



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 2006–2007

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

1. The great English historian, James Bryce, wrote that

*The American Constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly every institution has grown, so much the more enduring it is likely to prove. There is little in that Constitution that is absolutely new.**

Do you agree or disagree with Bryce? Why?

- What evidence can you cite that the United States Constitution was influenced by the ideas of classical republicanism?
- How did the natural rights philosophy influence the United States Constitution?

*James Bryce. *The American Commonwealth* 1:25–26 (1888).

2. What do you consider the most important milestones in the evolution of parliamentary government in England? Why?

- How and why did the struggle between the English kings and their subjects help to develop the British constitution?
- In what ways might an understanding of British history have influenced the Founders' thinking about government?

3. What values and basic features of constitutionalism were found in the governments of the colonies?

- What basic rights did most American colonists enjoy?
- Why did colonial governments become more representative than Britain's?



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Unit Two: How Did the Framers Create the Constitution?

1. Evaluate the proposal in the Virginia Plan to give Congress the power to strike down state laws that it considered to be in violation of the national constitution or of the national interest.*

- What actions by state legislatures may have prompted this proposal?
- What arguments could you make for or against amending the United States Constitution to give Congress this power today?

*For exact wording of the proposal see *The Virginia Resolutions Presented to the Constitutional Convention*, May 29, 1787.

2. “The debate [at the Constitutional Convention] was remarkably vigorous and often of high quality,” according to a contemporary scholar.* Which contentious issues do you think were subjected to the most vigorous, qualitative debate? Why?

- Which issues resulted in compromise?
- Which issues did the delegates fail to solve or deal with? Why?

*Bruce Ackerman. *We the People: Transformations*. Cambridge, Mass: The Belknap Press of Harvard University Press, 1998, p. 90.

3. Evaluate the Anti-Federalist argument that a bill of rights is as necessary to defend an individual against the majority in a republic as against the king in a monarchy.

- What other arguments in support of a bill of rights did the Anti-Federalists advance?
- What arguments did the Federalists make to resist the demand for a bill of rights?



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

- 1. “No America without democracy, no democracy without politics, no politics without parties.” Do you agree or disagree with that precept expressed by a noted American political scientist?* Why or why not?**
 - Why were the Framers opposed to the idea of political parties?
 - How are today’s criticisms of political parties similar to and different from those of the founding era?
- 2. Compare the most important tasks facing the First Congress in 1789 with the most important tasks facing the present Congress. In what ways are those challenges alike and different?**
 - Why was it so important for the First Congress to succeed?
 - Is it equally as important for the present Congress to succeed? Why or why not?
- 3. The debate about the legitimacy of judicial review is one of the longest-running debates in the history of the United States. What are the major arguments for and against judicial review?**
 - Evaluate the claim that although judicial review is not specifically mentioned in the United States Constitution, it can be inferred from Article III, Section 2, and Article VI, Section 2.
 - Evaluate the argument that the Supreme Court’s authority depends upon its being faithful to both the *language* and the *spirit* of the United States Constitution.

*See Clinton Rossiter. *Parties and Politics in America*. Ithaca, New York: Cornell University Press, 1960, 1964.



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

1. A leading scholar claims that due process of law is the “most important and influential term in American constitutional law.”* Do you agree or disagree with his judgment? Why?

- How would you distinguish between procedural and substantive due process of law, and why is each important?
- How is due process of law related to the natural rights philosophy and the principle of limited government?

*Leonard W. Levy. “Due Process of Law” in *Encyclopedia of the American Constitution*. New York: Macmillan Publishing Co., 1986, Vol. I, p. 591.

2. How, if at all, is the concept of equal protection of the laws related to the natural rights philosophy and the idea of a social contract?

- How would you differentiate among equality of condition, equality of opportunity, and equal protection of the laws?
- Under what circumstances, if any, is it ever justifiable to treat people unequally? Explain your position.

3. How is the extension of the right to vote related to the fundamental values and principles of constitutional government?

- What do you consider to be major milestones in the expansion of voting rights? Why?
- Research shows that attending a high school where voting is widely recognized as a social norm has a positive impact on voter turnout fifteen years following high school.* In what ways can and should a high school establish voting as a social norm?

*David E. Campbell. *Why We Vote: How Schools and Communities Shape Our Civic Life*. Princeton, New Jersey: Princeton University Press, 2006, pp. 166–167.



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

- 1. The principle that the sphere of religion and government are to be kept separate is a “proposition as easy to state as it has proved difficult to apply.”* Do you agree or disagree with that judgment? What evidence can you offer to support your opinion?**
 - How would you distinguish between the free exercise and establishment clauses of the First Amendment?
 - Does or should the concept of government neutrality toward religion include only equal treatment among religions or also between religious and nonreligious ideas and activities? Why or why not?
- 2. Why is the right to counsel an integral part of the adversary system of justice?**
 - What are the major differences between an adversary and an inquisitorial system?
 - How and why has the constitutional right to counsel been expanded in the course of our nation’s history?
- 3. Habeas corpus has been called “the most important human right in the Constitution” and “the best and only sufficient defense of personal freedom.”* Is habeas corpus deserving of such high praise? Why or why not?**
 - Why is habeas corpus both a symbol of freedom and an instrument or mode of procedure?
 - What are some present-day challenges to the “Great Writ” and why are they important?

*Jethro K. Lieberman. *A Practical Companion to the Constitution*. Berkeley: University of California Press, 1999, p. 201.

*See “Habeas Corpus” in *The Oxford Companion to the Supreme Court of the United States*, second edition. Kermit L. Hall, ed. New York: Oxford University Press, 2005, p. 415.



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

- 1. Compare the concept of good, effective citizenship in classical republican philosophy with that concept in the natural rights philosophy.**
 - Why and how has the American civic tradition tried to include both concepts?
 - What are the major challenges in trying to reconcile these two conceptions of citizenship?
- 2. Which aspects of American constitutional democracy have been the most influential in other countries?**
 - Why do you think those aspects have had widespread appeal?
 - Which aspects have not been widely accepted? Why?
- 3. “No free government, or the blessings of liberty, can be preserved to any people but ... by frequent recurrence to fundamental principles.” What do you believe are the “fundamental principles” of our constitutional democracy?***
 - What are the costs and benefits (or “blessings”) of liberty?
 - How can and should Americans “recur” to those fundamental principles?

*Virginia Declaration of Rights, Section 15.