



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 2012–2013

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

1. According to the founding generation, a constitution should function as a higher law. In what important ways does a higher law differ from a statute enacted by a legislature?

- How would you distinguish between a government with a constitution and a constitutional government?
- What are the advantages and disadvantages of a written constitution?

Suggested follow-up questions:

- a. Is it possible to have a constitutional government with one ruler, a group of rulers, or rule by the people as a whole? Why or why not?
- b. The Founders, given their experience under British rule, feared possible abuses of government powers. Do you think the Founders' concerns about government power are as valid today as they were in the 1700s? Why or why not?
- c. Why do you think people need constitutions? What purpose should they serve?
- d. Why is it important that a constitution can be changed only with the consent of the citizens and according to established and well-known procedures?
- e. What might happen in a government in which there was no agreed-on or peaceful means for removing officials? What recent examples can you cite to support your answer?



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2. Recently a historian has written that “the colonists looked upon themselves as Englishmen entitled to the rights of Englishmen of which they regarded Magna Carta to be the chief embodiment.”* How would you explain what is meant by “the rights of Englishmen”?

- What provisions of the Magna Carta established those rights?
- What principles important to the later development of constitutional government are set forth in the Magna Carta?

* Geoffrey Hindley. *A Brief History of the Magna Carta: The Story of the Origins of Liberty* (Philadelphia: Running Press Book Publishers, 2008), 298.

Suggested follow-up questions:

- a. What does the term *rule of law* mean and how does the Magna Carta express the concept of the rule of law?
- b. What is the relationship of the Magna Carta to the colonists’ claim of “no taxation without representation”?
- c. What important provisions for criminal justice did the Magna Carta establish?
- d. The Magna Carta stated that no free man could be imprisoned or punished “except by the law of the land.” Why does that provision protect rights of the accused?
- e. What is the significance of the Magna Carta for the establishment of limited government?



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3. On the fiftieth anniversary of the Declaration of Independence, Thomas Jefferson, its author, wrote that the object of the Declaration was “not to find out new principles, or new arguments, never before thought of...but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take.”* What were the main ideas or principles set forth in the Declaration?
- Jefferson freely acknowledged that the Declaration borrowed from the works of “Aristotle, Cicero, Locke, Sidney, etc.” What are some of those ideas borrowed and used in the Declaration?
 - Do these principles and arguments have relevance in the world today? Explain your answer.

* Thomas Jefferson to Henry Lee, Monticello, May 8, 1825. Letter reprinted in *Something That Will Surprise the World: The Essential Writings of the Founding Fathers*, Susan Dunn, ed. (New York: Basic Books, 2006), 347.

Suggested follow-up questions:

- a. In what ways does the Declaration reflect John Locke’s social contract theory?
- b. In what ways does the Declaration reflect principles of classical republicanism?
- c. Why do you think the Declaration did not make an appeal to the rights of Englishmen?
- d. What important ideas from natural rights philosophy are incorporated in the Declaration?
- e. Evaluate the argument for a right of revolution set forth in the Declaration.



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Unit Two: How Did the Framers Create the Constitution?

1. Alexander Hamilton argued that “the confederation itself is defective and requires to be altered; it is neither fit for war, nor peace. The idea of an uncontrollable sovereignty in each state, over its internal police, will defeat the other powers given to Congress, and make our union feeble and precarious.”* Evaluate Hamilton’s assessment of government under the Articles of Confederation.

- What do you consider to be the strengths of the Articles of Confederation?
- What do you consider to be the most important lasting contribution of the Articles of Confederation? Why?

* Alexander Hamilton to James Duane, September 3, 1780. Letter reprinted in *Something That Will Surprise the World: The Essential Writings of the Founding Fathers*, Susan Dunn, ed. (New York: Basic Books, 2006), 113.

Suggested follow-up questions:

- a. The Articles of Confederation display a distrust of a strong national government. What were the historical and philosophical reasons for this distrust?
- b. Why did the Articles of Confederation fail to provide for an executive and a judicial branch of government?
- c. What did the Framers learn from the inadequacies of the Articles of Confederation and how did they correct them in the Constitution?
- d. Why is the Northwest Ordinance considered to be the most significant measure passed by the Confederation Congress? What important policies did it establish?
- e. Compare government under the Articles of Confederation with a present-day confederation of nations (e.g., the United Nations, the European Union, or the African Union).



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Unit Two: How Did the Framers Create the Constitution?

2. What was the Great Compromise and what were the key elements in that compromise?

- What objections did James Madison have to the Great Compromise? Do you agree or disagree with his arguments? Why?
- What compromises were made to persuade the Southern states to sign the Constitution? What were the benefits and the costs of those compromises?

Suggested follow-up questions:

- a. Why did the Framers appoint a special committee to deal with the issues of representation?
- b. What compromises were agreed to that allowed both sides to claim some “victories”?
- c. What arguments did the Framers give for dividing Congress into a House and a Senate? Do you agree with their arguments? Why or why not?
- d. What role does the periodic census play in reallocating power in the House of Representatives?
- e. Why did Northern delegates, some from states that had abolished slavery, vote for compromises that maintained the institution of slavery? If you had been a delegate, would you have done the same? Why or why not?



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3. “The office of the president was to a degree invented and made potentially strong as a counterweight to the excesses of legislative bodies.... This was a large new grant of power, a new office, unlike anything before in republican government.”* What was new or different about the office of president devised at the Philadelphia Convention?

- In what ways did the office of president differ from that of consuls, kings, royal governors, or prime ministers?
- How did the Framers try to achieve a balance between an “energetic” executive and limited government?

* William Lee Miller, *The Business of May Next: James Madison and the Founding* (Charlottesville and London: The University Press of Virginia, 1992), 90–91.

Suggested follow-up questions:

- a. Evaluate the arguments advanced at the Philadelphia Convention for a single executive. Do the same for a plural executive.
- b. Why did the delegates reject the idea of direct election of the president by the people?
- c. What arguments can you give for and against use of the Electoral College?
- d. The powers of Congress are enumerated in the Constitution. Why do you think the Framers did not enumerate the powers of the president in the same detail?
- e. Some critics claim that the presidency has grown to be too powerful and that a better balance among the three branches needs to be restored. Do you agree or disagree? Why? What evidence can you offer in support of your position?



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STATE HEARING FOLLOW-UP QUESTIONS 2012–2013

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

1. “John Marshall’s insights in the legal case *Marbury v. Madison* have become a familiar part of constitutionalism around the world. One may suggest that no American contribution to constitutionalism has been more pervasive or important than this one.”*
Do you agree or disagree? Why?

- How would you explain the concept of judicial review?
- What arguments can you give for and against the power of judicial review?

* A.E. Dick Howard, University of Virginia law professor, testifying before a Senate committee. Quoted in Cliff Sloan and David McKean’s *The Great Decision: Jefferson, Adams, Marshall, and the Battle for the Supreme Court* (New York: PublicAffairs, 2009), 178.

Suggested follow-up questions:

- a. Although the Constitution does not mention the power of judicial review, both the Federalists and Anti-Federalists assumed the Supreme Court would exercise judicial review. Why? What practices in English law and the colonies supported that idea?
- b. What are some recent examples of the Supreme Court exercising the power of judicial review?
- c. In what ways, if any, does the power of judicial review affect the balance of power among the three branches of government?
- d. In what ways, if any, does the power of judicial review affect the balance of power between the national government and the states?
- e. A former Solicitor General of the United States (Ted Olson) claims that in *Marbury v. Madison*, Chief Justice Marshall “embedded judicial review so deeply into the fabric of American life that it could never be removed.” Do you agree or disagree? Why?



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2. How did the Southern states justify their decision to secede from the United States?

- How did President Lincoln and other Northerners justify treating secession as an act of rebellion?
- Why do you think secession has historically been viewed as unacceptable?

Suggested follow-up questions:

- a. What means other than secession can states or citizens use to resolve their grievances?
- b. Where in the world today are there threats of secession? Why?
- c. In his First Inaugural Address, Lincoln declared “the central idea of secession is the essence of anarchy.” Do you agree or disagree? Why?
- d. Some historians contend that secession and the Civil War marked the nation’s greatest constitutional crises ever. Do you agree or disagree? Why?
- e. The Constitution of the United States begins with the words, “We the People of the United States...” The Confederate Constitution began, “We, the People of the Confederate States, each State acting in its sovereign and independent character...” What do you see as the essential difference between those two declarations? Why is that difference important?



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3. In what ways, if any, does the equal protection clause of the Fourteenth Amendment limit American governments? How does it limit private organizations?

- How and why did the Supreme Court abandon the “separate but equal” doctrine?
- Do all classifications that result in different treatment of persons violate the guarantee of equal protection of the laws? Why or why not?

Suggested follow-up questions:

- a. How would you distinguish between equality of condition and equality of opportunity?
- b. In what ways, if any, should government provide equal opportunity? Why? Why not?
- c. Do laws that give preferences to certain groups that historically have been denied equal opportunities (e.g., affirmative action) constitute reverse discrimination? Why or why not?
- d. How would you distinguish between “strict” and “intermediate” scrutiny that courts use to determine if laws violate equal protection?
- e. What does it mean to say that laws creating classifications have “a rational basis”?



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STATE HEARING FOLLOW-UP QUESTIONS 2012–2013

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

1. In Federalist 48, Publius (James Madison) wrote that the constitutional powers of the legislative branch are “extensive,” with imprecise limits. But the essay also warned that “power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.”* What powers granted in Article I of the Constitution confer “extensive” powers on Congress?
- How would you distinguish among enumerated, implied, enforced, and inherent powers of Congress?
 - How can the powers of Congress be checked and balanced?

* See Federalist 48 in *The Federalist*, Michael Loyd Chadwick, ed. (Springfield, Virginia: Global Affairs, 1987), 267 and 269.

Suggested follow-up questions:

- a. How would you define “all laws...necessary and proper” as set forth in Article I, Section 8, of the U.S. Constitution?
- b. Does the “necessary and proper” clause contradict the principle of enumerated and limited powers? Why or why not?
- c. What powers are denied to Congress (Article I, Section 9)?
- d. In what ways, if any, do the U.S. Senate and House of Representatives act as “checks and balances” on one another?
- e. What are the benefits of placing “extensive” or “elastic” powers in the hands of a representative body? What are the problems or dangers of doing so?



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2. During the debate over ratification of the Constitution, many Americans were fearful of creating a “mighty and splendid President,” who possessed power ‘in the most unlimited manner’ that could be easily abused.”* Were those fears well founded or not? What evidence can you offer to support your response?

- How and why has presidential power expanded?
- What are some of the principal means by which the powers of the president can be limited?

* Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: Penguin Press, 2011), 231.

Suggested follow-up questions:

- a. What powers are specifically granted to the president in Article II, Section 2, of the Constitution?
- b. Article II, Section 1, gives the president “executive power” but does not define what that power is. How would you explain *executive power*?
- c. What is an executive order and why have presidents used it to an increasing extent?
- d. In your opinion, has Congress relinquished too much of its power to the president? Explain your view and give evidence to support it.
- e. The Framers wanted the president to be “energetic,” not “a feeble executive.” How did they contrast those capacities?



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3. “If every compromise is taken as a defeat that must be overturned, and if no healing generosity is ever shown to defeated rivals, the best-contrived constitution in the world would not succeed.”* Do you agree or disagree with this opinion of an American historian? Why or why not?

- In what ways, if any, do committee hearings held by the House and Senate facilitate compromise?
- Some members of Congress blame the media for making premature judgments about “do-nothing Congresses” and covering high-profile issues that provoke legislative conflict.** Evaluate the claim.

* Bernard Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Alfred A. Knopf, 2003), 124.

** Lee H. Hamilton, *How Congress Works and Why You Should Care* (Bloomington, Indiana: Indiana University Press, 2004), 34.

Suggested follow-up questions:

- a. In what ways, if any, do political parties function in Congress, and how do they promote or hinder compromise?
- b. How might civic education promote better understanding of the role of compromise in a constitutional democracy?
- c. How can citizens encourage compromise in the legislative process? On the part of their elected representatives?
- d. “Members [of Congress] who don’t learn the art of compromise usually find themselves on the margins of the legislative process.”*** What examples from history can you cite that substantiate that statement? What examples contradict it?
- e. Many Americans are concerned about the decline in civility in our political discourse. Has the tendency to demonize opponents made it more difficult to reach consensus on critical issues or to compromise? Explain your position.

*** Ibid., 88.



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STATE HEARING FOLLOW-UP QUESTIONS 2012–2013

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

1. **“The jury, which is the most energetic means of making the people rule, is also the most efficacious [effective] means of teaching it how to rule well.”*** In what ways, if any, does the jury allow the people to check the power of government?

- In what ways, if any, does serving on juries teach people “how to rule well”?
- What is the relationship, if any, between the Sixth Amendment’s requirement of “the right to a speedy and public trial” and limited government?

* Alexis de Tocqueville, quoted in *Democracy in America*, Phillips Bradley, ed. (New York: Vintage, 1965), 293–94.

Suggested follow-up questions:

- a. What important criteria for a fair trial are set forth in the Sixth Amendment?
- b. How would you respond to those who say jury trials are too time-consuming and too expensive?
- c. “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 why is one important?
- d. The Sixth Amendment guarantees persons charged with crimes a fair trial. The First Amendment guarantees the press and the public the right to attend criminal trials. In what ways, if any, are these rights in conflict with each other?
- e. The Sixth Amendment guarantees that the accused “have the right of Assistance of Counsel for his defence.” Why is that right important, especially in jury trials?

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



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

2. **“The makers of our Constitution...conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.”* Do you agree or disagree with the opinion of Justice Brandeis? Why or why not?**

- What protections against “intrusions by the government” does the Fourth Amendment provide?
- Why has the Supreme Court struggled to be true to the spirit of the Fourth Amendment while not restricting police in ways that render effective law enforcement impossible?

* Justice Louis D. Brandeis (dissenting) in *Olmstead v. U.S.*, 277 U.S. 438 (1928). The full text of his dissent is in *Brandeis on Democracy*, Philippa Strum, ed. (Lawrence, Kansas: University Press of Kansas, 1995), 203–7.

Suggested follow-up questions:

- a. What are general warrants and why did the American colonists object to them?
- b. How would you explain *probable cause* and what protections does it afford to persons in a free society?
- c. What is the relationship, if any, between a right to privacy and the Fourth Amendment?
- d. Under what circumstances, if any, should a law enforcement officer be able to arrest someone without a warrant? Enter a house without a warrant?
- e. What challenges to Fourth Amendment rights do the rapid growth of surveillance and other technology pose? What remedies to these challenges would you suggest? Explain the reasons for your response.



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

3. What important constitutional protections before, during, and after trial are provided to criminal defendants by the Fifth Amendment?

- How would you describe the right against self-incrimination?
- How is the right against self-incrimination related to protection against unreasonable searches and seizures? To the right to counsel?

Suggested follow-up questions:

- a. What is the relationship, if any, of the Fifth Amendment to the concept of limited government?
- b. In what ways, if any, does the *Miranda* rule extend or enhance the protections afforded by the Fifth Amendment?
- c. What important purposes does the *Miranda* rule serve?
- d. Why is it important that the rights of criminal defendants are protected both before and after, as well as during trial?
- e. Do you think the privilege against self-incrimination should apply to governmental hearings other than trials? Why or why not?



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

1. “While liberal democracy is stable and secure in the United States, it can again become a better democracy.... That will require some innovations to renew American political institutions and revive the founding spirit of American democracy based on active citizenship and a healthy but not cynical skepticism of power.”* Do you agree or disagree with this opinion expressed by an American scholar? Why or why not?

- What reforms or innovations do you think are most needed in American political institutions? Why?
- How would you explain or define *active citizenship* and why is it essential in a democracy?

* Larry Diamond, *The Spirit of Democracy: The Struggle to Build Free Societies throughout the World* (New York: Henry Holt and Company, 2008), 369.

Suggested follow-up questions:

- a. How would you describe “the founding spirit of democracy” as expressed in the Declaration of Independence?
- b. How would you distinguish between cynicism and healthy skepticism?
- c. Why have Americans always been concerned about limiting the power of government and in what ways have they attempted to limit power?
- d. What do you think can and/or should be done to promote active citizenship?
- e. In what ways, if any, should your school promote active citizenship?



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

2. “Only a nation of immigrants could argue so earnestly and endlessly...about who can become one of its own.... Through four hundred years, we have endeavored to shape and manage the flow of immigrants.”* Why have Americans continued to argue about immigration and who can become a citizen?

- What values and principles are involved in the continuing debate?
- How does the Fourteenth Amendment define citizenship and what important rights does it confer?

* Howard Fineman, *The Thirteen American Arguments: Enduring Debates that Define and Inspire Our Country* (New York: Random House, 2008), 41.

Suggested follow-up questions:

- a. What responsibilities do citizens and resident aliens share?
- b. How would you explain the meaning and the significance of the United States motto, *E Pluribus Unum*?
- c. How do *jus soli*, *jus sanguines*, and residency differ as principles for defining citizenship?
- d. What are the advantages and disadvantages of using the *jus soli* principle of national citizenship? Does simply being born in the United States establish enough of a foundation for good citizenship? Why or why not?
- e. What changes, if any, do you think the United States should make in its immigration policies? In its requirements for citizenship?



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

3. **“The American polity’s enduring stability and unity remain the envy of the world. Today many other polyglot [multilingual] nations...are at serious risk of fragmenting into ethnic shards.... Americans distrust many of their governmental institutions, but venerate [respect] their Constitution and the personal freedoms that it protects, freedoms that in turn create and shape those public institutions.”* Do you agree or disagree with the opinion expressed here? Why? What evidence can you offer to support your position?**

- What values and principles embodied in the U.S. Constitution entitle it to respect? Why?
- How have personal freedoms guaranteed by the Bill of Rights (e.g., speech, press, assembly, petition) been used by Americans to create fundamental political and social change in the United States?

* Peter H. Schuck and James Q. Wilson, “Looking Back,” in *Understanding America: The Anatomy of an Exceptional Nation*, Peter Schuck and James Q. Wilson, eds. (New York: PublicAffairs, 2008), 637 and 642–43.

Suggested follow-up questions:

- a. How have Americans used both the Declaration of Independence and the Fourteenth Amendment to bring about political and social change in the United States?
- b. Why is the right to peaceably assemble important? What civic purposes are served by public demonstrations?
- c. More than any other country, the United States protects expression of all kinds—not only political advocacy, but speech-like behavior (e.g., picketing, message-bearing clothing), commercial advertising, outrageous speech—even flag burning. Have we gone too far and become too permissive? Why or why not?
- d. Is Americans’ distrust of many governmental institutions a healthy or an unhealthy condition? Why?
- e. How important do you think it is that every American be knowledgeable about the Constitution? What should that knowledge include? Why?