



# 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 2007–2008

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

**1. In writing the Constitution, the Framers “did not start *de novo* [new or fresh], but drew on their collective experience in the Continental Congresses and early state legislatures.”\* What do you think were the most important “lessons” they learned from their early legislative experiences? Why?**

- In what ways were colonial legislatures more representative and independent than the British Parliament?
- How and why were written guarantees of basic rights important in the development of Americans’ ideas about government?

\* Donald S. Lutz, “The Colonial and Early State Legislative Process,” in *Inventing Congress: Origins and Establishment of the First Federal Congress*, Kenneth R. Bowling and Donald R. Kennon, eds. (Athens, OH: Ohio University Press, 1999), p. 49.

**2. Even before John Locke expounded the social contract theory, American colonists had incorporated the idea in documents such as the Mayflower Compact and the Fundamental Orders of Connecticut. Explain that theory. Why has it continued to play a significant role in the thinking of Americans?**

- What is the relationship between social contract theory and the rights and responsibilities of citizens?
- What is the relationship of social contract theory to constitutionalism?

**3. How and why did colonial Americans change from warm admirers of the British Constitution to critics of British constitutionalism?**

- Which documents that are a part of the British Constitution did Americans embrace? Why?
- How and why did the British and the American views on social class and sovereignty differ?



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

**1. Evaluate Alexander Hamilton’s claim in *The Federalist No. 84* “that the Constitution is itself, in every rational sense, and to every useful purpose, a Bill of Rights.”**

- Why did the Anti-Federalists insist that Hamilton was wrong and that a Bill of Rights must be added to the Constitution?
- Do you agree or disagree with a modern scholar who contends that “the clausebound approach misses the ways in which structure and rights mutually reinforce.... Our Constitution is a single document, and not a jumble of disconnected clauses”?\*

\* Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (New Haven, CT: Yale University Press, 1998), p.125.

**2. Evaluate the claim that the Great Compromise (or Connecticut Compromise) was “the price of union.”**

- How did the Great Compromise reconcile the important difference between the Virginia and the New Jersey Plans?
- How does the Great Compromise reached in 1787 continue to affect political life in the United States today?

**3. The Framers were caught between a belief in executive leadership and a fear of executive power. In what ways and where does the Constitution provide for strong executive leadership?**

- Where and how does the Constitution constrain or express fear of executive power?
- Compare the delegation of powers to the legislative branch (Article I) with the delegation of powers to the executive (Article II).



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#### Unit Three: How Did the Values and Principles Embodied in the Constitution Shape American Institutions and Practices?

**1. “Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to [the] courts is committed the guardianship of deeply-cherished liberties.”\* In what ways, if any, is judicial review a limitation on popular government?**

- Can limitations on the will of the majority be justified in a democracy? Why or why not?
- What responsibilities do legislatures, as well as courts, have for protecting constitutional rights and how should they fulfill those responsibilities?

\* Felix Frankfurter, *Minersville School District v. Gobitis*, 310 U.S. 586 (1940).

**2. “In all political societies, different interests and parties arise out of the nature of things, and the great art of politicians lies in making them checks and balances to each other.”\***

- How did Madison define factions and why did he think they could act as checks and balances on each other?
- How successful have American political parties been in checking and balancing one another? What evidence can you offer to support your response?

\* James Madison, article in the *National Gazette*, January 23, 1792. Reprinted in *The Quotable Founding Fathers*, Buckner F. Melton, Jr. ed., (Dulles, VA: Brassey’s Inc., 2004), p. 222.

**3. Why did the Framers invent federalism at the Constitutional Convention of 1787?**

- What are the advantages and disadvantages of federalism compared to a unitary government and to a confederation?
- Why and how does federalism encourage states to function as “laboratories of democracy”?



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#### Unit Four: How Have the Protections of the Bill of Rights Been Developed and Expanded?

- 1. The Civil War was partially a war over competing theories of constitutional government. What constitutional theory and arguments did the Southern states use to justify secession?**
  - What constitutional theories and arguments did Abraham Lincoln and the Northerners use to justify treating secession as rebellion?
  - What constitutional theories and arguments did John C. Calhoun and the Southerners use to justify treating secession as a right?
- 2. “I suspect that it would be impossible to arrange an affirmative-action program in a racially neutral way and have it [be] successful.... In order to get beyond racism, we must first take account of race.... And in order to treat some persons equally, we must treat them differently.”\* Do you agree or disagree with this opinion? Why?**
  - What are the major arguments for and against affirmative action programs?
  - What constitutional issues do they raise?
- 3. Why is the Voting Rights Act, first enacted in 1965 and recently renewed and extended, called “landmark legislation”?**
  - How has the Voting Rights Act strengthened the guarantees of the Fourteenth and Fifteenth Amendments?
  - What are the advantages and disadvantages of relying on legislation rather than judicial proceedings for the protection of the right to vote?

\* Harry A. Blackmun, *University of California Regents v. Bakke*, 438 U.S. 265, 407 (1978), (concurring in part and dissenting in part).



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

**1. “The jury has now largely vanished outside the United States, where trial by jury is a constitutionally guaranteed right.”\* What arguments can you make for retaining our jury system? For modifying or abolishing it?**

- What relationship, if any, do you see between the right to trial by jury and the natural rights philosophy?
- The Framers believed trial by jury was an important check on the power of government. What evidence can you cite to confirm or negate their belief?

\* *The Concise Encyclopedia of Democracy* (Washington, D.C.: Congressional Quarterly Press, 2000), p. 233.

**2. In what ways, if any, does freedom of expression contribute to individual liberty and to good government?**

- What forms of expression does the First Amendment protect? Why?
- A legal scholar argues that “Constitutional protection should be accorded only to speech that is explicitly political.”\* Do you agree or disagree? Why?

\* Robert H. Bork, “Neutral Principles and Some First Amendment Problems,” *Indiana Law Journal* 47, no. 1, p. 20 (Fall 1971).

**3. “The history of liberty has largely been the history of observance of procedural safeguards.”\* What evidence, historical or contemporary, can you offer that would substantiate or contradict that claim?**

- What procedural guarantees in the Fifth and Fourteenth Amendments ensure the liberty interests of all persons in the United States?
- How and why do those procedural guarantees protect not only those accused of crime but also shield persons from arbitrary or unduly intrusive government action?

\* Felix Frankfurter, *McNabb v. United States*, 318 U.S. 332, 347 (1943).



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#### Unit Six: What Are the Roles of the Citizen in American Democracy?

**1. A recent survey found that “nearly half ... of the adult population can be characterized as disengaged from both the civic and political realm.”\* Should this be a matter of concern for all Americans? Why or why not?**

- How would you distinguish between civic and political engagement and what purposes do each serve in a democratic society?
- What is the relationship, if any, between civic and political engagement and constitutional government?

\* Cliff Zukin, et.al., *A New Engagement?: Political Participation, Civic Life, and the Changing American Citizen* (New York: Oxford University Press, 2006), p. 188.

**2. Citizenship is “an internalized part of a democratic order that relies on the self-direction and responsibility of its citizens rather than on their mere obedience. Whether in private or in public, the good citizen does something to support democratic habits and the constitutional order.”\* Do you agree or disagree with this description of citizenship in a democratic order? Why?**

- How and why is democratic citizenship self-directed?
- What kinds of public acts of citizens are supportive of the constitutional order? What kinds of private acts? Why?

\* Judith N. Shklar, *American Citizenship: The Quest of Inclusion* (Cambridge, MA: Harvard University Press, 1991), p. 6.

**3. Which of the changes taking place in contemporary American society do you think are likely to present the greatest challenge to constitutional rights in the years ahead? Why?**

- What do you think is the best way to meet those challenges? Why?
- Which changes taking place do you think might need a constitutional amendment? Why?