



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 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?
- 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?
- 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.

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

* 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.



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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.

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?

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.



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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.

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?

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?



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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.

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.

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.



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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.

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.

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?



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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.

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.

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.