



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 2010–2011

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

1. What is the rule of law and what is its relationship to limited government and constitutionalism?

- How would you distinguish between rule *of* law and rule *by* law and why is that distinction important?
- What principles established in the Magna Carta were important for the rule of law and the later development of constitutionalism?

Suggested follow-up questions:

- a. How and why does rule of law contribute to equality?
- b. What is the relationship, if any, among rule of law, judicial independence, and honest law enforcement?
- c. Some scholars argue that the rule of law requires a statement of reasons for a court decision. Do you agree or disagree? Why?
- d. Tom Paine once said that we stood as a nation where “the law is king.” Do you think that statement is still true today? Why or why not? What evidence can you offer to support your position?
- e. How important to the rule of law is it that laws be made widely known and well-publicized? Why?



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2. Recently, an historian wrote that the American colonists believed that

Just as men had a right to their property, so they held a property in their rights. Men did not merely claim their rights, but also owned them, and their title to their liberty was as sound as their title to the land or the tools with which they earned their livelihood. * How would you explain the difference between *claiming* and *owning* a right and how important is that difference?

- In what ways, if any, were the colonists' beliefs about rights influenced by the writings of John Locke and other natural rights philosophers?
- Every one of the early state constitutions contained the idea of a social contract. In what ways, if any, is the idea of social contract related to the concept of rights?

* Jack Rakove. *Revolutionaries: A New History of the Invention of America* (Boston: Houghton Mifflin Harcourt, 2010), 78.

Suggested follow-up questions:

- a. In what ways were the colonists' beliefs about rights reinforced or expanded in the Declaration of Independence and in state constitutions?
- b. Why did the colonists attach special importance to written guarantees of rights?
- c. Why do you think property rights were so important to the colonists?
- d. In what ways are your thoughts about rights similar to or different from those of the colonists?
- e. Are written guarantees of rights as important today as they were in colonial times? Why or why not?



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3. Compare and contrast European concepts of the individual and society during the Middle Ages with those during the Renaissance and the Reformation.

- What are some of the advantages and disadvantages of viewing rights and responsibilities as being possessed by individuals rather than groups?
- In what ways, if any, do the ideas about politics and humanity that developed during the Renaissance and Reformation affect our thinking today?

Suggested follow-up questions:

- a. What major changes in society resulted from the Renaissance?
- b. What medieval ideas about society and government were similar to those of classical republicanism?
- c. In what ways did the Reformation contribute to the development of modern individualism?
- d. In what ways, if any, might the invention of the printing press be compared to the invention of the Internet?
- e. How did the ideas of the Renaissance and the Reformation influence the Founders?



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Unit Two: How Did the Framers Create the Constitution?

1. **George Washington, like many of the Founders, opposed slavery. He wrote, “There is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it.”* Why then was a plan on abolition not devised at the Philadelphia Convention?**

- What constitutional protection to slavery did the Constitution provide?
- How did slavery encourage different interpretations of the Constitution and the nature of the union?

* George Washington, *Letter to Robert Morris* (April 1786), quoted in John P. Kaminski, *The Great Virginia Triumvirate* (Charlottesville and London: University of Virginia Press, 2010), 37.

Suggested follow-up questions:

- a. Why do you think the words *slaves* and *slavery* were never used in the Constitution even though several provisions clearly protected the institution?
- b. What was the significance of the Three-Fifths Compromise?
- c. In what ways, if any, were provisions in the Constitution regarding slavery at odds with the Declaration of Independence?
- d. Why do you think the Founders did not use the Northwest Ordinance as a model for outlawing slavery throughout the nation?
- e. The Thirteenth Amendment outlawing slavery was the first to give Congress “power to enforce this article by appropriate legislation.” Why has that proved to be a significant provision?



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2. In Federalist 48, James Madison argued that in a representative republic the legislative branch is the most powerful and the most likely to abuse its power. Do you agree or disagree? Why? What evidence can you offer to support your position?

- Evaluate Madison's claim that "In a representative republic, the chief executive is carefully limited in both extent and duration of power." On the other hand, the constitutional powers of the legislative branch "are extensive with imprecise limits."
- The antidote Madison prescribes for the "enterprising ambition" of the legislature is for the people to "focus their scrutiny and take all precautions." How can you and other citizens do that?

Suggested follow-up questions:

- a. To what extent do you think Madison's views might have been influenced by Americans' experiences with the British Parliament?
- b. How does the Constitution try to balance power among the three branches of government?
- c. In what ways, if any, does having a bicameral legislature act as a safeguard against legislative abuse of power?
- d. How effective as a check on legislative power has the presidential veto proved to be? What evidence can you offer to support your position?
- e. Madison's great fear was that the majority in the legislature would abuse the rights of the minority. To what extent has history proved his fears were justified?



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3. Why did the Founders choose to establish a representative democracy rather than a “pure” or “direct” version of democracy?

- What are the advantages and disadvantages of representative democracy? Of direct democracy?
- Some people contend that instead of representing states or other geographic areas, representatives should reflect social, economic, or ethnic groups and perhaps even gender groupings. Do you agree or disagree? Why?

Suggested follow-up questions:

- a. How did Madison distinguish between a republic and a democracy?
- b. What is the relationship, if any, between representation and the right to government by consent?
- c. How can citizens ensure that their views and interests are fairly represented in their local, state, and national governments?
- d. James Madison believed that some system for apportioning representation by population should be applied to both houses of Congress. Do you agree or disagree? Why?
- e. In Federalist 55, Madison argued that the deliberations of elected representatives were superior to mass meetings of the citizenry because “in all very numerous assemblies, passion never fails to wrest the scepter from reason.” Do you agree or disagree? What evidence can you offer to support your position?



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

1. A scholar contends that the Framers, like Goldilocks in the children's story *Goldilocks and the Three Bears*, wanted executive power that was neither too strong nor too weak, but "just right."* Evaluate President Lincoln's use of executive power during the Civil War. Was it too strong, too weak, or just right given the critical times?

- Lincoln admitted exceeding the constitutional boundaries of the presidency. Why then did he seek Congressional approval of actions he had already taken?
- A scholar writes that some presidents have drawn heavily on the example of Lincoln for vindication of their use of enhanced executive power.** Do you agree or disagree? What evidence can you offer to support your position?

* Daniel Farber. *Lincoln's Constitution* (Chicago and London: The University of Chicago Press, 2004), 125.

** Donald E. Fehrenbacher. *Lincoln in Text and Context* (Stanford, California: Stanford University Press, 1987), 122, quoted in William Lee Miller's *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008), 102.

Suggested follow-up questions:

- a. Which of Lincoln's actions were authorized by the Constitution and which were not?
- b. What provisions of the Constitution, if any, allow the president to take extraordinary actions during emergencies or in wartime?
- c. Some historians say that the Emancipation Proclamation was justified as a necessary war measure. Others say it violated the Takings Clause of the Fifth Amendment. What is your judgment?
- d. Are civil liberties a necessary casualty of war? Why or why not?
- e. What responsibilities, if any, do Congress, the courts, and citizens have for seeing that presidential powers in wartime do not exceed constitutional limits?



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2. Many antislavery Americans said, “Let the erring sisters go. Depart in peace.” But Abraham Lincoln did not. How and why did Lincoln respond to the idea of secession in his First Inaugural Address?

- What were the South’s major arguments for the right to secede?
- A scholar writes that “If secession on demand is unacceptable, perpetual union ‘at all costs’ is also a troublesome idea, . . . a democratic dilemma that has no easy answer.”* Do you agree or disagree? Why?

* Daniel A. Farber. *Lincoln’s Constitution* (Chicago and London: University of Chicago Press, 2004), 110.

Suggested follow-up questions:

- a. Southerners claimed that secession was a revolutionary act akin to the American and French revolutions throwing off oppressive regimes. How would you respond to this assertion?
- b. The U.S. Constitution begins with the words “We the People.” The Confederate Constitution begins with the words “We the People of the Confederate States.” What is the significance, if any, of the difference between those two openings?
- c. Why was slavery both a great constitutional issue and a great moral and human issue?
- d. Where in the world is secession an important concern today? Why?
- e. How might history be different if the Confederate States had been allowed to withdraw peacefully from the Union?



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3. “The Preamble’s statement that the primary purpose of the Constitution was to form a more perfect union” offers a way to find answers to “perennial and perennially troubling questions.”* What were the perennially troubling questions that the Thirteenth, Fourteenth, and Fifteenth Amendments addressed?
- In what ways, if any, have the Thirteenth, Fourteenth, and Fifteenth Amendments contributed to “a more perfect union”?
 - All three amendments gave Congress the power to enforce them “by appropriate legislation.” How and why has that power been significant?

* R. B. Bernstein. *The Founding Fathers Reconsidered* (Oxford and New York: Oxford University Press, 2009), 168.

Suggested follow-up questions:

- a. Why did the Thirteenth, Fourteenth, and Fifteenth Amendments become ineffective in less than a decade after their ratification?
- b. In what ways, if any, did the Thirteenth, Fourteenth, and Fifteenth Amendments transform the relationship between the state and national governments?
- c. What are the key provisions of the Fourteenth Amendment?
- d. The Thirteenth Amendment prohibits both slavery and involuntary servitude. What constitutes involuntary servitude and why is prohibiting it important?
- e. The Fourteenth Amendment is often called “The Great Amendment.” Is it deserving of such high praise? Why or why not?



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STATE HEARING FOLLOW-UP QUESTIONS 2010–2011

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

1. From its first session in 1789 to the present day, Congress has organized its work through committees. What important purposes are served by the use of committees?

- How does the use of committees promote or undermine the principles of representation, majority rule, and limited government?
- Some scholars claim that Congressional committees function as “safety valves” or outlets for national frustrations and challenges.* Do you agree or disagree? What evidence can you offer to support your position?

* Roger H. Davidson, Walter J. Oleszek, and Frances E. Lee. *Congress and Its Members*, 5th Edition (Washington, D.C.: Congressional Quarterly Press, 2008), 197.

Suggested follow-up questions:

- a. Congressional rules place limits on the number of committees on which a member can serve, as well as term limits for the chairpersons of committees. What are the benefits and the disadvantages of those rules?
- b. What purposes do televised committee hearings serve? What are some possible disadvantages of televised hearings?
- c. What responsibility, if any, should committees have for ensuring that diverse viewpoints are represented in committee hearings?
- d. Some critics claim that there are now too many congressional committees and subcommittees and that they have become “little legislatures.” Do you agree or disagree? Why?
- e. How can you and other citizens become informed about the work of congressional committees? How can you monitor and influence their work?



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2. In Federalist 74, Alexander Hamilton claimed that “the propriety” of the constitutional provision making the president commander-in-chief of the army and navy “was so evident in itself . . . that little need to be said to explain or enforce it.” Not everyone has agreed. What are the arguments for and against making the president the commander-in-chief?

- Article II, Section 2 designates the president as commander-in-chief “of the militia of the several states when called into the actual service of the United States.”* When and why have presidents used this authority?
- How and why has the conception of the power of the commander-in-chief been expanding since the time of Abraham Lincoln?

*The voluntary armed forces of the states, formerly called the militia, are now known as the National Guard.

Suggested follow-up questions:

- a. Article I, Section 8 gives Congress the power to challenge the president by refusing to fund the military or by enacting “rules for the government and regulation of land and naval forces.” Why has Congress been reluctant to use these powers?
- b. How might public opinion influence a president’s behavior as commander-in-chief? What historic or contemporary examples can you cite as evidence to support your position?
- c. Unlike Articles I and III of the Constitution, Article II invests power in “a one-man president always on duty” as commander-in-chief. What are the advantages and possible dangers of such concentrated power?
- d. Americans have a long tradition of opposing standing armies in peacetime. In Federalist 29, Hamilton argued that the power of the national government to command the militias of the states alleviates the need for standing armies. Do you agree or disagree? Why?
- e. Federalist 28 claims that “it cannot be denied that sometimes the national government may need to use force Emergencies sometimes arise in all societies. Revolts and rebellions are, unhappily, diseases as inseparable from the political body as tumor or rashes from the natural body.” Do you agree or disagree? Why?



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3. Federalist 78 made the following predictions:

The judiciary will always be the least dangerous to the political rights of the Constitution, because it will have the least capacity to annoy or injure them . . . The judiciary has no influence over either the sword or the purse. It directs neither the strength nor the wealth of society. It can take no active resolution whatsoever. How accurate have these predictions proven to be? What evidence can you offer to support your position?

- In what ways, if any, has the Supreme Court acted to protect “the political rights of the Constitution”? How has it acted to restrict them?
- How and why are Supreme Court decisions respected, even though the judiciary has neither “sword nor purse” nor an enforcement arm?

Suggested follow-up questions:

- a. How can Congress check and balance the power of the Supreme Court?
- b. What is the relationship between the right to appeal and the protection of individual rights?
- c. In what ways, if any, has the Supreme Court imposed checks on itself in respect to political questions?
- d. What are “fundamental rights” and why has the Court been particularly attentive to them?
- e. How has the Court extended its power through the doctrine of incorporation?



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

1. **What is the relationship, if any, between the rights guaranteed in the Bill of Rights and natural rights philosophy?**
 - How would you distinguish between positive and negative rights and why are they both important?
 - Under what circumstances, if any, should the rights of institutions and classes of individuals be given preference over individual rights? Why?

Suggested follow-up questions:

- a. Alexander Hamilton argued in Federalist 84 that the Constitution itself was a Bill of Rights. Do you agree or disagree? Why?
- b. How important is it that Americans know and understand the rights that are affirmed in the Bill of Rights?
- c. How would you distinguish between political and economic rights and why are they important?
- d. Recent polls show that many Americans know little or nothing about the meaning, history, or application of the Bill of Rights. Should that be a matter of concern? Why?
- e. Why was the incorporation of the Bill of Rights important for all Americans?



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

2. The First Amendment is stated in absolute terms: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Does that wording reflect a hostility toward religion? Why or why not?

- What are the primary differences between the establishment and the free exercise clauses of the First Amendment?
- Under what circumstances, if any, should society’s need for order and tranquility warrant restriction of religious liberty?

Suggested follow-up questions:

- a. How would you explain the principle of “a wall of separation between church and state”?
- b. Does using tax money to pay for military and prison chaplains violate the establishment clause? Why or why not?
- c. The United States is the most religiously diverse country in the world. How and why do you think it has been able to avoid the so-called “Holy Wars” that have been prevalent in history and are prevalent even today?
- d. What is a “compelling state interest” and how have the courts used that idea in deciding free exercise cases?
- e. In what ways did Americans’ colonial experience affect their desire for religious freedom?



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

3. Should the right to association in civil society be considered an integral part of the Constitution even though there is no reference to such a right in the First Amendment? Why or why not?

- In what ways does the right to assemble and petition reinforce and enhance the First Amendment's protections of political rights?
- Under what circumstances, if any, should the right to freedom of assembly be limited? Why?

Suggested follow-up questions:

- a. Should private organizations be required to make public the names of their members? Why or why not?
- b. Should the right of association be interpreted to mean that organizations may impose limits on their membership?
- c. Alexis de Tocqueville believed that the right to associate was essential for preserving a free government. Do you agree or disagree with him? Why?
- d. How did colonial Americans use assembly, association, and petition in their effort to secure what they believed were their rights?
- e. How have modern Americans used their rights of assembly, association, and petition to correct injustices and to improve civic life?



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

1. **The Constitution as originally ratified used the word “citizen” eleven times, but provided no definition of the word. Why? What were the consequences of that omission?**
 - How is citizenship defined in the Fourteenth Amendment and how has that definition altered the constitutional balance 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 all children born in the United States automatically be considered natural-born citizens? Why or why not?
- b. Should the United States allow dual citizenship? Why or why not?
- c. Should all Americans be required to demonstrate their knowledge of U.S. history and government in the way that naturalized citizens must in order to become citizens?
- d. Should the Constitution be amended to allow naturalized citizens to serve as president? Why or why not?
- e. How may United States citizenship be lost?



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2. “Voluntary associations” provide “social energy” and “fuel for change in the practices of states and business.” They also “motivate people to raise their voices in the public sphere.”* Do you agree or disagree with this appraisal? What evidence can you cite to support your response?

- How would you differentiate between voluntary organizations and factions?
- What is the relationship, if any, between civic participation and civic virtue?

* Michael Edwards. *Civil Society* (Malden, Mass.: Polity Press, 2009), 111.

Suggested follow-up questions:

- a. How would you distinguish among self-interest, enlightened self-interest, and the common good?
- b. What are some of the costs and benefits of participating in voluntary organizations?
- c. What is the relationship, if any, between civic participation and popular sovereignty?
- d. What role can and should schools play in promoting civic participation?
- e. Do you think the classical republican sense of community is possible in American society today? What forces work for and against it?



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3. Why and how have civil rights movements used the Declaration of Independence and the Fourteenth Amendment to effect political and social change in the United States?

- Why and how have the enforcement provisions of the Fourteenth and Fifteenth Amendments proved to be significant?
- Is civil disobedience ever justified? Explain and justify your position.

Suggested follow-up questions:

- a. How would you distinguish between *de facto* and *de jure* segregation? Which is more difficult to change? Why?
- b. The civil rights decisions of the Warren Court and the voting rights act of Congress have been described as “The Second Reconstruction.” Is that an accurate description? Why or why not?
- c. What changes have been made in American life and law due to the civil rights movement?
- d. What changes have been made to correct discrimination against handicapped or disabled persons?
- e. What more do you think needs to be done to build on the legal equality won by civil rights movements?