



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 2013–2014

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

- 1. The Declaration of Independence has been described as “the most revolutionary political statement in American History.”* What new ideas about government and its purposes are set forth in the Declaration and why might they be considered “revolutionary”?**
- What principles expressed in the Declaration are traceable to John Locke and other natural rights philosophers?
 - Why do you think the Declaration is one of the most imitated or copied documents in the world today?

* Alan Dershowitz, *America Declares Independence* (New York: John Wiley and Sons, 2003), 1 and 7–8.

Suggested follow-up questions:

- Evaluate “the right of revolution” as set forth in the Declaration.
- To whom is the Declaration addressed, and why do you think the drafters were attentive to “the opinions of mankind”?
- Why was the term *sovereignty* a disputed matter between Great Britain and the colonists?
- The Declaration of Independence often is called “American Scripture.” Is that an apt description? Why or why not?
- What do you think “a decent respect to the opinions of mankind” required when the Declaration was proclaimed? What does it require today? Why?



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2. Why did the Founders believe that a constitution should function as a type of higher law?

- In what important ways does a higher law differ from a statute enacted by a legislature?
- Evaluate the Founders' claim that direct democracy was more likely to ignore constitutional limits than representative government? What evidence—historical and contemporary—can you offer in support of your position?

Suggested follow-up questions:

- a. What experiences of the colonists influenced the Founders' belief that a constitution needed to be written?
- b. What are the advantages and disadvantages of a written constitution? Of an unwritten constitution?
- c. What might happen in a government in which there is no agreed-upon or peaceful means for removing officials? What historical or contemporary examples can you cite to support your answer?
- d. How would you explain what a constitution is and why it is important for a government to have one?
- e. What is the relationship between constitutional government and limited government?



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3. What important principles of modern constitutionalism were set forth in the Magna Carta?

- What is the rule of law and how did the Magna Carta establish it?
- How did the Magna Carta help to establish what today is called “due process of law”?

Suggested follow-up questions:

- a. How are the principles in the Magna Carta related to the idea of limited government?
- b. How are the ideas in the Magna Carta related to natural rights of philosophy?
- c. What principles in the U.S. Constitution and/or your state constitution can be traced back to the Magna Carta?
- d. In what ways, if any, is the Magna Carta related to the social contract theory of government?
- e. The Magna Carta was an effort to secure “redress of grievances.” How would you explain the concept of redress of grievances, and why is that concept important to constitutional government?



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STATE HEARING FOLLOW-UP QUESTIONS 2013–2014

Unit Two: How Did the Framers Create the Constitution?

1. **“The doctrine of separation of powers was adopted by the Convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but...to save the people from autocracy.”*** How would you explain the doctrine of separation of powers, and what are its major features?
 - Why did the Framers believe that mere separation of powers was not enough? Why did they think the different branches would also need “checks” on one another? What provisions of the Constitution enable one branch to “check and balance” the power of another?
 - In Federalist 48, Publius writes that “power has an encroaching nature, and it should be effectually restrained.... After theoretically dividing the classes of power into legislative, executive or judiciary, the next and most difficult task is to provide some practical security for each against the invasion of the others.”** Do you agree or disagree? Why? What evidence—historical or contemporary—can you cite to fortify your answer?

* *Myers v. United States*, 272 U.S. 52 (1926).

** Federalist 48 in *The Federalist Papers in Modern Language*, Mary Webster, ed. (Bellevue, WA: Merrill Press, 1999), 202.

Suggested follow-up questions:

- a. What experiences led American colonists to believe that an imbalance of power among the different branches of government led to tyranny?
- b. How would you differentiate between “checking” and “balancing” the powers of government? Why are both checking and balancing important?
- c. What examples—historical and contemporary—can you cite of one branch of government attempting to usurp the powers of another?
- d. Do you agree with Publius that “power has an encroaching nature, and it should be effectually restrained”? Why? What evidence can you cite?
- e. In what ways can citizens monitor the exercise of power by the government and how can they act to help restrain it?



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Unit Two: How Did the Framers Create the Constitution?

2. The Articles of Confederation were the first of two blueprints for a United States government. Although the Articles had serious weaknesses, government under the Articles should be credited for some important achievements. What were the major defects of the Articles and why did they impede the development of a national government?

- What were the major achievements of government under the Articles?
- In what ways, if any, are the weaknesses of the Articles comparable to the weaknesses of the United Nations and/or the European Union?

Suggested follow-up questions:

- a. Why is the Northwest Ordinance of 1787 acclaimed as the Articles' most significant and lasting achievement?
- b. What problems did the lack of an executive pose? The lack of a judiciary?
- c. What problems arose because Congress under the Articles did not have the power to levy and collect taxes? To raise an army?
- d. The Articles reflected a distrust of strong national government. What were the historical and philosophical reasons for that distrust?
- e. Under what circumstances, if any, can distrust of government serve useful purposes? Under what circumstances, if any, can distrust of government prove harmful? Why?



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Unit Two: How Did the Framers Create the Constitution?

3. What was the Great Compromise and why was it such a contentious issue at the Philadelphia Convention?

- Evaluate this argument advanced at the time of the Convention. In the House of Representatives, “the states are represented in proportion to their inhabitants—here the separate interests will operate with their full force, and the violence of parties can be restrained and quieted only by a body of men less local and dependent.”*
- Evaluate this counterargument currently being advanced. The Great Compromise “guaranteed that the American constitutional system would forever fall short of the one person one vote rule that is the defining norm of modern democracy... simply because the accident of their residence in less populous states gives them a bigger political bang for the electoral buck.”**

*Noah Webster, “An Examination of the Leading Principles of the Federal Constitution” (October 10, 1787), in *The American Republic: Primary Sources*, Bruce Frohnen, ed. (Indianapolis: Liberty Fund, 2002), 286.

***The Annotated U.S. Constitution and Declaration of Independence*, Jack N. Rakove, ed. (Cambridge, MA: The Belknap Press, 2009), 42.

Suggested follow-up questions:

- a. What important principles were at stake in the debate about the Great Compromise?
- b. Why did James Madison, James Wilson, and several other delegates oppose the Great Compromise?
- c. In what ways, if any, did the Great Compromise make it possible for both sides to claim victories?
- d. Why are compromises necessary in a democratic society?
- e. Can compromises sometimes just postpone addressing problems, thus making them more difficult to resolve in the future? What evidence can you offer to support your answer?



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

1. What important purposes are served by the right to amend the Constitution guaranteed by Article V?

- Evaluate James Madison’s claim in Federalist 43* that the Constitution “guards equally against the extreme facility which would render the Constitution too mutable [easily changed], and that extreme difficulty which might perpetuate its discovered faults.”
- Some critics of the amending process contend that amendments, once proposed, should be submitted to popular vote, bypassing state legislatures. Do you agree or disagree? Why?

* *The Federalist*, Michael Loyd Chadwick, ed. (Springfield, CA: Global Affairs Publishing, 1987), 237.

Suggested follow-up questions:

- a. Some scholars argue that the Thirteenth and Fourteenth Amendments are equivalent to a second American constitution. Do you agree or disagree? Why?
- b. Other than by amending the Constitution, what other means can people use to effect changes they believe are needed? What examples—historical and contemporary—can you cite of people bringing about changes in the Constitution?
- c. Compare the processes for amendment provided in Article V of the U.S. Constitution with that of Article XIII of the Articles of Confederation.
- d. Why have the American people been reluctant to change the Constitution, even though since 1789 many thousands of proposed amendments have been introduced in Congress?
- e. Abraham Lincoln, in his First Inaugural Address, said, “to me, the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others.”** Do you agree or disagree? Why?

** Abraham Lincoln, First Inaugural Address, Washington, D.C., March 4, 1861.



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

2. How does the right to due process of law protect an individual's right to life, liberty, and property?

- How would you distinguish between procedural and substantive due process?
- How is due process related to natural rights philosophy and the principle of limited government?

Suggested follow-up questions:

- a. How is the concept of substantive due process related to the idea of fundamental rights?
- b. Why is due process required in both criminal and administrative proceedings?
- c. How would you describe “a compelling interest” and why must a state or Congress show a compelling interest in order to interfere with or regulate a fundamental right?
- d. What rights, if any, do you think should be identified as fundamental? Why?
- e. What is the doctrine of incorporation and why has the Supreme Court been selective in the incorporation of rights?



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

3. Why has controversy over gun control and the meaning of the Second Amendment continued from the time of the First Congress to the present day?

- Evaluate the argument that the Second Amendment refers to the institutional right of states to maintain militia units and is therefore a collective right.
- Evaluate the argument that the Second Amendment refers to the individual's right to keep and bear arms.

Suggested follow-up questions:

- a. Famed legal scholar William Blackstone claimed that individuals have “the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.”* Do you agree or disagree? Why?
- b. Why did the Anti-Federalists strongly support the right of citizens to bear arms?
- c. What recent decisions taken by the Supreme Court affect the debate over the Second Amendment?
- d. In what ways, if any, were the Founders' fears of a standing army related to the right of citizens to keep and bear arms?
- e. What action, if any, do you think should be taken to clarify the meaning of the Second Amendment? Who or what institution should initiate that action?

* William Blackstone, *Commentaries*, quoted in *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins*, Neil Cogan, ed. (New York: Oxford University Press, 1997), 204.



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STATE HEARING FOLLOW-UP QUESTIONS 2013–2014

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

- 1. Evaluate the argument in Federalist 62* that the United States needs both a House of Representatives and a Senate because “single, large assemblies have the propensity to yield to the impulse of sudden, violent passions and be seduced by factious leaders into intemperate, pernicious resolutions.”**
 - Why do you think the Constitution provides that “all Bills for raising revenue shall originate in the House of Representatives” and that the House “shall have the sole Power of Impeachment”?
 - In your opinion has the Senate properly used or has it abused its power to review treaties and confirm nominations? What evidence can you offer to support your position?

* Federalist 62 in *The Federalist Papers in Modern Language*, Mary E. Webster, ed. (Bellevue, WA: Merril Press, 1999), 253.

Suggested follow-up questions:

- a. Some critics claim that Congress is a difficult body to lead because the presidency answers to a national constituency and members of Congress see themselves as first and foremost responsible to their districts or their states. Do you agree or disagree? What evidence can you offer to support your answer?
- b. Members of the House are elected for terms of only two years. Do the advantages outweigh the disadvantages of such a short tenure? Why?
- c. The number of seats in both houses that are considered competitive has markedly declined since the 1990s. In what ways, if any, should the absence of competition cause concern?
- d. Public satisfaction with Congress is currently at a low ebb. Why? What do you think could and/or should be done to restore its standing in the public eye?
- e. The Constitution provides that each house shall be the sole judge of the election and qualifications of its members. How effectively has this rule been used? What evidence—historical and contemporary—can you offer to support your answer?



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2. What are the major differences between the United States Congress and the British Parliament?

- What are the advantages and disadvantages of mingling executive and legislative powers?
- Members of Congress and the president serve fixed terms. In a parliamentary system, the government “fails” and must call new elections if it loses popular support on major issues. Which is preferable? Why?

Suggested follow-up questions:

- a. Party discipline is strong in a parliamentary system. Members are expected to vote with their party. In Congress, only in rare instances will all party members vote together on an issue. How would you explain that difference?
- b. The prime minister regularly appears in the House of Commons to answer questions from the members. Would you favor or oppose a similar requirement for the president of the United States to appear before Congress? Why?
- c. Unlike the U.S. Congress, there is no requirement that a member of Parliament be a resident of the province or even the district he or she represents. Is that a wise or an unwise rule? Why?
- d. The Founders were well acquainted with a parliamentary system. Why do you think they rejected that system and invented a new system of separated and shared powers?
- e. Some people claim that a major advantage of a parliamentary system is that it fixes responsibility and avoids controversy and deadlocks between the legislative and executive branches. How would you evaluate that claim?



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3. How does the use of committees in Congress promote or undermine the principles of representation, majority rule, and limited government?

- Evaluate the claim that “votes on the floor of the Senate or House may finally determine the success or failure of a proposal, but the important decisions that determine its ultimate fate have normally already been made in the committee that considered it.”*
- Some scholars contend that there are now too many committees and subcommittees in Congress and that they have become “little legislatures.”** Do you agree or disagree? Why?

* Robert A. Heineman, Steven A. Peterson, and Thomas H. Rasmussen, *American Government*, Second Edition (New York: McGraw Hill, 1995), 158.

** Roger Davidson and Walter J. Oleszek, *Congress and Its Members*, Third Edition (Washington, D.C.: Congressional Quarterly Press, 1996), 1960.

Suggested follow-up questions:

- a. House rules place limits on the number of committees a member can serve on as well as term limits for the chairpersons of committees. What are the benefits and the downsides of those rules?
- b. The powerful Rules Committee has been called the “traffic cop” of the House of Representatives. Is that an apt description? Why?
- c. Evaluate the use of investigative committees by both Houses. What constructive purposes do they serve? How can they be used for partisan or destructive purposes?
- d. Under what circumstances, if any, should the doors to a committee hearing be closed?
- e. What purposes do televised committee hearings serve? What are the possible downsides to such hearings?



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

1. How do the rights found in the U.S. Constitution and the Bill of Rights reflect the influence of natural rights philosophy and classical republicanism?

- How would you distinguish between a declaration of rights and a bill of rights incorporated into a constitution? Why is that distinction important?
- How would you distinguish between positive and negative rights and the obligations they impose upon governments?

Suggested follow-up questions:

- a. Evaluate Alexander Hamilton's argument in Federalist 84 that "the truth is...that the Constitution is itself, in every rational sense, and to every useful purpose, a Bill of Rights"?
- b. How would you distinguish between political and economic rights and why are both important?
- c. What rights are protected in the body of the United States Constitution?
- d. James Madison argued that if the Bill of Rights were added to the Constitution, judges would "consider themselves...the guardians of those rights" and they would "resist every encroachment" upon them.* How accurate has Madison's prophecy proven to be? What evidence can you offer to support your answer?
- e. How important do you think it is that every American both knows and understands the rights protected in the Bill of Rights and subsequent amendments? Why?

* James Madison in *Annals of Congress*, 457, Joseph Gales, ed. (1789), quoted in *The Oxford Dictionary of American Legal Quotations*, Fred R. Shapiro, ed. (New York: Oxford University Press, 1993), 24.



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

2. In the 1928 wiretapping case of *Olmstead v. United States*, Justice Louis Brandeis wrote a dissent arguing for a general right to privacy. He stated, “The makers of our Constitution...sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be left alone—the most comprehensive of rights and the right most valued by civilized men.” Do you agree or disagree with Justice Brandeis? Why or why not?

- Where in the Constitution and the Bill of Rights might the right to privacy be implied?
- Under what circumstances, if any, is it appropriate for government to limit individual liberty in order to promote national security?

Suggested follow-up questions:

- a. Should the president have the power to order the National Security Agency to collect and record email and phone conversations of American citizens without a search warrant? Why or why not? What about non-citizens?
- b. Should American citizens limit their privacy rights to ensure national security? Why or why not?
- c. Should students in public schools have the same privacy rights as they and adults do in the community? Why or why not?
- d. Does the collecting of emails and phone conversations by the government, but not viewing them without a warrant, violate the Fourth Amendment? Why or why not?
- e. What limits, if any, should be placed on a citizen’s First Amendment right to expose what he or she believes to be constitutional violations by government?



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3. What is the relationship of the right of trial by jury to natural rights philosophy and to the principle of limited government?

- Evaluate the criteria for a fair trial as set forth in the Sixth Amendment.
- What is the importance of the right to counsel, particularly in the adversary system of justice?

Suggested follow-up questions:

- a. The Sixth Amendment guarantees a fair trial. The First Amendment affords the press and the public the right to attend criminal trials. In what ways, if any, do these rights conflict with one another? Why?
- b. “There is a constitutional right to a jury drawn from a group which represents a cross-section of the community.”* How would you define a “cross-section of the community” and how should it be drawn or selected?
- c. Some observers contend that in high-profile cases, criminal defendants face two trials—trial by jury and trial by the media. Do you agree or disagree? What evidence can you offer to support your answer?
- d. Why is the right to “be confronted by the witnesses against them” important not only for the defendant, but for the jurors, as well?
- e. The Sixth Amendment requires that trials be conducted in the state and district in which the crime was committed. What are the reasons for that requirement? When and why can exceptions be made?

* Justice Frank Murphy, *Fay v. New York*, 322 U.S. 261, 299-300 (1947) (dissenting).



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STATE HEARING FOLLOW-UP QUESTIONS 2013–2014

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

1. What are the principal differences between natural rights philosophy and classical republicanism in respect to the rights and responsibilities of citizenship?

- Do you agree or disagree with the Founders that republican self-government requires a greater measure of civic virtue than other forms of government? What evidence can you offer to support your answer?
- Why did the Founders believe that religion and education were essential for republican self-government? Are those beliefs still valid today? Why or why not?

Suggested follow-up questions:

- a. How would you explain the concept of civic virtue, and what are its benefits?
- b. How might today's Americans bridge the gap between classical republican civic virtue and natural rights?
- c. How would you explain the concept of enlightened self-interest?
- d. Some contend that enlightened self-interest must be learned. If so, what obligations, if any, do schools have for teaching and/or promoting an understanding of enlightened self-interest?
- e. Fewer Americans today participate in voluntary organizations and in their local government than did in the past. What, if anything, do you think should be done to encourage greater participation in one's own community?



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

2. What are the major issues in the current debates in Congress about immigration and citizenship?

- How is citizenship defined in the Fourteenth Amendment and how has that definition altered the relationship between the nation and the states?
- Should the Fourteenth Amendment be changed to reflect additional or different criteria for citizenship? Explain and justify your response.

Suggested follow-up questions:

- a. Should children brought to the United States by their parents at an early age automatically become citizens? Why or why not?
- b. Should all children born in the United States automatically become citizens? Why or why not?
- c. Should the United States allow dual citizenship? Why or why not?
- d. What are the costs and benefits of the melting pot theory and its replacement with ethnic and cultural identity?
- e. Should all Americans be required to demonstrate their knowledge of American history and government as naturalized citizens must do in order to become citizens? Why or why not?



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

3. “History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been the vanguard of democratic thought and whose programs were ultimately accepted.”* Do you agree or disagree with the opinion expressed here? Why? What evidence can you offer to support your position?

- Which, if any, of the goals dissident groups hoped to achieve put them in “the vanguard of democratic thought”? Why?
- How would you explain the concept of civil disobedience and why have minorities often employed civil disobedience in an effort to achieve their goals?

* Chief Justice Earl Warren, *Sweezy v. New Hampshire* (1957).

Suggested follow-up questions:

- a. What political activities other than civil disobedience can minority groups use to try to achieve their goals?
- b. Under what circumstances, if any, do you think a citizen in a representative democracy has the right to engage in civil disobedience?
- c. Evaluate the argument that civil disobedience makes individual conscience absolute, leading to disrespect for all laws so that no rights are secure.
- d. An English historian claims that “the most certain test by which we judge whether a nation is really free is the amount of security enjoyed by minorities.”** Do you agree? If so, what kinds of “security” should be provided for minorities?
- e. Martin Luther King Jr. wrote that an individual who breaks a law his conscience tells him is unjust and willingly accepts the penalty by staying in jail to arouse the conscience of the community is, in reality, expressing the very highest respect for the law.*** Do you agree or disagree? Why?

** Lord Acton, *The History of Freedom and Other Essays* (1907), Chapter 1, quoted in *The Great Thoughts*, George Seldes (New York: Ballantine Books, 1985), 30.

*** Martin Luther King Jr., “Letter from a Birmingham Jail,” April 16, 1963, *African Studies Center–University of Pennsylvania*, http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.