

National Hearing Questions

Academic Year 1999-2000

UNIT ONE: What Are the Philosophical and Historical Foundations of the American Political System?

- 1. Americans have sometimes been described as a “people of the Word,” that is, a people strongly influenced by the language and teachings of the Bible. In what ways have the constitutional and political traditions of the American republic been shaped by the legacy of Judeo-Christianity?**
 - Where in the founding documents do you find evidence of this influence?
 - What have been the positive and negative influences of this legacy?
- 2. The writ of habeas corpus, one of the few rights guaranteed in the original text of the U.S. Constitution, has been described by the English legal historian, Sir William Holdsworth, as “the most effectual protector of the liberty of the subject that any legal system has devised.”* Do you agree or disagree with Holdsworth’s statement? Why or why not? What other legal protections might be at least as important? Explain your answer.**
 - What are the British constitutional roots of this right?
 - What other constitutional rights and principles does the writ of habeas corpus help to protect? Explain your answer.
- 3. The Declaration of Independence was not merely what the words of its title suggest: it was also a manifesto for the philosophy of natural rights, including the right of revolution. What sort of arguments does the Declaration make on behalf of such rights? Do you agree with those arguments? Explain your position.**
 - What limits, if any, does the Declaration place on the right of a people to overturn their government?
 - President John F. Kennedy said that “those who make peaceful revolution impossible will make violent revolution inevitable.”* Why do you agree or disagree with President Kennedy? How can Americans engage in peaceful revolution?

**A History of English Law* (14 vols.; London, 1903-72), x, 658.

*speech to the diplomatic corps of the Latin American republics, March 13, 1962.

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UNIT TWO: How Did the Framers Create the Constitution?

1. **The historian Henry May said: “The great debate over liberty and order which took place in America from 1763 to 1789 was also a debate about the nature of man.”* What were the differing interpretations of human nature that figured in this great debate?**
 - What view or views of human nature are reflected in the Articles of Confederation and U.S. Constitution? To what extent do these different views illustrate the differences between the two documents? Explain your position.
 - George Mason said that Congress “like all other assemblies, will be composed of some bad and some good men; and considering the natural lust of power so inherent in man, I fear the thirst for power will prevail to oppress the people.”** What provisions were made in the Constitution to control this natural lust of power?

*Henry F. May, *The Enlightenment in America* (New York, 1976), p. 88.

**speech to the Virginia Ratifying Convention, June 4, 1788. Reprinted in Bernard Bailyn, ed., *The Debate on the Constitution: Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle over Ratification, Part Two/January* (New York: Library of America 1993), p. 608.

2. **The Great Compromise of the Philadelphia Convention has shaped the nature of American representative government to this day. It established a bicameral legislature, with each house in that legislature representing different principles of government. How did the Senate and House of Representatives as constituted by the Framers differ in their theories of representation?**
 - Which set of principles was more consistent with the ideas of classical republicanism? With the natural rights philosophy? Explain your position.
 - To what extent do these different theories of representative government serve the needs of American democracy today? Explain your position.

UNIT TWO *continued*

- 3. The Anti-Federalists lost the battle of the Constitution's ratification. Did they completely lose the war for the nation's future? How and to what extent have their principles and ideals been realized during the last two hundred years?**
- The Anti-Federalists did not like that name and seldom used it themselves. They claimed that they were the true federalists. How accurate is this claim? Explain your position.
 - How do you think the Anti-Federalists might evaluate the state of the republic today? What would they find encouraging? What characteristics might they find contrary to their understanding of the principles of republicanism and democracy?

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UNIT THREE: How Did the Values and Principles Embodied in the Constitution Shape American Institutions and Practices?

- 1. Federalists and Anti-Federalists differed sharply about the need to add a bill of rights to the Constitution. Many among the latter believed that such a declaration of fundamental guarantees was a necessary safeguard against tyranny. Many among the former believed that the mechanisms of divided government, as well as the diversity and expanse of the country, would provide a surer guarantee of liberty. Which view do you believe two centuries of experience have shown to have been the more correct?**
 - To what extent and how do these different methods of securing individual rights depend upon each other?
 - What changes in the Constitution, if any, would you suggest to improve the protection of rights today?

- 2. John Marshall and Thomas Jefferson held very different positions regarding the legitimacy of judicial review. How did Marshall use the words of the Constitution to justify the principle of judicial review? What provisions in the Constitution might support Jefferson's opposition to it?**
 - Which position is more consistent with the principles of classical republicanism? Which is more consistent with the natural rights philosophy? Explain your answers.
 - Does limited government require some form of judicial review? Why or why not?

UNIT THREE *continued*

- 3. In 1824 James Madison concluded that political parties had become an unavoidable part of the American political landscape because “the Constitution itself must be an unfailing source of party distinctions.”* To what extent and how did different interpretations of the Constitution bring about the birth of political parties in the United States? What other factors figured in the development of political parties?**
- Do fundamentally different interpretations of the Constitution continue to nurture party differences today? Explain your position.
 - How effective are American political parties in fostering democracy today? Explain your position.

*James Madison, *Writings*, ed. Jack Rakove (New York: Library of America, 1999), p. 803.

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UNIT FOUR: How Have the Protections of the Bill of Rights Been Developed and Expanded?

- 1. U.S. Supreme Court Justices opposed to nationalizing all of the provisions of the Bill of Rights in the due process clause of the Fourteenth Amendment believed that complete incorporation would put the individual states in a “constitutional straitjacket.” Why did these Justices believe the Bill of Rights would thereby become such a straitjacket? What arguments could be made on behalf of total incorporation?**
 - Which view do you believe to be more consistent with the principles of democracy? Explain your position.
 - Should the procedural rights of the Fourth through Eighth Amendments be any less “preferred” than the rights of exercise in the First Amendment? Why or why not?
- 2. In 1897 Susan B. Anthony declared that suffrage was “the pivotal right,” that is, the right upon which all other rights depended.* Do you agree with that statement? What historical evidence supports Anthony’s contention? What evidence suggests that other rights might be of equal or greater importance?**
 - Should the exercise of the franchise be a requirement as well as a right? Why or why not?
 - Do the historically low voter turnouts in recent decades suggest that the franchise has become a less important right than it was a century ago? Explain your answer.

*“The Status of Women, Past, Present and Future,” *Arena* (May 1897).

UNIT FOUR *continued*

3. The Rev. Martin Luther King, Jr. believed that civil disobedience was a necessary tactic of the Civil Rights Movement. What was his justification for using it? Do you think the Civil Rights Movement could have achieved its goals without resorting to civil disobedience? Explain your position.

- Is the principle of civil disobedience consistent with the principles of constitutional government? Why or why not?
- Civil disobedience is used today in political struggles over abortion, environmental protection, and world trade. In a democracy what criteria should determine the legitimacy of this course of political action?

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UNIT FIVE: What Rights Does the Bill of Rights Protect?

- 1. In recent years many colleges and universities have established regulations intended to place limits on the freedom of expression on campus, and particularly to prohibit “hate speech” and other expression that might offend members of the community. What First Amendment and other considerations would determine whether or not such a regulation was constitutional?**
 - What restrictions on freedom of expression on college and university campuses does the Constitution allow? Explain your position.
 - What limits does the Constitution place on a college or university’s authority to regulate such expression? Explain your position.

- 2. The trial jury is an outstanding feature of our adversary system of justice. What arguments suggest that a jury verdict is more likely to realize justice than a verdict made by a judge as is characteristic of the inquisitorial system? What arguments can be made to the contrary? Which do you favor and why?**
 - Reforms in recent decades have included the introduction of smaller juries and non-unanimous verdicts. Why have such reforms been instituted? What might be their advantages and disadvantages?
 - Should a jury’s representativeness of the various racial, ethnic, gender, age, and other groups in the community be a primary test of its impartiality? Why or why not?

UNIT FIVE *continued*

3. *Miranda v. Arizona* (1966) is the most famous and debated confession case in our nation's history. The Justices of the U.S. Supreme Court were sharply divided in their opinions, splitting five-to-four in the decision. What were the major constitutional arguments advanced by the concurring and dissenting Justices?

- In an earlier opinion, Chief Justice Earl Warren said that “in the end, life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.”* Why do you agree or disagree with Chief Justice Warren? What evidence supports your opinion?
- In his dissenting opinion in *Miranda*, Justice John Marshall Harlan said that the “social costs of crime are too great to call [such] new rules anything but a hazardous experimentation.” Why do you agree or disagree with Justice Harlan? What evidence supports your opinion?

**Spano v. New York* (1959).

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UNIT SIX: What Are the Roles of the Citizen in American Democracy?

- 1. The Constitution's ability, in John Marshall's words, to "endure for ages to come, and ... to be adapted to the various crises of human affairs" has depended on the development of what is sometimes called an "unwritten Constitution" of institutions, customs, and usages. The party system, presidential cabinets, and judicial review are among the many elements of this unwritten Constitution. What elements of this unwritten Constitution do you consider to be the most important to the written Constitution's adaptation and survival through two centuries?**
 - Which branch of the federal government has been most affected by the development of this unwritten Constitution? Explain your position.
 - What additional changes in either the written or unwritten Constitution do you think may be likely during your lifetimes? Why do you think they may be necessary?

- 2. This year's elections will see an expansion of mail-in voting across the country. Experimented with by various states in recent decades, the arrangement allows all registered voters, not just absentees, to vote by mail as well as at assigned polling stations. The electronic casting of votes via the internet may be just around the corner. What might be the advantages of distance voting? What might be the disadvantages?**
 - Modern technology has made it practical to test the wishes of the people on any number of policy issues, through instant referenda and plebiscites. Would you favor or oppose the creation of an "electronic city state?" Why or why not?
 - To what extent is voter turnout a reliable indicator of a country's civic-mindedness? What might be the drawbacks to relying on such an indicator?

UNIT SIX *continued*

3. **Eighty-five years ago, President Woodrow Wilson said: “You cannot become thorough Americans if you think of yourselves in groups. America does not consist of groups. A man who thinks of himself as belonging to a particular national group in America has not yet become an American.”*** Do you agree with President Wilson’s statement? Why or why not?

- Is the statement more or less valid today than it was in Wilson’s time? Explain your position.
- What positive role do diverse ethnic and other group loyalties play in shaping the nation’s civic identity? To what extent and how might such diverse loyalties pose a threat to that civic identity?

*speech in Philadelphia, PA, May 10, 1915.