



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 2004 – 2005

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

- 1. John Locke wrote that “there is a common distinction between an express and a tacit consent. Nobody doubts an express consent. The difficulty is, what ought to be looked on as a tacit consent and how far it binds.”* How did Locke answer the question he raised about what constitutes tacit consent and how far it binds? How would you answer that question?**

* John Locke. *The Second Treatise on Civil Government* (New York: Prometheus Books, 1986). Chapter VIII:119.

- How have you expressed your own express and tacit consent to be governed?
 - Some political philosophers argue that consent—whether express or tacit—involves taking responsibility for the “outcomes of government” or the actions one’s government takes. Do you agree or disagree? Why?
- 2. What are the major differences between the classical republican ideas and the Judeo-Christian ideas about the importance of the individual? How did the Founders try to incorporate both classical republican and Judeo-Christian ideas into the Constitution?**
 - How did the Judeo-Christian heritage contribute to the Founders’ understanding of human rights?
 - To what extent does the Declaration of Independence draw on classical republican ideas? On Judeo-Christian ideas?
 - 3. What basic constitutional principles were reflected in the governments of all of the colonies?**
 - Which of those constitutional principles were derived from the English experience in developing representative government?
 - Why did colonial governments become more representative than Britain’s?



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Unit Two: How did the Framers Create the Constitution?

1. In *Federalist No. 1*, Alexander Hamilton wrote:

It seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.

- How did the Founders use reflection on history and political philosophy in writing the Constitution?
- What were the most critical choices respecting good government that the Founders made?

2. Congress has been called “the first branch of government.” This phrase reflects Jefferson’s concept that the legislative branch is superior to the executive and judiciary, because it more accurately reflects the needs and opinions of the people. Do you agree or disagree with that argument? Why?

- Why did the Framers decide to divide Congress into two houses? What are the arguments for and against continuing to divide Congress today?
- Why did the Framers allocate specific powers to the House and to the Senate? Is that division of power justifiable today? Why or why not?

3. How did the arguments of the Federalists and Anti-Federalists reflect their points of view regarding natural rights, republicanism, and constitutionalism?

- On balance, do you think the Federalists or the Anti-Federalists presented the stronger case? Why?
- Which of the arguments presented by the Federalists and Anti-Federalists are still relevant? Why do you think those arguments persist in our society?



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

1. The Ninth Amendment to the United States Constitution provides that

the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

- What is the relationship of this Amendment to the natural rights philosophy?
- Why has the Ninth Amendment proved to be one of the most controversial amendments?

2. In his Farewell Address, George Washington cautioned his countrymen:

*[The spirit of party] serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foment occasionally riot and insurrection.**

* George Washington. Farewell Address, September 17, 1796.

- How and why did political parties develop despite the objections of Washington and other Framers?
 - On balance, do you think that political parties, during their more than 200 years of existence, have been more helpful or hurtful to our country? What evidence can you offer in support of your position?
- #### 3. What are the advantages and disadvantages of federal, unitary, and confederal systems of government?
- Why did the Framers decide to invent federalism, an entirely new plan for which no historical precedent existed?
 - Alexander Hamilton argued in *Federalist* No. 28 that federalism would keep the state and national governments in balance. “If their [the people’s] rights are invaded by either, they can make use of the other as the instrument of redress.” Has history proved Hamilton’s argument to be correct? What evidence can you offer to support your answer?



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

1. **“Nor shall any state ... deny to any person within its jurisdiction the equal protection of the laws.” That clause in the Fourteenth Amendment marks the first use in the Constitution of the word “equal” regarding the rights of individuals. How would you describe what “equal protection of the laws” means?**
 - Does equal protection require treating all persons the same? If not, under what circumstances might persons be treated differently?
 - Does equal protection require that everyone have equal opportunity?
2. **Justice Felix Frankfurter once explained that “due process ... is not a technical conception with a fixed content.” It embodies “that feeling of just treatment which has evolved through centuries of Anglo-American constitutional history.” It represents “a profound attitude of fairness between men and men and more particularly between the individual and government.”***

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

- How have landmark documents such as Magna Carta, the Massachusetts Body of Liberties, the Declaration of Independence, and the Fourteenth Amendment helped to develop the concept of due process?
 - How and why does due process require government to show “fairness” in dealing with individuals?
3. **American political writer Theodore H. White observed that “heroes and philosophers, brave men and vile, have since Rome and Athens tried to make this peculiar manner of transfer of power [elections] work effectively; no people has succeeded at it better than the Americans.”* Do you agree or disagree with this statement? Why?**

* Theodore H. White. *The Making of the President*, 1960, 61. Reprinted in *The Giant Book of American Quotations* (New York: Gramercy Books, 1988), p. 75:22.

- What evidence of success would you point to?
- What evidence of failure can you offer? How can those shortcomings be remedied?



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

1. Can a public trial become too public? How can the rights of the accused guaranteed in the Sixth Amendment be balanced with the First Amendment right of the public to know?

- To what extent does pretrial publicity prejudice potential jurors and deny defendants the right to a fair trial?
- What important purposes do public trials serve?

2. “I believe in an America where the separation of church and state is absolute ... where no church or church school is granted any public funds or political preference and where religious liberty is so indivisible that an act against one church is treated as an act against all.”* Do you agree or disagree with that stand taken by John F. Kennedy? Why or why not?

* John F. Kennedy. Campaign Speech to Greater Houston Ministerial Association, September 12, 1960. Reprinted in *The Oxford Dictionary of American Legal Quotations* (New York: Oxford University Press, 1993), p. 164:56.

- What kinds of government aid, if any, should church-related or faith-based institutions receive? Why?
- Distinguish between the establishment and the free exercise clauses of the First Amendment. What is the relationship between those two clauses and the concept of limited government?

3. “The Fifth Amendment is an old friend and a good friend. It is one of the great landmarks in man’s struggle to be free of tyranny, to be decent and civilized.”* Do you agree or disagree with that assessment of the Fifth Amendment? Why?

* William O. Douglas. *An Almanac of Liberty* (Oxford University Press, 1954), p. 238.
See also *Ullmann v. United States*, 350. U.S. 422 (1956) (dissenting).

- The Fifth Amendment guarantees five rights of a very diverse nature. What are those rights and why is each important?
- What experiences in England and colonial America prompted the Framers to include the Fifth Amendment in the Bill of Rights?



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

- 1. The United States has been called “a nation of nations.” How accurate is that description? What are the essential ingredients for a strong bond to be forged among diverse Americans today?**
 - What ideas and ideals have united Americans in the past? Why?
 - What forces tend to disunite Americans today? How would you countermand them?
- 2. What are the essential differences among the rights protected in the U.S. Constitution and Bill of Rights and those set forth in the United Nations’ Universal Declaration of Human Rights?**
 - What significant differences in philosophy regarding rights are reflected in those documents?
 - What position do you take on these philosophical differences and how do you justify your position?
- 3. What are the major differences between American constitutionalism and that of other constitutional democracies?**
 - Some critics consider the American arrangement of divided and shared powers inefficient and undemocratic. How would you respond to those critics?
 - What elements of American constitutionalism have been most widely adopted by other countries? Why do you think they appealed to other countries?