



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 2005–2006

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

- 1. Why did 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 and why did the Founders view the Roman Republic as both an example and a cautionary tale?
 - If you had been one of the delegates to the Constitutional Convention, how might you have reconciled the differences between the natural rights philosophy and classical republicanism?
- 2. How did the religious revival of the Reformation and the intellectual revival of the Renaissance contribute to modern ideas about individual rights?**
 - What were the major differences between the ideas about individual rights developed during the Reformation and the Renaissance and ideas about rights held during the Middle Ages?
 - How and why did the Reformation and the Renaissance contribute to a reexamination of the individual's relationship to government?
- 3. "The early state constitutions stand as the fulcrum in American constitutional history. On the one hand they were the culmination of colonial experience and thus embodied and summarized it. On the other hand, they formed the ground ... for the United States Constitution."* How accurate is that assessment of the early state constitutions? What evidence can you offer to support your answer?**
 - Why did the state constitutions show a preference for legislative supremacy?
 - How and why did the Massachusetts constitution differ from those of the other states?

*Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988), p. 97.



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Unit Two: How Did the Framers Create the Constitution?

1. **“Because [the Federalists and the Anti-Federalists] disagreed so strongly about the nature of the proposed government ... it is all too easy to lose sight of the common grounds that they shared”***—so writes a noted scholar. **What were their areas of agreement or “common ground” and why were they important?**

- In what ways were the viewpoints of the Federalists and the Anti-Federalists alike and different in respect to natural rights, republicanism, and constitutionalism?
- The ratification debate is considered one of the classic political battles in American history. If you had been a participant in that debate, what position would you have taken? Why?

**The Origins of the American Constitution: A Documentary History.* Edited with an Introduction by Michael Kammen. (New York: Penguin Books, 1986), p. xvi.

2. **The Founders believed that because a concentration of power leads to tyranny, government’s powers should be separated. They also believed, however, that**

*Unless the branches are so interconnected and blended that each has a constitutional control over the others, the degree of separation ... essential to a free government can never be maintained in practice.**

How does the Constitution provide for both the “interconnection and blending” of the branches and for the “constitutional control” of one branch over another?

- How did the writings of John Locke and Baron de Montesquieu influence the Founders’ thinking about the separation of powers?
- How successful in practice do you think the “blending” of the three branches has proved to be? What evidence can you offer in support of your judgment?

**Federalist No. 48*



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3. **“The Virginia Plan was the remedy for more than the obvious impotence of the Confederation; it was a remedy—and an aristocratic remedy—for what were often referred to as the excesses of democracy.”*** Do you agree or disagree with that judgment by an American historian? Why?
- What were the weaknesses of the Articles of Confederation and how did the Virginia Plan remedy them?
 - Why did the Framers think there were “excesses of democracy” and how did the Virginia Plan try to curb them?

*Gordon S. Wood, “Interests and Disinterestedness in the Making of the Constitution” in *Beyond Confederation: Origins of the Constitution and American National Identity*. Richard Beeman, Stephen Botein, and Edward C. Carter II, eds. (Chapel Hill: University of North Carolina Press, 1987), p. 72.



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

1. **What does the Second Amendment guaranteeing the “right of the people to keep and bear arms” mean? Does the guarantee extend to individuals keeping and bearing arms for private purposes or is it a right belonging to the people collectively?**

- How are those questions addressed in *Federalist No. 29* and *No. 46*?
- Is the Second Amendment an anachronism? Have the closing of the frontier, the emergence of a professional police force and army, and new technology made it outdated?

2. **“The federalism issue in its previous incarnations had torn the British Empire apart in the mid 1770s and had bedeviled America’s first efforts at continental coordination in the mid 1780s.”* Explain why federalism was such a troubling issue in those two historic times.**

- How would you distinguish a federal system from a unitary government and from a confederation?
- What did the Framers hope to achieve by establishing a federal system of government? How successful has that system proved to be over time?

*Akhil Reed Amar, *America’s Constitution: A Biography*. (New York: Random House, 2005), p. 105.

3. **Is judicial review essential for the functioning of our American constitutional democracy? Explain and justify your position.**

- Judicial review is not specifically mentioned in the Constitution, but *Federalist No. 78* tries to make a strong case for it. Evaluate the major arguments advanced in *Federalist No. 78*.
- What responsibilities, if any, do the executive and legislative branches have for reviewing the constitutionality of laws and how can they exercise those responsibilities?



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

1. Why did differing interpretations concerning the meaning of the Constitution and the Union lead to the Civil War?

- Why did the institution of slavery force a debate about the nation's fundamental principles?
- The Emancipation Proclamation has been called “one of the most sweeping measures ever undertaken” and “one that changed the course of American history.”* Do you agree with that assessment? Why or why not?

*Akhil Reed Amar, *America's Constitution: A Biography*. (New York: Random House, 2005), p. 356.

2. Although a right to privacy is not explicitly mentioned in the Bill of Rights, how has the Supreme Court used the First, Fourth, Fifth, and Ninth Amendments to assert that right?

- Evaluate the constitutional arguments advanced to support a right to privacy. Which do you find most and least persuasive? Why?
- Some people advocate amending the Constitution to add an explicit right to privacy. Do you favor or oppose such an amendment? Why?



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3. When considering the rights guaranteed in the Fourteenth Amendment, some legal scholars raised this question:

*Without assistance from the other branches and public support are Supreme Court decisions merely statements of legal rules and principles?**

How would you answer their question?

- What evidence of the assistance or opposition of the other branches can you offer to support your position?
- How important do you think public support of Supreme Court decisions is? What evidence can you offer to substantiate your opinion?

*James C. Foster and Susan M. Leeson, *Constitutional Law: Cases in Context, Vol. II: Civil Rights and Civil Liberties*. (Upper Saddle River, New Jersey: Prentice Hall, 1998), p. 533.



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

1. Justice Sandra Day O'Connor writes that there are three major problems with jury service today:

- Citizens see “jury service as a burden instead of a privilege”
- Jury consultants unduly influence the selection of jurors
- Jurors are “allowed to do nothing but listen passively”*

Do you agree that those are important problems? Why or why not?

- What provisions of the Constitution deal with the right of trial by jury? What landmark decisions of the Supreme Court treat the right of trial by jury?
- How might the problems identified by Justice O'Connor be corrected?

*Sandra Day O'Connor, *The Majesty of the Law*. (New York: Random House Trade Paperback Edition, 2004), pp. 217-222.

2. What is the relationship, if any, between the right of association and a democratic society?

- How has the right of association been established, even though it is not specifically mentioned in the Constitution?
- The Supreme Court has ruled that the right to associate is not absolute.* When and why can that right be infringed upon?

**Roberts v. United States Jaycees* 468 U.S. 609, 104S. Ct. 3244, 82 L. Ed. 2d 462 (1984).



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3. The Founders generally agreed with John Locke that the right to property is a natural right. As John Adams put it, “Property is surely a right of mankind as real as liberty.”* Do you agree or disagree? Why?

- What protections for property are provided by the Fifth and Fourteenth Amendments and why are those protections important?
- In the recent, controversial Supreme Court case *Kelo et al. v. City of New London et al.*, the meaning of “public use” was in dispute.** What position would you have taken, if you had been a Supreme Court justice? Why?

*John Adams, “A Defence of the Constitution of Government of the United States of America,” 1787 in *Works of John Adams* 6:8-9 (Charles Francis Adams, ed., 1851).

***Kelo et al. v. City of New London et al.* Certiorari to the Supreme Court of Connecticut No. 04-108. Argued February 22, 2005. Decided June 23, 2005. Opinion, Concurrence and Dissent available: <http://news.findlaw.com>



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

1. In discussing “the liberty of the Press,” Alexander Hamilton claimed that:

*Whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.**

Do you agree or disagree with Hamilton’s assertion? Why? What evidence—historical and contemporary—can you offer in support of your position?

- How would you define or explain “the general spirit of the people and of the government”?
- Is such a spirit necessary to support not only “liberty of the press,” but other rights as well? Why?

**Federalist No. 84*

2. What do you think are the most significant differences between a parliamentary system of government and the constitutional system of government of the United States?

- What are the greatest strengths and weaknesses of each system?
- Which of these two systems of government would you personally prefer? Why?

3. How have the natural rights philosophy and the ideals of classical republicanism influenced Americans’ thinking about what constitutes good citizenship?

- Why did the Founders look to religion and education to promote good citizenship?
- What responsibilities, if any, do you think religion and education should have today to promote good citizenship?