



# We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

## HIGH SCHOOL NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2018–2019

### Unit 1: What Are the Philosophical and Historical Foundations of the American Political System?

#### 1. Why did the Founders prefer a republican form of government to a democracy?

Does such sentiment exist today? Explain your response.

- What evidence, if any, is there that suggests that the United States has evolved from being a republic to being a democratic republic?
- What civic dispositions among the people are required for the healthy functioning of a democratic republic? Should government encourage civic dispositions that promote a healthy, functioning democratic republic? If not, why not? If so, how?

#### 2. Our system of government is based on both natural rights philosophy and classical republicanism. Which philosophy, if any, has predominated American political thought, and what have been the benefits and costs of this predominance?

- What examples of contemporary issues can you describe that reflect the tension between classical republican ideas and those of natural rights philosophy?
- What position would you take on which of the philosophies, if either, should prevail? Explain what principles and values underlie your position.

#### 3. What impediments to majority rule did the Framers embed in our Constitution?

What have been the consequences of these impediments?

- Are the reasons the Framers embedded impediments to majority rule in the Constitution persuasive today? Explain your position.
- What evidence is there, if any, that the Framers' fear of majority rule is validated by the actions of other democracies that practice majority rule?



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### Unit 2: How Did the Framers Create the Constitution?

**1. The state constitution developed in Pennsylvania in 1776 was considered the most democratic of the state constitutions, and it provoked considerable controversy. “Working for eight weeks, the constitution drafters considered and then rejected three of the most honored elements of English republican thought.”\* What elements did they reject when writing the Pennsylvania constitution, and what were their reasons for doing so?**

- What are the advantages and disadvantages of a unicameral legislature? Do you prefer a unicameral or a bicameral legislature, and on which fundamental democratic values and principles or other interests is your opinion based?
- What impact, if any, did the Pennsylvania constitution have on the U.S. Constitution?

\* Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Penguin Books, 2006), 273.

**2. “The Constitution was designed to foster a healthy rivalry between the legislative and executive branches, but one in which the president was subordinate to Congress.”\* Do you agree or disagree with Thomas Mann and Norman Ornstein? Why? Why do you think some of the Framers of the Constitution intended the president to be subordinate to Congress? What fundamental democratic principles and values are reflected in this position?**

- Which of the three branches of the national government appears to have the greatest influence on public policy today? What evidence do you have for your position?
- What changes, if any, would you suggest be made in the balance of powers among the three branches of the national government? On which fundamental democratic values and principles or other important interests is your opinion based?

\* 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), 37.

**3. “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”\* How does the system of government created by the Framers of Constitution “oblige [the government] to control itself”? Explain your position.**

- Is our system of separated and shared powers enough to control the government to ensure it does not become tyrannical and violate the rights of the people and the common good? Explain your position.
- What civic virtues of citizens and elected officials, if any, are required to prevent the emergence of a tyranny, secure the rights of the people, and foster the common good? Explain your position.

\* Publius, “The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments” (Federalist 51), *New York Packet*, March 18, 1788, The Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/fed51.asp](http://avalon.law.yale.edu/18th_century/fed51.asp).



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### Unit 3: How Has the Constitution Been Changed to Further the Ideals Contained in the Declaration of Independence?

1. **“The Civil War had a greater impact on American society and the polity than any other event in the country’s history. It was also the most traumatic experience endured by any generation of Americans.”\* Do you agree or disagree with James McPherson? Why?**

- What impact, if any, did the Thirteenth, Fourteenth, and Fifteenth Amendments have on America?
- What impact, if any, did the Civil War have on the social and economic culture of America?

\* James M. McPherson, “Out of War, a New Nation,” *Prologue Magazine* 42, no. 1 (Spring 2010) National Archives, <https://www.archives.gov/publications/prologue/2010/spring/newnation.html>.

2. **Originally, the Bill of Rights only limited the powers of the national government. After the passage of the Fourteenth Amendment, the U.S. Supreme Court decided to selectively hear cases related to the Bill of Rights and state power. Through the doctrine of incorporation, the U.S. Supreme Court declared that many of the rights listed in the Bill of Rights also limited the powers of the state governments, as well as the national government. How has the doctrine of incorporation both expanded and limited the liberty of Americans?**

- Should states have the power to decide what rights they want to protect? Why or why not?
- Does the confiscation of a person’s property that is worth more than a fine established by law violate the “excessive fines” clause of the Eighth Amendment? Should the excessive fines clause be incorporated? Why or why not?\*

\* *Timbs v. Indiana*, Oyez, accessed January 30, 2019, <https://www.oyez.org/cases/2018/17-1091>.

3. **“It is well known, for instance, that only property owners could vote at the end of the eighteenth century, but why exactly was this the case? Why in fact did it take so long for women to gain the vote? ... Why did those who were already enfranchised, such as property-owning white males, cut anybody else in on the deal? ... Why did the right to vote expand at certain times and certain places, while contracting in others?”\* What principles in the Declaration of Independence and Constitution are related to this issue? Explain what position you would take on the issue.**

- What constitutional amendments expanded suffrage, and what was their impact?
- What was the impact of the Voting Rights Act of 1965?

\* Alexander Keyssar, *The Right to Vote: A Contested History of Democracy in the United States* (New York: Basic Books, 2009), xxiii.



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### Unit 4: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

1. **“On one side of Capitol Hill [the Senate], then, the give and take that ought to be part of the legislative process is now far too easily shut down by the minority. On the other side [the House], it’s all too often shut down by the majority. ... There are several instances in which our Constitution calls for more than a simple majority ... On everything else, let’s allow a measure onto the floor through a fair process, then vote it up or down by simple majority rule. Why should the world’s greatest democracy not practice democracy?”\*** Do you agree or disagree with this criticism of the way Congress is working today and the remedy suggested? Explain your position.

- Under what conditions, if any, do you think that more than a simple majority—a “supermajority”—should be required to pass a law? Does requiring supermajorities result in minority rule? Explain your position.
- What rules, if any, in the House or Senate allow a minority to stop legislation supported by a majority? Do you support or oppose such rules? Explain your position.

\* Lee H. Hamilton, *Congress, Presidents, and American Politics: Fifty Years of Writings and Reflections* (Bloomington: Indiana University Press, 2016), 328.

2. **“The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void.”\*** What limits, if any, should there be on the Supreme Court’s power to declare acts of Congress and other branches of government unconstitutional? Explain your position.

- What are the advantages and disadvantages of the U.S. Supreme Court exercising its power of judicial review?
- What are the advantages and disadvantages of the president nominating Supreme Court justices and the Senate confirming them?

\* Publius (Alexander Hamilton), “The Judiciary Department” (Federalist 78), *McLEAN’s Edition*, n.d., The Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/fed78.asp](http://avalon.law.yale.edu/18th_century/fed78.asp).

3. **Oversight is an implicit constitutional responsibility of Congress. “It was not considered necessary to make an explicit grant of such authority [in the Constitution]. ... The power to make laws implied the power to see whether they were faithfully executed.”\*** Do you agree or disagree with historian Arthur Schlesinger Jr.?

- What formal powers are granted in the Constitution to Congress to hold the president and the rest of the executive branch accountable for their actions or inactions?
- How does congressional oversight work, and what are some of its advantages and disadvantages?

\* Arthur M. Schlesinger Jr. and Roger Burns, *Congress Investigates: A Documented History, 1792–1974, Volume 1* (New York: Chelsea House Publishers, 1975), 19.



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### Unit 5: What Rights Does the Bill of Rights Protect?

1. In 1928, Justice Louis Brandeis argued that the Founders had “conferred against the government, the right to be let alone—the most comprehensive of rights and the right most favored by civilized men.”\* What is the right to privacy, and where is the right to privacy implied in the Constitution or Bill of Rights?

- “If a dictator ever took charge in this country, the technological capacity that the intelligence community has given the government could enable it to impose total tyranny.”\*\* Is this warning by former senator Frank Church still relevant today? Why or why not? What impact, if any, has the Church Committee had on the right to privacy?
- How do we balance the government’s “need to know” in combating national security threats and our right to privacy?

\* *Olmstead v. United States*, 277 US 438 (1928).

\*\* NBCUniversal Archives, “The Intelligence Gathering Debate - www.NBCUniversalArchives.com,” filmed August 18, 1975, *Meet the Press* video, 1:48, <https://youtu.be/YAG1N4a84Dk>.

2. “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.”\* Do you agree or disagree with Justice Robert H. Jackson’s opinion about rights? Why?

- If you believe in popular sovereignty, political equality, and majority rule, how can you support the idea that the majority cannot limit rights that some people claim are fundamental?
- What rights, if any, do you think are fundamental to the preservation of democracy, and what is the importance of political culture to the maintenance of these rights? Explain your position.

\* *West Virginia State Board of Education v. Barnette*, 319 US 624 (1943).

3. It has been fifty years since the landmark case of *Tinker v. Des Moines*. “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”\* Since *Tinker*, have the rights of students in public schools been expanded or limited?

- “If the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.”\* Do you agree or disagree with Justice Hugo Black’s dissent in *Tinker*? Why or why not?
- Should students suspected or accused of breaking school rules have the same due process rights as juveniles or adults accused of crimes? Explain your position.

\* *Tinker v. Des Moines Independent Community School District*, 393 US 503 (1969).



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### Unit 6: What Challenges Might Face American Constitutional Democracy in the Twenty-first Century?

**1. Today, more than one million immigrants come to the United States each year, more than to any other country in the world. In 1970, immigrants were 4.7 percent of the population. Today, there are more than 43 million immigrants living in the United States, which is around 14 percent of the population.\* What are some of the most commonly claimed benefits and costs of immigration? What evidence supports or contradicts these claims?**

- What are the advantages and disadvantages of our present immigration policy?
- How great a problem is illegal immigration, and what are our current policies for dealing with it? What changes, if any, would you suggest? Explain your position.

\* Migration Policy Institute, “U.S. Immigrant Population and Share over Time, 1850-Present,” accessed January 28, 2019, <https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-over-time>.

**2. Publius wrote in Federalist 51, “A dependence on the people is, no doubt, the primary control on the government.”\* Fair and frequent elections are the foundation of democratic republics, where the people have the ultimate control of their government. The people select the person they wish to serve in public office on their behalf. How fair is our electoral system? To what extent does it provide for political equality and majority rule? What improvements, if any, would you make in our electoral system?**

- What are the benefits and costs of our plurality/majority system compared with proportional systems?
- What are some examples of current attempts to make our system more fair?  
Explain what position you support regarding these attempts.

\* Publius (Alexander Hamilton or James Madison), “The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments” (Federalist 51), *New York Packet*, March 18, 1788, The Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/fed51.asp](http://avalon.law.yale.edu/18th_century/fed51.asp).

**3. “A decade ago, 80 percent of Americans agreed with the statement that a free market economy is the best system. Today, it is 60 percent, lower than in China. One recent poll found that only 42 percent of millennials supported capitalism. In another, a majority of millennials said they would rather live in a socialist country than a capitalist one.”\* What do you think are the advantages and disadvantages of capitalism and socialism?**

- Most countries, including the United States and Sweden, have a mixed economic system that includes elements of capitalism and socialism. What elements of capitalism and socialism can you identify in the economy of the United States? What changes, if any, would you suggest be made in our economic system?
- What are the similarities and differences in the positions of democratic capitalists, democratic socialists, and social democrats? Which, if any, do you prefer? Explain your position.

\* Steven Pearlstein, *Can American Capitalism Survive? Why Greed Is Not Good, Opportunity Is Not Equal, and Fairness Won't Make Us Poor* (New York: St. Martin's Press, 2018), 2.