is the right to counsel and how is that right related to a “fair” trial?
- c. Many people today try to avoid jury service. What can or should be done to encourage and/or require them to serve?
- d. The Declaration of Independence condemned George III and Parliament “for depriving us in many cases, the benefits of trial by jury.” Is that accusation justified? Why or why not?
- e. What important purposes does “the right to a speedy and public trial” serve?



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

1. **“Judicial Review relies on a ‘fire-alarm’ model using the complaints of damaged parties to trigger scrutiny of government policy.”*** How would you describe the “fire-alarm” model of challenging government policies? What are its advantages and disadvantages?
 - Why and how did African-Americans and other groups use the “fire-alarm” model to call attention to their grievances?
 - In addition to court challenges, in what other ways have “damaged parties” tried to change government policies? With what success?

*Keith E. Whittington. “Constitutional Constraints in Politics”. *The Supreme Court and the Idea of Constitutionalism*. Steven Katz et. al, eds. 2009. Philadelphia: University of Pennsylvania Press. 227.

Suggested follow-up questions:

- a. How would you distinguish between “de-facto” and “de-jure” segregation? Which is the more difficult to change? Why?
- b. How has the Voting Rights Act of 1965, together with its amendments, addressed the grievances of minorities?
- c. How would you explain civil disobedience and how would you differentiate it from just breaking the law?
- d. The First Amendment protects “the right of the people peaceably to assemble and to petition the government for a redress of grievances.” How has that right been used to “trigger scrutiny of government policy”?
- e. What role have voluntary organizations played in triggering scrutiny of government policies and why is that role important?



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2. **“Four decades of high volume immigration from virtually every country, rising intermarriage and persisting fertility differentials have transformed the United States into the most demographically complex society in the world.”* On balance, does increasing the diversity enrich the nation’s economy and culture or are there limits to how much diversity the country can absorb?**
- Why has immigration reform become what some scholars call a “political minefield”?
 - Evaluate the argument that because the federal government has failed to regulate immigration, that power should be given to the states.

*Maria Tienda. “Demography and the Social Contract” in *Princeton Readings in American Politics*. Richard M. Valley, ed. Princeton: Princeton University Press, 2009. 409.

Suggested follow-up questions:

- a. What rights does the Fourteenth Amendment confer on aliens?
- b. Should the Fourteenth Amendment be changed to reflect additional or different criteria for protection of aliens? If so, how? If not, why not?
- c. The United States historically has been an asylum for the oppressed of the world. Should the United States now grant asylum to those fleeing poverty and violence in Central America?
- d. How would you explain the American goal of “e pluribus unum”? Is that goal still achievable?
- e. Should the equal protection and due process clauses be amended to substitute “citizen” or “legal resident” for the word “person”? Why or why not?



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3. **“American rights and American freedom were not a gift of the country’s ‘founding fathers.’ They are and have always been a work in progress.”* Do you agree or disagree with this statement? Why? What evidence can you offer to support your response?**

- What has been the role of Congress and state legislatures in the establishment and expansion of individual rights?
- What do you think are the major challenges to the rights of Americans today and what should be done to address those challenges?

* Pauline Maier. *Ratification: The People Debate the Constitution*. 1787-1788. (New York: Simon and Schuster, 2010), 467.

Suggested follow-up questions:

- a. Madison claimed that the First Amendment was “the most valuable in the whole list” of rights included in the Bill of Rights. Do you agree? Why or why not?
- b. How would you distinguish between positive and negative rights and why are both important?
- c. What distinguishes the Bill of Rights in the United States Constitution from other bills of rights such as the French Declaration of Rights of Man and the Citizen or the Universal Declaration of Rights?
- d. What is the relationship of judicial review to the protection of the rights guaranteed by the Constitution?
- e. What responsibility, if any, do you think schools should have for teaching not only about rights but about civic responsibilities? Why? How?