



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



National Hearing Questions **Academic Year 2004–2005**

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

1. How and why did the basic ideas about rights and constitutional government held by Colonial Americans differ from those held by people in Great Britain?

- Although the forms of government varied somewhat from colony to colony, they all shared certain basic constitutional principles. What were those principles and why were they important?
- What examples can you identify of written guarantees of basic rights in colonial America? How did those written guarantees influence the Founders' views about rights and government?

2. “Although the Declaration [of Independence] is remembered for its opening paragraphs ...about God-given unalienable rights, most of its words are about human *wrongs*.... It was the British wrongs that inspired Americans to claim their own rights.”*

Do you agree or disagree with this assessment by one of today's prominent American lawyers? Why?

- Evaluate the wrongs charged against the “King of Great Britain.” Which do you think were fair charges? Which were unfair charges? Why?
- What rights included in the United States Constitution and Bill of Rights addressed the “wrongs” cited in the Declaration of Independence?

*Alan Dershowitz, *America Declares Independence* (New York: John Wiley & Sons, Inc., 2003), p. 116.



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- 3. The renowned American historian, Bernard Bailyn, claims that Benjamin Franklin, John Adams, and Thomas Jefferson were “great virtuosi of the American Enlightenment.”***

How would you describe the American Enlightenment and what were the significant contributions of these three virtuosi to it?

- What is the relationship of the natural rights philosophy to the American Age of Enlightenment?
- How was the American Enlightenment like and different from the European Enlightenment?

*Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: The Belknap Press of Harvard University Press, 1992), p. 27.



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Unit Two: How Did the Framers Create the Constitution?

1. According to a famous British writer:

“The American Constitution [is] one of the few modern political documents drawn up by men who were forced by the sternest circumstances to think out what they really had to face, instead of chopping logic in a university classroom.”*

*George Bernard Shaw in his preface to *Getting Married*, 1908, and reprinted in *The Giant Book of American Quotations* (New York: Gramercy Books, 1988), p. 57.

- What were the “sternest circumstances” the Framers had to face when they gathered in Philadelphia in 1787?
- What were the most important compromises they had to make in order to get agreement to the Constitution?

2. The Northwest Ordinance of 1787 has been called “one of the most constructive and influential legislative acts in American history.”* It has also been called the most lasting achievement of the government under the Articles of Confederation.

Is the Northwest Ordinance deserving of such high praise? Why or why not?

- The Northwest Ordinance was the first federal document to contain a Bill of Rights. Compare the rights it guaranteed with those in the Bill of Rights of the United States Constitution.
- Why do you think it was possible to outlaw slavery in the Northwest Ordinance while the Framers had to compromise on that issue?

*Leonard W. Levy. “Northwest Ordinance” in *Encyclopedia of the American Constitution*. Leonard W. Levy, ed. (New York: Macmillan Publishing Co., 1986), pp. 1328-1329.



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- 3. What did the Framers intend the relationship to be among the legislative, executive, and judicial branches?**
 - Has the relationship among the three branches of government intended by the Framers been maintained? Explain and cite examples to support your response.
 - In what ways, if any, do you think the relationship among the three branches of government should be changed? 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. In *Federalist 10*, James Madison argued:

“A pure democracy ... can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; ... and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual.”

Do you agree with Madison or disagree? Why?

- What examples from history or current events can you cite to support your position?
- What do you see as the advantages and disadvantages of a republic as compared to a pure democracy?

2. Some legal scholars claim that:

“American federalism is something of a double-edged sword. On the one side, the balance of power it created not only pacified those who were opposed to ratifying the Constitution but also continues to define the contours of the U. S. system of government. On the other, the complexity of the system has given rise to tensions between the levels of government, in the form of disputes that require settlement by the courts.”*

Why do you think the framers invented federalism rather than forming a unitary or confederal government?

- What powers does the Constitution allocate to the national government? To the states? What powers do national and state governments share? Do you agree or disagree with the allocation and why?
- What is the significance of how the courts have settled major disputes between the national and state governments?

*Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America*, second edition (Washington, D.C.: Congressional Quarterly Press, 2000), p. 187.



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- 3. How and why does the United States Constitution provide for judicial independence on the one hand and for democratic control and accountability on the other?**
- What examples drawn from American history can you cite that show how the judiciary has demonstrated its independence? What is the significance of the examples you cite?
 - What roles can or should individuals and organizations in civil society play in monitoring the courts and holding them accountable?



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

- 1. When Americans added the Fourteenth Amendment to the Constitution, “We the People” established important norms which have become a part of our constitutional culture. That is the opinion of one leading scholar.***

What norms do you think the Fourteenth Amendment established and why are they important?

- What conditions made adoption of the Fourteenth Amendment necessary?
- How have the norms established by the Fourteenth Amendment been reinforced through acts of Congress and acts of the executive branch?

*Michael J. Perry, *We the People: The Fourteenth Amendment and the Supreme Court*. (New York: Oxford University Press, 1999), see Chapter 3: “The Fourteenth Amendment: What Norms Did ‘We the People’ Establish?”

- 2. Alexis de Tocqueville called juries “the most energetic means of making the people rule, [and] the most efficacious means of teaching it to rule well.”***

Do you think that his appraisal of juries is as appropriate today as it was when he made it? Why or why not?

- What rights to trial by jury do the Constitution and its Bill of Rights guarantee? Why are those rights important?
- What reforms, if any, do you think are needed in the jury system as it now exists? Why?

*Alexis de Tocqueville, *Democracy in America*, Volume I (New York: Schocken Books, 1961), p. 339. Reprinted in Sandra Day O’Connor, *The Majesty of the Law* (New York: Basic Books, 2003), p. 222.



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

- 3. Although the right to vote is the cornerstone of the democratic political system, the Constitution until 1868 made almost no mention of that right. How and why has the Constitution been amended to extend and protect this basic political right?**
 - How might a classical republican and a natural rights philosopher differ about who should vote and which votes should be counted?
 - What do you think are now the major problems in guaranteeing the right to vote to all Americans? How could those problems best be addressed?



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

- 1. The First Amendment emphatically states that “Congress shall make no law ... abridging the freedom of speech.” Even so, the legislative and judicial branches of government have established limits or boundaries to freedom of expression. What are the most important of those boundaries? Are they in keeping with the spirit of the Constitution? Why or why not?**
 - What considerations has the Supreme Court used to limit freedom of expression?
 - When, if ever, does the right of free speech come into conflict with the common good and how should such conflicts be addressed?

- 2. The Sixth Amendment is brief but highly important, because it deals with procedural due process. How would you define procedural due process and how would you distinguish it from substantive due process?**
 - What limitations does the Sixth Amendment place on government and why are those limitations important?
 - What is the relationship of procedural justice to the natural rights philosophy and to a republican form of government?



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

- 3. The Eighth Amendment prohibits excessive bail, excessive fines, and cruel and unusual punishments. Why are those limitations on government important?**
 - What is the relationship of bail to the theory that one is innocent until proven guilty?
 - The Eighth Amendment does not specify what constitutes “cruel and unusual punishment.” What criteria would you use to determine whether a punishment is “cruel and unusual”?



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

- 1. “Liberty has never come from the government. Liberty has always come from the subjects of government. The history of liberty is the history of resistance. The history of liberty is a history of limitation of governmental power, not the increase of it.”***
 - Do you agree or disagree with those ideas about liberty expressed by President Woodrow Wilson? Why or why not?
 - What historical and contemporary evidence can you offer to support your position?

*Woodrow Wilson, speech to the New York Press Club, September 9, 1912. Reprinted in *The Oxford Dictionary of Political Quotations*, p. 386.

2. What do you consider to be the principal obligations of a good American citizen?

- What is the relationship between the rights and the obligations of a good citizen?
- How have your ideas about what constitutes good citizenship been influenced by the natural rights philosophy and/or classical republicanism?



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

- 3. How does the amendment procedure specified in Article V of the United States Constitution reflect the sovereignty of “We the People” and how does it safeguard the basic division of powers under the federal system?**
- The Framers considered the example of the Pennsylvania State Constitution. It provided for a system of automatic and frequent constitutional review by an independent council. What might be the advantages and disadvantages of such an amendment process? If you had been a delegate to the Constitutional Convention, would you have favored or opposed the Pennsylvania system? Why?
 - “A changeless constitution becomes the protector not only of vested rights but of vested wrongs.”* So said an American judge. What rights protected by the U.S. Constitution have remained unchanged? Why? What “wrongs” have been corrected by amendments. Why?

*Charles F. Amador in “The Nation and the Constitution” quoted in David E. Kyvig’s *Explicit and Authentic Acts: Amending the U.S. Constitution, 1776-1995* (Lawrence, Kansas: University Press of Kansas, August 1996), p. 473.