



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.

NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2011–2012

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

1. Why is a constitution considered a higher law?

- What are the major characteristics of a higher law?
- What are the advantages and disadvantages of a written constitution? Of an unwritten constitution?

2. In what ways, if any, did the constitutions of the newly independent states reflect Americans' profound distrust of executive power?

- How justified do you think American distrust of executive power was? What evidence can you offer to support your answer?
- Evaluate the arguments for legislative supremacy.

3. "The initial identification of the colonial population as 'Americans' came from English writers, who used the term negatively as a way of referring to a marginal or peripheral population unworthy of equal status with full-blooded Englishmen."* How and why did the colonists refuse that characterization?

- Why were written guarantees of rights in colonial documents important to the development of Americans' ideas about individual rights and government?
- What values from natural rights philosophy did the colonists use to counter their identification as inferiors?

* Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Alfred A. Knopf, 2000), 10.



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Unit Two: How Did the Framers Create the Constitution?

1. In 1785, George Washington described government under the Articles of Confederation as “little more than an empty sound, and Congress a nugatory [inconsequential] body.”* How accurate was that description? What evidence can you offer to support your judgment?

- What concerns made it difficult for the Continental Congress to devise an effective central government?
- Despite its weaknesses, what were the achievements of the central government under the Articles of Confederation?

* Washington quoted in Pauline Maier, *Ratification: The People Debate the Constitution, 1787–1788* (New York: Simon and Schuster, 2010), 14.

2. The Framers believed that a concentration of power leads to tyranny. How did they seek to ensure that no one branch of government could dominate?

- How did the Framers try to ensure that the national government could not dominate the states?
- What are the advantages and disadvantages of a system of divided and shared powers?

3. George Mason, one of the three delegates who refused to sign the Constitution, wrote his objections in a pamphlet that was widely circulated.* Evaluate each of the following of Mason’s objections.

- “There is no declaration of rights, and the laws of the general government being paramount to the laws and constitutions of the several States, the declarations of rights in the separate States are no security.”
- “The President of the United States has no constitutional Council...and will generally be directed by minions [henchmen/lackeys] and favorites—or he will become a tool to the Senate.”
- “Under...the general clause [Article I, Section 8]...the Congress may...extend their power as far as they shall think proper.”

* The objections of George Mason to the proposed Federal Constitution of 1787 in Paul Leicester Ford, ed., *Pamphlets on the Constitution of the United States* (Brooklyn, New York: 1888), 327–32 passim. See also the Center for Civic Education’s lesson on George Mason at <http://www.civiced.org> (in press).



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

1. Some political scientists contend that the lessons of history demonstrate that political parties are an integral part of democratic systems. Do you agree or disagree? Why?

- Why did the Founders initially oppose political parties?
- A longtime member of Congress writes that politics is “a contact sport, and hard-hitting partisan competition is unavoidable, even desirable.”* Do you agree or disagree? Why?

* Lee H. Hamilton, *Strengthening Congress* (Bloomington and Indianapolis: Indiana University Press, 2009), 52.

2. How would you describe the doctrine of judicial review and what are the major arguments for and against it?

- *Marbury v. Madison* has been called the most important decision in American history. Does it deserve that distinction? Why or why not?
- A few states and some foreign countries require judges of the highest court to advise the executive and the legislature when asked to do so. Presidents George Washington and Franklin Roosevelt also favored the idea. Evaluate the U.S. Supreme Court’s continuing refusal to provide advisory opinions.

3. In what ways did the Constitution of the Confederate States of America resemble the United States Constitution?

- What were the most important differences between the Confederate Constitution and the U.S. Constitution?
- Evaluate the arguments the Confederates made to justify their right to secede.



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

1. What are the major ways in which the United States Congress differs from the British Parliament?

- In what ways are the U.S. Congress and the British Parliament similar?
- What might be the advantages of mingling executive and legislative powers, such as in the British parliamentary system?

2. “Federalism is a singularly American invention described by one political scientist as ‘the greatest of American contributions to the art of government.’”^{*} Do you agree or disagree with this appraisal of federalism? Why or why not?

- Why did the Framers “invent” federalism at the Philadelphia Convention?
- What do you consider to be the major strengths and weaknesses of federalism? Why?

^{*} Leslie Lipson, *The Democratic Civilization* (New York: Oxford University Press, 1964), 3. Quoted in Larry N. Gerston, *American Federalism: A Concise Introduction* (Armonk, New York and London: M.E. Sharpe, 2007), 6.

3. Woodrow Wilson described Congress in session as Congress on public exhibition, whereas Congress in its committee rooms as Congress at work.^{*} How accurate is that characterization? What evidence can you offer to support your answer?

- How do committees help Congress organize to do its work?
- Legislation is shaped more in committees than on the floor of the House and Senate. Bills tend to pass in a form that they are reported out of committee. Is that a healthy development? Why or why not?

^{*} Woodrow Wilson quoted in Donald A. Ritchie, *The U.S. Congress: A Very Short Introduction* (New York: Oxford University Press, 2010), 44.



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

1. In Federalist 51, James Madison argued, “It is of great importance in a republic not only to guard against the oppression of its rulers, but to guard one part of the society against the injustice of the other part.... If a majority be united by a common interest, the rights of the minority will be insecure.” Has history proven Madison to be correct? What evidence can you offer to support your answer?

- What guarantees of individual rights are contained in the Bill of Rights?
- Why is listing in a constitutional document an insufficient guarantee of a right? What more is needed?

2. How and why are the rights of assembly, petition, and association linked to the concept of popular sovereignty?

- How have these rights been used throughout American history to protect the rights of individuals and minorities?
- Do the rights of petition and assembly imply a corresponding duty on the part of government to respond? Why or why not?

3. “Not the least significant test of the quality of a civilization is its treatment of those charged with crime, particularly with offenses which arouse the passions of a community.”* Do you agree or disagree with the opinion expressed here? Why or why not?

- Why is it important for criminal defendants to have rights before, during, and after trial?
- What procedural rules contained in the Bill of Rights protect individuals against the power of the government? Why are they important?

* Felix Frankfurter, *Irvin v. Dowd*, 366 U.S. 717, 729–30 (1961) (concurring).



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

1. A constitutional scholar warns that the national surveillance state has become a permanent feature of government “and will become as ubiquitous [widespread] in time as the familiar devices of the regulatory and welfare states.”* How seriously do you think this warning should be taken? Why? What evidence can you offer to support your response?

- Are the constitutional provisions in the Fourth and Fifth Amendments for controlling and preventing abuses of the power of surveillance adequate, or do they need to be strengthened? If so, how? If not, why not?
- Should Congress pass new super-statutes that restrict the kinds of data that governments and/or private companies may collect, collate, and use against people or sell? Why or why not?

* Jack M. Balkin, “The Constitution in the National Surveillance State,” in *The Constitution in 2020*, ed. Jack M. Balkin and Reva B. Siegel (New York: Oxford University Press, 2009), 198–99.

2. John F. Kennedy concluded his inaugural address with this now-famous challenge: “And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country.”* How would you answer his question? What can and should an American do for his or her country? Why?

- What obligations, if any, does the United States owe to each individual? Why?
- What knowledge, skills, and attitudes enable individuals to “do something” or make a positive contribution to their country?

* John F. Kennedy, Inaugural Address, January 20, 1961.

3. Immigration has been called “an enduring American argument”* extending from the time of William Penn to the present day. What are the major arguments in favor of a less restricted immigration policy? In favor of a more restricted policy?

- Why has “illegal” or “undocumented” immigration become a major and as yet unresolved political issue?
- How would you explain the American goal of *e pluribus unum* and how successful has the United States been in achieving it? What evidence can you offer to support your answer?

* See Howard Fineman, “Who Is an American,” in *The Thirteen American Arguments: Enduring Debates that Define and Inspire Our Country* (New York: Random House Trade Paperback Edition, 2009), 38–55.