



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 2008–2009

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

1. The nation's Founders were students of history. Thomas Jefferson wrote:

*“History, by apprizing [men] of the past, will enable them to judge of the future; it will avail them of the experience of other times and other nations It will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views.”**

What were some important “lessons” about government that the Founders learned from their study of history?

- Why did the Founders’ reading of history and philosophy lead them to prefer a representative or republican form of government rather than direct democracy?
- In what ways, if any, did the Founders apply the lessons they learned from history in their state constitutions and the U.S. Constitution?

* Thomas Jefferson. *Notes on the State of Virginia*, 1784.

2. What role does the Declaration of Independence play in American society today? One scholar believes that it is “a statement of values that more than any other expresses not why we separated from Britain, and not what we are or have been, but what we ought to be, an inscription of ideals that bind us as a people”* Do you agree or disagree with that assessment? Why?

- In what ways does the Declaration of Independence reflect the social contract theory of John Locke and other social contract philosophers?
- The Declaration of Independence has been at the core of America’s most important political struggles, according to some historians. What evidence can you offer to substantiate or contradict that claim?

* Pauline Maier. *American Scripture: Making the Declaration of Independence*. New York: Alfred A Knopf, 1997, p. XIX.



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3. Evaluate the claim that the “English Bill of Rights of 1689 is the direct ancestor of the American Bill of Rights.”*

- What ideas or principles of constitutional government established in the English Bill of Rights did colonial government use?
- Compare English and American ideas of representation. How were they alike? How were they different?

* Bernard Schwartz. *The Roots of the Bill of Rights*, vol. I. New York: Chelsea House Publishers, 1980, p. 40.



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Unit Two: How Did the Framers Create the Constitution?

1. “America’s founding gave the world more democracy than the planet had thus far witnessed.... The Constitution infused some form of democracy in each of its seven main articles.”* What evidence can you provide to support or contradict this claim?

- What democratic ideas expressed earlier in founding documents (e.g., Mayflower Compact, Virginia Bill of Rights, etc.) are reasserted or confirmed in the Constitution?
- Which provisions of the United States Constitution do you consider most democratic? Least democratic? Why?

* Akhil Reed Amar. *America’s Constitution: A Biography*. New York: Random House, 2006, pp. 14–15.

2. “American constitutional discourse began with the debate over the Revolution and flowered during the dispute over the proposed Constitution. Politics-as-conversation has continued uninterrupted since the adoption of the Constitution.... The shared conversation about the Constitution continues as a vital adjunct of the processes of government.”* Do you agree or disagree that “constitutional discourse flowered” during the dispute over the proposed Constitution?

- How would you define “constitutional discourse” and “civil discourse,” and why are both important in a democratic society?
- In what ways, if any, does shared conversation about the Constitution serve as an adjunct (extension/reinforcement) to the processes of government?

* Richard B. Bernstein with Jerome Agel. *Amending America*. New York: Times Books-Random House, 1993, pp. 270–71.

3. In *Federalist 10*, James Madison argues that “faction is part of the very nature of man” and that a republic is better than a pure democracy for combating majority factions. Do you agree or disagree? Why?

- Evaluate the two methods of “curing the mischiefs of faction” that Madison sets forth in *Federalist 10*.
- How serious are the problems of faction and/or “majority tyranny” today? What evidence can you offer in support of your position?



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

1. Why has there been a long and continuing debate over the scope and legitimacy of judicial review in a democracy?

- Evaluate the argument that judicial review is needed because majorities can't be relied on for the protection of individual rights.
- Evaluate the claim that "In practice the courts have more often leaned with rather than against the political winds. Judges are more apt to reflect the constitutional sensibilities of the people than to displace them."*

* Keith E. Whittington. *Judicial Review and Interpretations: Have the Courts Become Sovereign When Interpreting the Constitution? Institutions of American Democracy: The Judicial Branch.* Kermit L. Hall and Kevin T. McGuire, eds., New York: Oxford University Press, 2005, pp. 138–39.

2. The Emancipation Proclamation has been described as:

- **Having "no more moral grandeur than a bill of lading."***
- **"The most revolutionary pronouncement ever signed by an American President."****
- **"A pivotal, monumental decision whose effect led far beyond its immediate context."*****

Are any or all of these descriptions apt or accurate? Why or why not?

- On what constitutional grounds did Lincoln issue the Emancipation Proclamation?
- How and why did the Emancipation Proclamation reinforce America's founding principle of liberty?

* A bill of lading is a receipt for merchandise aboard a ship. The term was used by Richard Hofstadter in *Abraham Lincoln and the Self-Made Myth. American Political Tradition and the Men Who Made It.* New York: Alfred A. Knopf, 1973, p. 117.

** Allen C. Guelzo. *Lincoln's Emancipation Proclamation,* New York, 2004, p. 1.

*** William Lee Miller. *President Lincoln: The Duty of a Statesman.* New York: Alfred A. Knopf, 2008, p. 269.



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ABRAHAM LINCOLN BICENTENNIAL QUESTION

3. Abraham Lincoln claimed that “I have never had a feeling, politically, that did not spring from the sentiments embodied in the Declaration of Independence.”* What are the “sentiments” or constitutional principles that are set forth in the Declaration of Independence?

- In what ways and by what actions did Lincoln advance or help to realize those “sentiments”?
- In what ways and by what actions did Lincoln’s critics claim that he violated or contradicted the “sentiments” embodied in the Declaration of Independence?

* Abraham Lincoln. Address in Independence Hall, Philadelphia, February 22, 1861.



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

1. What are Congress's strengths and weaknesses in performing the tasks of democratic government?

- How can citizens as individuals or as members of groups monitor and influence the work of Congress?
- What reforms, if any, are necessary to ensure the health and success of Congress as a democratic institution?

2. What are the similarities and differences between the American president's role in the executive branch and the role of leaders in established parliamentary systems?

- Why did the Founders reject a parliamentary system in favor of a system of shared and separated powers?
- How are the powers of a president limited or checked by the Constitution, acts of Congress, the judiciary, and pressures from interest groups?

3. Federalism was an entirely new political system invented at the Philadelphia Convention of 1787. What are its essential features and most important principles?

- What are the strengths and weaknesses of federalism?
- “The Framers believed that the separate sphere of sovereignty reserved to the states would ensure that the states would serve as an effective ‘counterpoise’ to the power of the federal government.”* How well has their belief been borne out? What evidence can you offer to support your response?

* Lewis F. Powell, Jr. *Garcia v San Antonio Metro Transit Authority*, 469 U.S. 528, 568, 571–72 (1985) (dissenting).



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

1. **“The Bill of Rights is a *bill*—a set of interconnected provisions whose whole is greater than its parts ... exemplifying a unified theory of liberty.”*** Do you agree or disagree with that assessment of the Bill of Rights? Why?

- How do rights found in the U.S. Constitution and Bill of Rights reflect ideas of liberty found in classical republicanism and natural rights philosophy?
- Why is merely listing rights in a constitutional document an insufficient guarantee of liberty? What else is needed?

* Akhil Reed Amar. *The Bill of Rights: Creation and Reconstruction*. New Haven and London: Yale University Press, 1998, p. 292.

2. **What rights does the Fourth Amendment protect and why are those protections important?**

- What historical experiences led to the adoption of the Fourth Amendment?
- Why has the Fourth Amendment proved to be one of the more troublesome provisions of the Bill of Rights?

3. **The brief but highly important Sixth Amendment sums up the essential requirements of procedural due process. What is due process of law and how does it help to achieve the goal of “justice for all”?**

- Why is it important for criminal defendants to have rights before, during, and after trial?
- Justice Felix Frankfurter claimed that “The history of liberty has largely been the history of procedural safeguards.”* Do you agree? What evidence can you offer to support your answer?

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



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

1. How and why have American political ideas influenced other peoples?

- What elements of American constitutionalism have proved most influential? Least influential? Why?
- Why has federalism, an American invention, proved especially popular in other countries?

2. Some scholars distinguish between “thin” (mere status) and “thick” (democratically engaged) citizenship.* How would you describe the differences between “thin” and “thick” citizenship and why might those differences be significant?

- Should the Fourteenth Amendment be changed to reflect additional or different criteria for citizenship? Why or why not?
- What responsibilities, if any, do schools have for helping students become “thick” or democratically engaged citizens?

* See Linda Bosniak. *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton and Oxford: Princeton University Press, 2006, p. 87.

3. “Diversity is the great issue of our time Many claims advanced under the banners of diversity, difference and cultural pluralism are worth heeding Yet an uncritical embrace of diversity may obscure the need to promote citizenship and the elements of a healthy civic life.”* Do you agree or disagree with this judgment of an American scholar? Why or why not?

- What forms of diversity do you think are “worth heeding” in a democratic society? Why?
- How can and should the tensions between diversity and the need for shared civic values be addressed?

* Steven Macedo. *Diversity and Distrust: Civic Education in Multicultural Democracy*. Cambridge: Harvard University Press, 2000, pp. 1 and 6.