



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

HIGH SCHOOL NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2017–2018

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

1. What are classical republicanism and natural rights philosophy, and how did they influence the Declaration of Independence, the Constitution, and the Bill of Rights?

- Which, if either, of these two sometimes competing philosophies has prevailed in the United States since the founding period? Explain your position and give evidence to support it.
- What contemporary conditions of American society and governance, if any, can be attributed to the tension between classical republicanism and natural rights philosophy? Explain your position and give evidence to support it.

2. In 1833, James Madison wrote, “the general question must be between a republican Government in which the majority rule the minority, and a Government in which a lesser number or the least number rule. ... No government ... can be perfect ... the abuses of all other governments have led to the preference of republican government as the best of all governments, because the least imperfect; that the vital principle of republican government is the *lex majoris partis*, the will of the majority.”* Does the U.S. Constitution establish a system in which the majority always prevails over the minority? What evidence supports your position?

- The Framers of the Constitution were concerned with the protection of the rights of the minority from possible abuses by a majority in Congress. What minority did they think needed protecting? What evidence did they have that it needed protecting?
- What institutional arrangements did the Framers provide to protect the rights of the minority they were concerned about?

* James Madison, *The Mind of the Founder: Sources of the Political Thought of James Madison*, ed. Marvin Meyers (Hanover: University Press of New England, 1981), 412 and 416.

3. In John Locke’s *Second Treatise of Government*, he asked this question: “If man in the state of nature be so free as has been said; if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom?”* How did Locke answer this question? Do you agree or disagree with Locke’s answers? Why or why not?

- Explain why both John Locke and Thomas Jefferson claimed that there was a “natural law” in a state of nature. Do you agree or disagree with their position? Explain your position.
- What did Locke mean by a “social contract”? Why did he think it necessary, and what obligations does it place on the individual?

* John Locke, “Of the Ends of Political Society and Government,” in *Locke: Political Writings*, ed. David Wootton (Indianapolis: Hackett Publishing Company, Inc., 2003), 324.



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Unit 2: How Did the Framers Create the Constitution?

1. According to one historian, “most Antifederalist leaders disparaged Madison’s proposed amendments, which they considered positively harmful because their enactment would be likely to reduce the prospects of securing the sort of amendments they deemed necessary.”* What sort of amendments did the Anti-Federalists think were necessary?

- What were the Anti-Federalists’ objections to Madison’s proposed amendments?
- What additional rights, if any, should be added to the Constitution? Explain your position.

* Michael J. Klarman, *The Framers’ Coup: The Making of the United States Constitution* (New York: Oxford University Press, 2016), 594.

2. “The general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy.”* What impact, if any, did these “evils” have on the drafting of the Constitution and the type of government it established?

- What evidence of these “evils” was there in the colonies just before the American Revolution and in the newly independent states up to the time of the Philadelphia Convention?
- To what extent, if any, do the “follies of democracy” referred to by Edmund Randolph exist today? Explain your position.

* Edmund Randolph, “The New Nation, 1783–1815,” Library of Congress, accessed January 25, 2018, <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/newnatn/usconst/debates.html>.

3. James Madison opposed the Connecticut Compromise, which gave the Senate equal representation and gave proportional representation to the House of Representatives. What were the arguments in favor of the Connecticut Compromise, and what arguments did Madison make in opposition?

- Assuming there is little or no evidence in the history of the House of Representatives of its passing bills detrimental to small state governments or their citizens, what other arguments can you give to support equal representation in the Senate?
- What fundamental democratic principles and values are involved in the issue regarding equal and proportional representation in the Senate?



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

1. **“The Constitution makers knew the need for change, and provided for it. Amendments suggested by the people’s elected representatives can be submitted to the people or their selected agents for ratification. That method of change was good for our Fathers ... I must add it is good enough for me.”*** What is the amendment process and how effective has the process been?

- How, if at all, does the difficulty of the amendment process inhibit the realization of the principle of popular sovereignty? What remedy, if any, would you suggest? Explain your position.
- How does the amendment process compare with amendment processes in state constitutions and those of other advanced democracies?

* *Griswold v. Connecticut*, 381 US 479 (1965).

2. **“Our fathers believed that if this noble view of the rights of man was to flourish, it must be rooted in democracy. The most basic right of all was the right to choose your own leaders. The history of this country, in large measure, is the history of the expansion of that right to all of our people.”*** How has the right to vote expanded since the ratification of the Constitution?

- Does a state violate the equal protection clause of the Fourteenth Amendment when it disregards neutral redistricting principles to achieve an advantage for one political party? Why or why not?
- What are the advantages and disadvantages of using the Electoral College to determine the presidency? What alternative, if any, would you suggest? Explain your position.

* Lyndon Johnson, “President Johnson’s Special Message to the Congress: The American Promise,” LBJ Presidential Library, <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>.

3. **How has the relationship among the three branches of the national government changed since the time of the founding of the nation? What problems, if any, have resulted from these changes? Explain your position.**

- What challenges, if any, do changes in the relationship and roles of the three branches of government pose for the fundamental principles of representative democracy? Explain your position.
- What remedies, if any, would you suggest for any problems you have identified? Explain your position.



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

1. The War Powers Act of 1973 provides that the president can send the armed forces into action abroad only by a declaration of war by Congress, “statutory authorization,” or in case of a “national emergency created by attack upon the United States, its territories or possessions, or its armed forces.”* How effective has the War Powers Act been at checking the president’s power to engage the military power of the United States in conflicts in other nations?

- What are Congress’s constitutional war-making powers and to what extent has it ceded them to the presidency? What action, if any, do you think should be taken in this regard?
- Should the president alone have the authority to engage the United States in nuclear war? Explain your position and any alternative you propose.

* War Powers Act of 1973, Pub. L. 93–148, §2, Nov. 7, 1973, 87 Stat. 555 (1973).

2. Brutus 15 observed that in England, the decisions of the judges were subject to correction by the House of Lords. However, the American Constitution has no such provision for overruling the decisions of the judicial branch. The powers of the judiciary under the proposed U.S. Constitution “transcends any power before given to a judicial by any free government under heaven.”* How has the power of the judicial branch changed since it was first established? What has helped to bring about this change? Is it too powerful? Explain your position.

- Is the power of judicial review consistent with democratic principles in a republican form of government? Why or why not?
- What checks, if any, does Congress have on the judicial branch?

* Ralph Ketcham, *The Anti-Federalist Papers and the Constitutional Convention Debates: The Clashes and Compromises That Gave Birth to Our Government* (New York: Penguin, 2003), 305.

3. Since the Virginia House of Burgesses in 1619, people have relied on democratically elected legislative bodies to promote both individual liberty and the common good. At one time, the U.S. Congress was regarded as the most august legislative body in history. Why is the approval rating of Congress so low today? What is the role of Congress in promoting both individual liberty and the common good?

- What is the role, if any, of negotiation and compromise in a legislative body?
- How does the current level of polarization affect the functioning of Congress? Explain your position.



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

1. **The Stored Communications Act of 1986 provides that government may demand the disclosure of some telecommunications records when “specific and articulable facts show that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”*** Under what circumstances, if any, should warrantless searches of electronically stored information on private and other nongovernmental devices and servers be allowed?

- How has the Court’s interpretation of the Fourth Amendment changed since the *Olmstead v. United States* decision in 1928?
- Does the warrantless search and seizure of cell phone records, which include the location and movements of cell phone users, violate the Fourth Amendment? Why or why not?

* The Stored Communications Act of 1986, Pub. L. 99–508, §2709, Oct. 21, 1986, 100 Stat. 1848 (1986).

2. **“There is no principle in all of Madison’s wide range of private opinions and long public career to which he held with greater vigor and tenacity than this one of religious liberty.”*** What is the role of government, if any, in protecting or promoting religious liberty?

- Do laws like Mississippi’s “Protecting Freedom of Conscience from Government Discrimination Act” violate the establishment or free exercise clauses of the First Amendment? Why or why not?
- Should a cake baker be compelled to make a cake for a same-sex wedding if the baker claims that doing so would violate his religious beliefs and is contrary to his right to free speech and free exercise of religion under the First Amendment? Why or why not?

* Robert S. Alley, *James Madison on Religious Liberty* (New York: Prometheus Books, 1985), 187.

3. **“If I were king, I would not allow people to go about burning the American flag. However, we have a First Amendment, which says that the right of free speech shall not be abridged. ... Burning the flag is a form of expression. Speech doesn’t just mean written words or oral words. ... Burning a flag is a symbol that expresses an idea.”*** Do you agree or disagree with Justice Scalia’s opinion? Why or why not? How has the meaning of free speech as defined by the courts changed over time?

- Should the government ban websites that advocate hate speech towards ethnic, racial, or religious groups? Why or why not?
- What, if any, are the restrictions courts have placed on freedom of expression? Which of these restrictions do you support or oppose? Explain your positions.

* “Antonin Scalia: Flag Burning ‘A Form of Expression,’” CNN video, July 21, 2012, <https://www.cnn.com/videos/tv/2016/02/13/scalia-burning-flag-piers-intv.cnn/video/playlists/supreme-court-justice-antonin-scalia-dead/>.



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

- 1. In 1875, the U.S. Supreme Court ruled that the power to set rules surrounding immigration and to manage foreign relations rested with the United States national government rather than with the states.* What criteria, if any, should immigrants be required to meet to enter the United States?**
 - What changes, if any, would you suggest to U.S. immigration policy? Explain your position.
 - Should “sanctuary cities” be forced by the federal government to detain an illegal immigrant if the government does not have a warrant? Why or why not?

* *Chy Lung v. Freeman*, 92 U.S. 275 (1875)

- 2. In his farewell address George Washington said, “Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations.”* Do you agree or disagree with Washington’s assessment? Why or why not?**
 - To what extent, if any, do you think Washington’s perspective has influenced how Americans view themselves as citizens of their nation, of their states, and of their local communities?
 - To what extent, if any, has globalization presented a challenge to Washington’s perspective?

* George Washington, “Washington’s Farwell Address to the People of the United States,” September 19, 1796, <https://www.gpo.gov/fdsys/pkg/GPO-CDOC-106sdoc21/pdf/GPO-CDOC-106sdoc21.pdf>.

- 3. “The local interests of a state ought in every case to give way to the interests of the Union: For when a sacrifice of one or the other is necessary, the former becomes only an apparent, partial interest, and should yield, on the principle that the small good ought never to oppose the great one.”* Do you agree or disagree with Alexander Hamilton? Why or why not? In what areas, if any, should states be considered sovereign and not subject to the authority of the national government? Explain your position.**
 - What examples can you provide of issues that are best handled by the national government, state governments, or shared among them?
 - Despite federal law prohibiting the possession and use of marijuana, half of the states and some local governments have legalized the recreational or medical use of marijuana. What power, if any, do states and local governments have to pass such laws? Explain your position.

* Alexander Hamilton, *The Papers of Alexander Hamilton, Volume I*, eds. Harold C. Syrett, Jacob E. Cooke (New York: Columbia University Press, 1962), 70.