



We the People... **The Citizen and the Constitution**

Directed by the Center for Civic Education
Funded by the U.S. Department of Education by act of Congress



STATE HEARING QUESTIONS 2002-03

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

- 1. Governments and societies based on the natural rights philosophy guarantee certain rights to their citizens. How would you describe or define a right? What are the natural rights that John Locke claimed every human being has?**
 - What are some *civil* rights you possess under the U.S. Constitution and the Civil Rights Acts passed by Congress and why are they important for the protection of your natural rights?
 - What are some *political* rights you possess under the U.S. Constitution and why are they necessary to protect your natural rights?

- 2. According to the Founders, what are major characteristics that a constitution or higher law should have, and why are these characteristics essential to the protection of our natural rights?**
 - How would you define a constitution? Under what conditions does a constitution serve as a higher law?
 - What is the difference between a government with a constitution and a constitutional government?

- 3. How does the classical republican idea of civic virtue conflict with the Founders' belief in natural rights and their understanding of human nature as defined by John Locke?**
 - How did James Madison refine and adapt the ideas of classical republicanism to the new form of government created by the Founders?
 - To what extent does the common good of our society today depend on the classical republican ideal of civic virtue? To what extent does the common good depend on the natural rights philosophy idea of each individual pursuing his or her own self-interest? What evidence can you cite to support your position?



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Unit Two: How did the Framers Create the Constitution?

1. The Articles of Confederation was our nation's first constitution. The Articles had some critical shortcomings. Even so, the national government was able to make some notable achievements. What were some of the shortcomings and achievements of the national government under the Articles? What was the significance of the achievements?

- Why did the Articles of Confederation fail to provide for an executive and a judicial branch of government? What problems did their omission cause?
- Compare the shortcomings and the achievements of the United Nations, a contemporary confederation, with those of the government under the Articles of Confederation.

2. Some political scientists claim that “the Constitution is not a simple product of sweet reason. Rather, every provision reflects the competition and ultimately compromise among political interests that were vying for advantage in the new institutions and rules.”*

* *Principles and Practice of American Politics: Classic and Contemporary Readings*. Samuel Kernell and Steven S. Smith (eds.). Washington, D.C.: Congressional Quarterly Press, 59.

- What were the most important compromises made in the Constitutional Convention and what were the major political interests vying with one another?
- Were the important compromises, in the long-term, in the best interests of the United States? Why or why not?

3. The Framers intended to limit executive power through constitutional provisions such as the overriding of presidential vetoes, impeachment, and separation of powers. However, some critics have argued that presidents starting in the latter half of the twentieth century have expanded the powers of the office. Do presidents today have too much power?

- Should presidents have the power to order military action without explicit congressional approval? Why or why not?
- Should executive orders have the force of law without congressional approval? Why or why not?



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

1. Some of the rights Americans have are specified in the body of the Constitution rather than in the Bill of Rights or other amendments. Why do you think the Framers acted to protect these specific rights in the Constitution? What abuses had they seen in British history, their own colonial and state governments, or the national government under the Articles of Confederation that caused them to guarantee these rights?

- What protections for individual rights are included in the Constitution and why are they important?
- What protections for the political independence of public officials are included in the Constitution and why are they important?

2. A British scholar described the United States system of federalism in this way: “The characteristic feature... is that it shows us two governments covering the same ground yet distinct and separate in their action. It is like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their bonds crossing one another, yet each doing its own work without touching or hampering the other.”*

* James Bryce. *The American Commonwealth* (Vol. 1, Second Edition, 1891) cited in Jay M. Shafritz. *The Harper Collins Dictionary of American Government and Politics*. (Concise Edition, 1993, p. 186).

- In what ways is that an accurate description of the relationship between the federal and state governments today? In what ways is it inaccurate? Explain and justify your answers.
 - How do unitary and confederal systems of government differ from the federal system of the United States?
- 3. Although the Constitution does not explicitly mention the power of judicial review, it has exercised this power for two hundred years. How has the Supreme Court’s power of judicial review expanded the role of the Court?**
- Is the practice of judicial review consistent with democratic practices? Why or why not?
 - Does the Supreme Court have too much power? Why or why not?



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

1. In the landmark case *Reynolds v. Sims*,* the Supreme Court declared: “Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”

* *Reynolds v. Sims*, 377 U.S. 533.

- How would you distinguish between civil and political rights? Why are both types of rights important in a democracy?
 - Do you agree or disagree with the Supreme Court that the right to vote “is preservative” of other basic rights? What evidence can you provide to support your answer?
2. The Civil War has been called “the greatest failure in America’s constitutional government.” What were the constitutional issues that led to the Civil War?
 - What were the major arguments made by the North and the South about the proper relationship between the nation and the states?
 - How and why did the principles set forth in the Declaration of Independence figure in the debate between the North and South?
 3. The Fourteenth Amendment says that no state shall “deny to any person within its jurisdiction the equal protection of the law.” How did this phrase of the Fourteenth Amendment change the relationship between federal and state power?
 - Why did the authors of the amendment choose the word “person” rather than “citizen”?
 - Should resident aliens be guaranteed the same protections as citizens? Why or why not?



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

1. Why are freedom of speech and the press important to both the individual and society and under what circumstances should government be able to limit them?

- It is argued that the press is or should be part of our system of checks and balances. Its responsibility is to expose public mismanagement, keep power separated, manageable, and accountable. Do you agree? Why or why not?
- When, if ever, do the rights of free speech and press come in conflict with the common good and how should such conflicts be addressed?

2. Justice Felix Frankfurter once explained that “due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.... (It represents) a profound attitude of fairness between man and man and more particularly between the individual and government.”*

* Felix Frankfurter. *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162-63 (1951) concurring.

- How and why does the adversarial legal system help to guarantee due process “between man and man” and “between the individual and the government”?
 - Is due process as important in civil cases and administrative hearings as it is in criminal cases?
- 3. Justice Louis Brandeis, in his dissent in *Olmstead v. United States* (1928), argued for a right to privacy. “The makers of our Constitution... sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.”**
- Should privacy be a fundamental right even though it is not specifically listed in the Bill of Rights? Why?
 - Where in the Constitution or Bill of Rights does Justice Brandeis find references to suggest privacy rights?



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

1. **What were the most important differences in how classical republicans and natural rights philosophers viewed citizenship?**
 - How and why did the Founders attempt to blend these two theories of government?
 - Why did Alexis de Tocqueville believe that there did not have to be a contradiction between self-interest and civic-mindedness? Was he right then? Is his position correct today?
2. **How would you describe the role of a citizen in a constitutional democracy?**
 - What responsibilities, if any, does a citizen have for promoting sound political and social policies?
 - What responsibilities, if any, does a citizen have to protect the rights of others, whether or not his or her own rights are endangered?
3. **Alexis de Tocqueville argued that, in America, good citizenship meant the pursuit of “enlightened self-interest.” Does enlightened self-interest really produce good citizens? Why or why not?**
 - How would classical republicans view this idea of citizenship?
 - How might James Madison view it?