



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 2015–2016

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

1. “What is meant by the Revolution? The War? That was no part of the Revolution.... The Revolution was in the minds of the People, and this was effected...before a drop of blood was drawn.”* Do you agree or disagree with this opinion? Why? What evidence can you offer to support your position?

- 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?

* John Adams to Thomas Jefferson, August 24, 1815, in Kathleen Burk, *Old World, New World: Great Britain and America from the Beginning* (New York: Atlantic Monthly Press, 2007), 108.

Suggested follow-up questions:

- a. Why did the colonists believe that British policies violated their rights as Englishmen?
- b. How did the colonists use their colonial charters to bolster their claims to their rights as Englishmen?
- c. How were American and British societies similar and different in terms of the right to vote?
- d. Why were written guarantees of rights in colonial documents important to the development of Americans’ ideas about government?
- e. In what ways did colonial governments become more representative than the government in Britain?



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2. In what ways were the Founders influenced, both positively and negatively, by past governments and governments from their own time?

- Why did the Founders distrust direct democracy and prefer a representative or republican form of government?
- Why did the founding generation believe that a constitution should function as a type of higher law?

Suggested follow-up questions:

- a. In what ways does a higher law differ from a statute enacted by a legislature?
- b. Why did the Founders attach special importance to the idea of the consent of the governed?
- c. Why did the American colonists attach special importance to the constitutional principle of written guarantees of basic rights?
- d. Why did the American colonists attach special importance to the constitutional principle of representative government?
- e. What are the advantages and disadvantages of a written constitution? Of an unwritten constitution?



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3. “In just 1,337 words, the Declaration of Independence altered the course of history. Written in 1776, it is the most profound document in the history of government since the Magna Carta.”* What, if anything, do you think is profound about the Declaration?

- The Declaration claims that some rights are “unalienable.” What does this mean, and do you agree with this idea? Why or why not?
- Under what circumstances does the Declaration justify a right of revolution? Do you agree with the justification? Why or why not?

* “Our Declaration,” accessed August 20, 2015, <http://books.wwnorton.com/books/Our-Declaration/>.

Suggested follow-up questions:

- a. A scholar recently wrote, “All students should have read the Declaration from start to finish before they leave high school.”** Do you agree or disagree? Why?
- b. Why did members of the Continental Congress believe it was essential to write a formal Declaration of Independence?
- c. In what ways, if any, did the Declaration of Independence “alter the course of history” at the time it was written?
- d. In what respects, if any, has the Declaration of Independence continued to “alter the course of history” over time?
- e. How was sovereignty defined in the Declaration, and how did that differ from the traditional British concept of sovereignty?

** Danielle Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (New York: Liveright, 2014), 282.



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Unit Two: How Did the Framers Create the Constitution?

1. Why did the Articles of Confederation prove inadequate to the first attempt to form a national government?

- In what ways did the Articles of Confederation demonstrate a distrust of a strong national government?
- What were the historical and philosophical reasons for the distrust of strong national government? To what extent do those reasons exist today? Are they justified? Why or why not?

Suggested follow-up questions:

- a. Why was abandoning state sovereignty for national sovereignty difficult for many Americans?
- b. How would you define a confederation?
- c. Under what circumstances do you think a confederation might be the most reasonable form of government?
- d. Why do you think the Articles did not give the Confederation Congress the power to collect taxes? What problems did this create?
- e. What problems were caused by the inability of Congress to make laws directly regulating the behavior of citizens?



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2. Compare the New Jersey and Virginia Plans. What were the strengths and weaknesses of each plan?

- How would you explain the principle of proportional representation, and why was it controversial at the Philadelphia Convention?
- The Great Compromise resulted in proportional representation of people in the House of Representatives and equal representation of states in the Senate. What have been the consequences of this compromise? Would you change it in any way? Why or why not?

Suggested follow-up questions:

- a. Under what conditions would the Virginia Plan have authorized Congress to negate or “veto” state laws? If you had been a delegate to the Philadelphia Convention, would you have favored or opposed this proposal?
- b. Some historians claim that the New Jersey Plan amounted to nothing more than the strengthening of the Articles of Confederation. How would you evaluate that argument?
- c. James Madison hoped that the Virginia Plan for Congress to “veto” state laws might deal with the problem of protecting rights within individual states. Was he right? Why or why not?
- d. The Virginia Plan authorized the national government to act directly on the people. Why was that a significant change from the government under the Articles of Confederation?
- e. How would you describe the federal system established by the Constitution?



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3. A widespread public debate over the ratification of the Constitution raged for almost a year. What important purposes, if any, were served by that debate?

- Why did the delegates to the Philadelphia Convention create new rules for the ratification of the proposed Constitution, and were they justified in doing so?
- What role did the newspapers and pamphlets—the media of that time—play in educating the public and furthering reasoned discourse? How would you compare today’s media with the media of the time of ratification?

Suggested follow-up questions:

- a. In what ways, if any, was the plan for ratification consistent with John Locke’s natural rights philosophy?
- b. In what ways, if any, was the plan for ratification an example of social contract theory?
- c. What do you think was the strongest argument put forth by the Federalists in this debate? Why?
- d. What do you think was the strongest argument put forth by the Anti-Federalists in this debate? Why?
- e. How important do you think widespread debate about public issues is today? Why?



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

1. “The Civil War worked profound changes in the Constitution...amounting to what many have called America’s Second Founding.”* What were those changes in the Constitution?

- Should those changes be called “profound”? Why or why not?
- In what ways, if any, do those constitutional changes amount to “America’s Second Founding”?

* Goodwin Liu, Pamela S. Karlan, and Christopher H. Schroeder, *Keeping Faith with the Constitution* (New York: Oxford University Press, 2010), 12–13.

Suggested follow-up questions:

- a. What is the significance of the Fourteenth Amendment’s extension of due process and equal protection to all persons, not just to citizens?
- b. In what ways, if any, did the Civil War Amendments alter or revise the balance of power between the federal government and the states?
- c. What is the significance of Section 2 of the Thirteenth Amendment, which gave Congress the power to “enforce” the amendment by “appropriate legislation”?
- d. Why do you think citizenship was not defined in the Constitution until the adoption of the Fourteenth Amendment?
- e. The Thirteenth Amendment not only prohibits slavery, but also “involuntary servitude.” In what respects is that a term of larger meaning than slavery?



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2. The Fourteenth Amendment mandates that no state shall “deprive any person of life, liberty, or property, without due process of law.” It does not define due process of law, however. How would you explain the concept of due process of law?

- What is the relationship, if any, of due process to natural rights philosophy and the principle of limited government?
- How would you distinguish between procedural and substantive due process, and why are both important?

Suggested follow-up questions:

- a. What is the relationship, if any, of substantive due process to the concept of a compelling state interest?
- b. What is the relationship, if any, of due process to the doctrine of incorporation?
- c. What are some examples of rights that the Supreme Court has identified as fundamental?
- d. Why does controversy continue over why certain rights should be regarded as fundamental?
- e. What is a compelling interest, and why must a state or Congress show a compelling interest in order to regulate a fundamental right?



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3. **“Who are to be the electors of the federal representatives?... Not the rich, more than the poor; not the learned, more than the ignorant.... The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State.”*** Almost two centuries passed before James Madison’s prediction became reality. Why?

- In what ways, if any, is the right to vote related to the fundamental principles of American constitutional government?
- Voter turnout in presidential elections over the past eighty years has ranged from a low of 50 percent to a high of 62 percent.** Why do you think so many Americans fail to cast ballots? What might be done to improve this record?

* Federalist 57

** Sarah Janssen, ed., *World Almanac and Book of Facts: 2015* (New York: World Almanac Books, 2014), 517.

Suggested follow-up questions:

- a. Why do you think the Philadelphia Convention was unwilling to establish national qualifications for suffrage?
- b. The Twenty-fourth Amendment says the right to vote shall not be denied for “failure to pay any poll tax or other tax.” Why was that a contradiction of previous practices?
- c. A political scientist claims that the “Woman Suffrage Amendment marked the single biggest democratizing event in American history.”*** Do you agree? Why or why not?
- d. How did Susan B. Anthony use Section 1 of the Fourteenth Amendment—which reads “All persons born or naturalized in the United States...are citizens”—to support women’s right to vote?
- e. On what grounds were Native Americans originally denied the right to vote, and how did they finally secure it?

***Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005), 419.



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

1. In 1798 James Madison wrote to Thomas Jefferson that “the constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war in the Legislature.” To what extent, if any, has the executive branch taken this power from Congress?

- How well has the War Powers Resolution of 1973 limited the powers of the president? Explain your position.
- What changes, if any, do you think should be made regarding the war powers of the president and Congress? Explain your answer.

Suggested follow-up questions:

- a. To what extent do you think Congress has fulfilled its responsibilities under the Constitution in regard to involving the United States in wars? Explain your position.
- b. Under what conditions, if any, do you think it is justifiable for the United States to enter into armed conflicts with other nations?
- c. Under what conditions, if any, do you think it is justifiable for the United States to use its military powers against terrorist groups that reside within other nations?
- d. What changes, if any, would you make in the War Powers Resolution of 1973?
- e. How, if at all, can the War Powers Resolution of 1973 be enforced?



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2. To devote more time to crafting and passing legislation, “the Senate should do more of its business by simple majority vote of the senators present and voting. I know that many senators like the ability to filibuster and do not want to abandon the rule that requires 60 votes to close debate. But here’s the thing: the super-majority rule, as it has been applied recently, has become a formula for impotence and disorder. Every democratic institution in this country operates by majority rule except the Senate, where a small minority can completely gum up the works.”* Do you agree or disagree with Congressman Lee Hamilton? Why?

- What fundamental democratic principles are involved in this issue? Explain your answer.
- What policies, if any, would you suggest be established to deal with this issue? Justify your position.

* Lee H. Hamilton, “Specific Ways in Which Congress Can Fix Itself,” *Dallas Morning News*, March 19, 2014, <http://www.dallasnews.com/opinion/latest-columns/20140319-specific-ways-in-which-congress-can-fix-itself.ece>.

Suggested follow-up questions:

- a. What are the advantages and disadvantages of the “super-majority” and “filibuster” rules?
- b. Is the cloture rule a satisfactory way for the Senate to close out debate on an issue? Why or why not?
- c. In his notes of the Constitutional Convention on June 26, 1787, James Madison explained that the Senate would be a “necessary fence” against the “fickleness and passion” that tended to influence the attitudes of the general public and members of the House of Representatives. Is this statement still relevant today? Why or why not?
- d. Is it true that a small minority in the Senate can “gum up the works”? Why or why not?
- e. What might be the advantages and disadvantages in the Senate if a small minority is allowed to stop legislation?



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3. What are the major differences between Congress and the British Parliament?

- In what ways does the British Parliament mingle legislative and executive powers? What are the advantages and disadvantages of such mingling compared with the American system of separated powers?
- Compare and contrast the manner in which members are elected to Parliament and the U.S. Congress and their terms of office. What are the advantages and disadvantages of each?

Suggested follow-up questions:

- a. How would you explain the concept of parliamentary sovereignty?
- b. Why did the Founders originally set a two-year term for members of the House of Representatives? Is a two-year term still the most desirable? Why or why not?
- c. Ministers in the British government are required to attend Parliament and answer questions both for the full House of Commons and its committees. Should cabinet officers in the executive branch of the U.S. government be required to do the same? Why or why not?
- d. What are the advantages and disadvantages of the American arrangement of federalism in contrast with the British arrangement of one central government?
- e. What are the most important differences between the powers of the British House of Lords and the U.S. Senate?



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

1. Why has capital punishment continued to be controversial? What values and important principles are at variance?

- What are the major arguments for and against capital punishment?
- “In assessing a punishment selected by a democratically elected legislature...we presume its validity.... And a heavy burden rests on those who would attack the judgment of the representatives of the people.”* Do you agree or disagree with this opinion? Why?

* Justice Potter Stewart, plurality opinion, *Gregg v. Georgia*, 428 U.S. 153, 175 (1956).

Suggested follow-up questions:

- a. The Supreme Court has held that the death penalty is “cruel and unusual punishment” when inflicted on persons sixteen or seventeen years old at the time of the crime. Do you agree or disagree? Why?
- b. The Eighth Amendment also forbids excessive bail and excessive fines. Why are those important protections?
- c. What are the arguments for and against mandatory death sentences for certain crimes?
- d. Evaluate the argument that capital punishment violates evolving “standards of decency.”
- e. What position do you take on capital punishment? Why?



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

2. The jury has been defined as “the democratic branch of the judiciary power—more necessary than representatives in the legislature.”* Do you agree or disagree with the opinion expressed here? Why?

- In what ways do the jury clauses of the Fifth, Sixth, and Seventh Amendments serve to ensure citizen participation in the judicial process?
- In what ways, if any, are both the grand (large) jury and the petit (trial) jury related to the principle of limited government?

* Maryland Farmer, quoted in Akhil Reed Amar and Les Adams, *The Bill of Rights Primer: A Citizen’s Guidebook to the American Bill of Rights* (New York: Skyhorse Publishing, 2013), 138.

Suggested follow-up questions:

- a. What purposes are served by indictment by a grand jury before a person can be brought to trial?
- b. What purposes are served by the right to a speedy and public trial?
- c. Why did the right to trial by jury figure prominently in many of America’s founding documents, from the Northwest Ordinance to the Declaration of Independence?
- d. In what ways, if any, is willingness to serve on juries related to the concept of civic virtue?
- e. What is the relationship, if any, of the right to trial by a local jury of one’s peers and the concept of self-government?



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3. What is the relationship, if any, between the Fourth Amendment and the principles of limited government and the rule of law?

- What is the relationship, if any, between the Fourth Amendment and a right to privacy and to freedom of conscience and thought?
- At the time the Constitution was adopted, all searches would have involved a physical trespass. How have searches changed since then, and what problems do those changes create?

Suggested follow-up questions:

- a. Why did the colonists object to general warrants, and how does the Fourth Amendment answer those objections?
- b. In what ways, if any, does the exclusionary rule reinforce the requirements of the Fourth Amendment?
- c. Under what circumstances, if any, can searches without warrants be justified?
- d. What is the relationship, if any, between the Fourth Amendment and the provision against self-incrimination in the Fifth Amendment?
- e. The Fourth Amendment singles out “papers” for special mention and protection. How should the term *papers* be interpreted today? Why should they be singled out for special protection?



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

1. **“Democracy is not the ‘default’ form of political organization; it requires a high degree of citizen understanding and participation to work well even under the best of conditions.”* Do you agree or disagree with this statement? Why or why not?**
- How would you explain “citizen understanding”? Why is it important?
 - In what ways, if any, are “citizen understanding” and “citizen participation” related to one another and required for democracy to work well?

* Robert L. Maddex, *Constitutions of the World*, 3rd ed. (Washington, D.C.: CQ Press, 2008), viii.

Suggested follow-up questions:

- In what ways, if any, can participation in civic life advance both self-interest and the common good?
- How important do you think volunteerism is to civic life? Why?
- What might be done to improve voting rates, especially among younger voters?
- Naturalized citizens are required to demonstrate a belief in and a commitment to the principles of the Constitution of the United States. They are also required to take an Oath of Allegiance. Should all Americans be required to take this oath when they register to vote?
Why or why not?
- How important do you think it is that all Americans have an understanding of the Declaration of Independence and the Constitution?
- What should the nation’s schools do to enhance citizen understanding and citizen participation?



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2. When Eleanor Roosevelt urged the adoption of the Universal Declaration of Human Rights in the United Nations in 1948, she insisted that “This Universal Declaration...may well become the international Magna Carta of all men everywhere.”* In what ways are the Magna Carta and the Universal Declaration alike? In what ways are they different?

- How are ideas in the Magna Carta and the Universal Declaration related to natural rights philosophy?
- How are ideas in the Magna Carta and the Universal Declaration related to classical republicanism?

* Jill Lepore, “The Rule of History: Magna Carta, the Bill of Rights, and the Hold of Time,” *New Yorker*, April 20, 2015, <http://www.newyorker.com/magazine/2015/04/20/the-rule-of-history>

Suggested follow-up questions:

- a. The right of petition is included in both the Magna Carta and the Universal Declaration. Why is that right fundamental to constitutional democracy?
- b. What might account for the continuing influence over time of the Magna Carta, an eight-hundred-year-old document?
- c. Alexander Hamilton claimed that there were limits to what can be accomplished by writing down a list of rights in a document. Do you agree or disagree? Why?
- d. Thomas Jefferson disagreed with Hamilton. He said there is an “educative aspect” in having rights written down. Do you agree or disagree? What evidence can you offer to support your position?
- e. In what ways, if any, do the Magna Carta and the Universal Declaration reflect a commitment to the right of self-government?



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3. **“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even those most basic, are illusory if the right to vote is undermined.”* Do you agree or disagree with this opinion? What evidence can you offer to support your response?**

- What do you consider to be the most important landmarks in securing the right to vote for all Americans? Why?
- What do you consider to be the most important issues still facing Americans in regard to the right to vote? Why?

* Hugo L. Black, *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

Suggested follow-up questions:

- a. If the right to vote is so important, why do you think so many Americans fail to exercise that right?
- b. Young adults have the lowest voting rates. What do you think might be done to improve their turnout?
- c. Should voting be mandatory, as it is in many countries of the world, including some democracies?
- d. Some politicians favor automatically registering Americans to vote when they turn eighteen years old. Do you agree or disagree? Why?
- e. What responsibility, if any, do you think schools should have for teaching students about voting?