



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 2009 – 2010

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

1. **What are the major differences between classical republicanism and natural rights philosophy?**
 - How might those differences affect thinking about the purposes and goals of government?
 - What might the consequences be for individuals and society of placing too great an emphasis on the common good over the rights of individuals? Of emphasizing the rights of individuals over the common good?

Suggested follow-up questions:

- a. What examples—historical or contemporary—can you cite in which the rights of individuals have predominated over the common good? The common good over the rights of individuals?
- b. How would you define civic virtue and how important is it in today's society?
- c. If you were asked to create a government that reflects principles of both classical republicanism and the natural rights philosophy, which elements of each would you pick? Why?
- d. What responsibility, if any, do you think schools have for teaching and encouraging civic virtue? Why?
- e. Which philosophy of government—classical republicanism or the natural rights philosophy—is more conducive to limited government? Why?



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2. Three principles were contained in the Magna Carta: the rule of law, basic rights, and government by agreement or contract. How and why did those principles prove to be important in the development of constitutional government?

- What is the relationship, if any, between the rule of law and limited government?
- What is the relationship, if any, between the idea of government by agreement or contract and basic rights?

Suggested follow-up questions:

- a. How was the Magna Carta created and how did it contribute to the development of constitutional government?
- b. What is the relationship, if any, between the Magna Carta and the Rights of Englishmen?
- c. One goal of the English barons was to establish a way to secure “redress of grievances.” How would you explain “redress of grievances” and why is that concept important to constitutional government?
- d. Why did American colonists believe they were entitled to the Rights of Englishmen? Why did they believe those rights were being violated?
- e. How would you explain the concept of social contract and how have Americans continued to express their belief in the idea of a social contract?



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3. Evaluate the arguments the American colonists made against British policies of 1763–1776.

- Why did the colonists finally decide to declare independence?
- What were the main ideas and arguments of the Declaration of Independence?

Suggested follow-up questions:

- a. What is meant by the term *sovereignty* and why was sovereignty a disputed matter between the British and the Americans?
- b. To whom was the Declaration of Independence addressed? How and why has that proved to be important?
- c. How is the natural rights philosophy reflected in the Declaration of Independence?
- d. How is social contract theory reflected in the Declaration of Independence?
- e. Why do you think that the Declaration of Independence continues to inspire people all over the world?



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Unit Two: How Did the Framers Create the Constitution?

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

- James Madison and others argued that membership in both houses of Congress should be based on the numbers of people represented. States should not be represented as states. Do you agree or disagree? Why?
- What was the Great Compromise and how did it make it possible for both sides to claim some victories?

Suggested follow-up questions:

- a. Some historians argue that the New Jersey Plan amounted to nothing more than strengthening the Articles of Confederation. How would you evaluate that argument?
- b. James Madison fought against the Great Compromise longer and harder than any other delegate. What were his objections? Do you agree or disagree with Madison? Why?
- c. One delegate proposed the states be divided into three population clusters with one, two, or three senators respectively. Would you have been for or against that proposal? Why?
- d. One observer predicted that because the two branches of Congress have different constituencies that can check and balance each other, “there will be frequent struggles and contentions between them.”* Has history proved him right or wrong? What evidence in support of your answer can you offer?
- e. One historian claims that the principle of compromise “is a feature of American life indispensable from that day (July 16, 1787, date of the Great Compromise) to this.”** Do you agree or disagree? Why?

* Theophilus Parsons in Gordon S. Wood’s *The Creation of the American Republic 1776–1787*. (New York: W.W. Norton & Co., 1972), 558–559.

** Ralph L Ketcham in *American Primer*. Daniel Boorstin, ed. (New York: Meridan Books, 1995), 100.



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2. The office of president of the United States was a new office invented at the Philadelphia Convention. What was new about it, and why did the delegates think such a new office was needed?

- Evaluate the arguments advanced for a single executive and those for a plural executive.
- How did the delegates try to achieve a balance between an energetic executive and limited government?

Suggested follow-up questions:

- a. The length of the term of office of the chief executive was controversial at the Philadelphia Convention and remains controversial to this day. Why?
- b. How did the office of president invented at Philadelphia differ from that of kings and colonial governors?
- c. Thomas Jefferson strongly opposed perpetual reeligibility of the president. He said, "There's your king!" Do you agree or disagree with Jefferson? Why?
- d. Why did the delegates reject the idea of direct election of the president by the people?
- e. What arguments can you give for and against the use of the Electoral College to select the president?



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3. **“Although the Anti-Federalists failed, they are entitled to their just shares of credit in the making of the Constitution.... The Anti-Federalists forced the Constitution’s supporters to engage in this dialogue and to explain and justify the new charter clause by clause. In resisting the Constitution, they compelled the American people to think more deeply than any other people, before or since, about what the basic principles of their government should be and how they should be put into effect.”* Do you agree or disagree with this appraisal? Why?**

- What basic principles were at the core of the debate between the Federalists and the Anti-Federalists?
- How was this debate widened to include the American people, not just delegates to the ratifying conventions? Why was widening the debate important?

* Richard B. Bernstein. *Are We to Be A Nation? The Making of the Constitution* (Cambridge, Mass: Harvard University Press, 1987), 229–230.

Suggested follow-up questions:

- a. What were the key objections to the proposed Constitution raised in the Anti-Federalists’ arguments?
- b. What principles of classical republicanism and the natural rights philosophy did the Anti-Federalists think would be endangered by the Constitution?
- c. Which fears of the Anti-Federalists do people express today? How valid are those fears?
- d. What do you think were the strongest arguments put forth by the Federalists in support of the Constitution?
- e. How important is it that the American people continue to consider and debate the basic principles of government? Why?



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

1. **“Throughout American history courts have played a major role in the development of public policy through the exercise of the power of judicial review.”* What is judicial review and how have the courts used this power to develop public policy?**
 - “The single most important post-1787 addition to checks and balances is judicial review.”** Do you agree or disagree with this view? Why?
 - Why has judicial review continued to be controversial?

* Jack C. Plano and Milton Greenberg. *The American Political Dictionary*, 11th ed. (Fort Worth: Harcourt College Publishers, 2005), 290.

** Richard A. Brisbin, Jr. “The Judiciary and the Separation of Powers,” in *The Judicial Branch*, Kermit Hall and Kevin T. McGuire, eds. (New York: Oxford University Press, 2005), 95.

Suggested follow-up questions:

- a. How can a court decision on the Constitution be changed?
- b. Why have the courts been reluctant to exercise judicial review?
- c. What are the best arguments you can give for judicial review?
- d. What are the best arguments you can give against judicial review?
- e. Should the executive and legislative branches, as well as the judiciary, possess the power to declare what the Constitution means? Why or why not?



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2. Reacting to the Supreme Court's decision in *Dred Scott v. Sandford* (1857), Abraham Lincoln said, "But we think the *Dred Scott* decision is erroneous. We know that the Court that made it has often overruled its own decisions and we shall do what we can to have it overrule this. We offer no resistance to it."* Why did Lincoln believe that the Supreme Court's decision was wrong?

- Why and how did Lincoln and others work to see that the *Dred Scott* case was overturned?
- Why do you think Lincoln said he would support no "resistance" such as mass demonstrations or other "revolutionary" behavior to overturn *Dred Scott*?

* Abraham Lincoln, "His Speech on the *Dred Scott* Decision, Springfield, Illinois, June 26, 1857," in *The Words of Abraham Lincoln: Speeches, Letters, Proclamations, and Papers of Our Most Eloquent President*. Martin Lubin, ed. (New York: Tess Press, 2005), 43.

Suggested follow-up questions:

- a. Why was the *Dred Scott* decision a major defeat for anti-slavery forces?
- b. What were the most important issues in the *Dred Scott* case?
- c. *Dred Scott* has been called one of the most important Supreme Court decisions in American history. Do you agree or disagree? Why?
- d. How did the Fourteenth Amendment invalidate the principle of citizenship established by the *Dred Scott* decision?
- e. What relationship, if any, might there be between the *Dred Scott* decision and Lincoln's issuing of the Emancipation Proclamation?



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3. How is the right to vote related to the concepts of popular sovereignty and the consent of the governed?
- The Constitution does not expressly provide a right to vote, but could such a right be implied by the Preamble and other provisions of the Constitution? Why?
 - Although Americans fought hard to remove legal barriers to the vote, their turnout at elections remains low compared to other Western democracies.* Why? How might turnout be improved?

* See U.S. Federal Electoral Commission. www.fec.gov.

Suggested follow-up questions:

- a. Evaluate the arguments for and against property requirements for suffrage.
- b. Some countries require citizens to vote and fine them if they fail to do so. Would you favor or oppose such a requirement in the United States? Why?
- c. How and why did women use the Declaration of Independence in their quest for the right to vote?
- d. Should felons be disenfranchised? Even after they have served their sentences?
- e. Should the voting age be lowered? If so, to what age and why? If not, why not?



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STATE HEARING FOLLOW-UP QUESTIONS 2009 – 2010

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

1. **Presidential power has increased dramatically since the early 1930s. What factors have contributed to that growth of power? On balance, is the growth of presidential power a healthy or a detrimental development? Why?**
 - How is the system of checks and balances designed to limit the exercise of presidential power and how well does it work?
 - How can public opinion affect presidential power?

Suggested follow-up questions:

- a. Would you support a constitutional amendment to change the president's tenure in office from a fixed term to a vote-in-confidence system as in Great Britain? Why or why not?
- b. How would you distinguish between executive orders and signing statements? In what ways can they enhance or endanger our system of shared powers?
- c. In *Federalist 70*, Alexander Hamilton argued that "all men of sense will agree on the necessity of an energetic executive." How would you describe an "energetic executive" and do you agree with Hamilton that one is needed? Why or why not?
- d. How would you describe what Hamilton called a "feeble executive"? In what ways might a feeble executive be as dangerous as an overly "energetic" executive?
- e. Has Congress relinquished too much power to the president? What evidence can you offer to support your opinion?



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2. **“The essence of law-making in Congress is the quantity and quality of its deliberation.”*** How would you define deliberation and do you agree or disagree that deliberation should be at the core of law-making? Why?

- What provisions of the Constitution encourage or discourage deliberation in Congress?
- In addition to its primary responsibility to legislate, what other responsibilities does Congress have and why are they important?

*Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006), 212.

Suggested follow-up questions:

- a. What are the advantages and disadvantages of the strong committee system used in Congress?
- b. What purposes are served by public hearings held by congressional committees?
- c. The Constitution provides that each house of Congress shall be the sole judge of the election and qualifications of its members. How important is that provision? Why?
- d. Some critics claim that the increase in partisanship in Congress is detrimental, even corrosive. Do you agree or disagree? Why?
- e. How can you as an individual or as a member of a group participate in the deliberative process in Congress?



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3. How does federalism try to avoid the overcentralization of unitary governments and the extreme decentralization of confederations?

- What governing powers does the U.S. Constitution leave to the states? What powers does it deny to the states?
- What are the major advantages of federalism? The major disadvantages?

Suggested follow-up questions:

- a. What is the relationship, if any, between federalism and limited government?
- b. Why is there continuing conflict between state and national authority?
- c. Why did the Framers provide that some powers of the government be reserved to the states?
- d. How is your state's constitution similar to and different from the U.S. Constitution with respect to separation of powers and checks and balances?
- e. Why do you think many countries have adopted federal systems influenced to varying degrees by the American model?



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

1. **“Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be.”* Do you agree or disagree with this assertion? Why?**

- How can Americans most effectively express their convictions about what laws and policies should be?
- What limits, if any, should a democratic government be permitted to place on freedom of expression?

* Ronald Dworkin, “The Right to Ridicule,” *New York Review of Books*, 53/5 (23 March, 2006), in *Free Speech: A Very Short Introduction*, Nigel Warburton (Oxford/New York: 2009), 3–4.

Suggested follow-up questions:

- a. What sources other than government can endanger freedom of expression?
- b. What historical and/or contemporary examples can you cite that have endangered or curtailed freedom of expression?
- c. What is symbolic speech and why is it protected in a democratic society?
- d. How is increased use of the Internet affecting freedom of expression both positively and negatively?
- e. How would you define “hate speech” and is it deserving of First Amendment protection? Why or why not?



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

2. Justice Antonin Scalia claims that juries are “the spinal column of American democracy.”* Would you agree or disagree with this characterization of juries? Why?

- What is the relationship, if any, between the right to trial by jury and limited government?
- 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 one another?

* Justice Antonin Scalia, “American Institutions of Democracy,” in *The Judicial Branch*, Kermit L. Hall and Kevin J. McGuire, eds. (New York: Oxford University Press, 2005), 419.

Suggested follow-up questions:

- a. What purposes are served by the right to be tried by a jury of your peers?
- 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. How would you respond to critics who say jury trials are too time-consuming and costly?
- d. What are the criteria for a fair trial as set forth in the Sixth Amendment?
- e. In a criminal trial the law requires proof of guilt beyond a reasonable doubt. How would you explain “a reasonable doubt”?

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



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3. Why does the establishment clause generate the fiercest arguments about religion-related constitutional rights, even though there have been no established state churches in America for two centuries?

- What are the major differences between the establishment and free exercise clauses of the First Amendment?
- How and why might the establishment and free exercise clauses come in conflict?

Suggested follow-up questions:

- a. In what ways, if any, is freedom of religion bound up with other freedoms guaranteed by the First Amendment?
- b. What criteria should be used to determine which religious practices should be protected and which practices government may limit?
- c. How would you explain the principle of separation of church and state?
- d. Does the wording of the First Amendment reflect hostility toward religion? Why or why not?
- e. What role, if any, should government play in fostering or in limiting religious diversity?



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

1. A scholar recently wrote:

*The Constitution of the United States along with its 27 amendments defines the opportunities, rights, privileges and obligations of its population.**

What opportunities does the Constitution offer and why are those opportunities important?

- Why do you think the scholar speaks of “opportunities, rights, privileges and obligations of its population” rather than just those of the nation’s leaders? Its citizens?
- In what ways, if any, are rights and obligations related?

* Jean H. Baker. *New Essays on American Constitutional History: Women and the U.S. Constitution 1776–1920* (Washington, D.C.: American Historical Association and The Institute for Constitutional Studies, 2009), vii.

Suggested follow-up questions:

- a. In what ways are the rights and responsibilities of citizens and resident aliens alike? In what ways do they differ?
- b. What do you think are some of the most important legal rights and obligations of citizens?
- c. What do you think are some of the most important moral rights and obligations of all persons in the United States?
- d. Which amendments to the U.S. Constitution have profoundly extended opportunities and rights to persons who previously did not enjoy them?
- e. What opportunities to participate in civic life are open to you in your own school and community?



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2. **“The Supreme Court commands no armies. Civil Rights could not become effective until both the executive and the legislature had also put their weight behind them.”***
How does Congress “put its weight” behind civil rights?
- What role does the executive branch play in the enforcement of civil rights?
 - How and why are Supreme Court decisions carried into effect, even though the Court “has no armies”?

* *Concise Oxford Dictionary of Politics*. Iain McLean and Alistair McMillan, eds. (New York: Oxford University Press, 2009), 79.

Suggested follow-up questions:

- a. Why was the Voting Rights Act of 1965 needed to enforce the provisions of the Fifteenth Amendment?
- b. What role has civil society played in the extension of civil rights?
- c. Why has the Civil Rights Act of 1964 been called the most far-reaching civil rights legislation in American history?
- d. The Thirteenth, Fourteenth, and Fifteenth Amendments all end with the words “Congress shall have the power to enforce this article by appropriate legislation.” What is the significance of that provision?
- e. What do you think are the major civil rights issues today? Why?



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3. **“Citizenship in a democracy is more than a legal status, it is a character or spirit, an ethos that guides relationships among persons and animates individual commitment to fundamental principles of democracy.”* Do you agree or disagree with this characterization of democratic citizenship? Why or why not?**
- How does the Fourteenth Amendment define citizenship and what important rights does it confer?
 - What is the relationship, if any, between the rights and the responsibilities of citizens in a democracy?

* *Res Publica: An International Framework for Education in Democracy* (Calabasas, California: Center for Civic Education, 2003), 40.

Suggested follow-up questions:

- a. What are the fundamental principles of democracy and why is the individual's commitment to those principles important?
- b. Should all Americans be required to demonstrate a belief in and a commitment to the principles of the Constitution in order to vote? If so, how should that belief and commitment be demonstrated?
- c. How do the rights and responsibilities of citizens differ from those of resident aliens?
- d. What do you think are the most important legal rights and obligations of citizenship?
- e. What do you think are the most important moral rights and obligations of citizens?