



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 2003-04

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

- 1. In the Declaration of Independence, Thomas Jefferson asserted that “governments are instituted among men, deriving their just powers from the consent of the governed.” Why did Jefferson claim that a legitimate government cannot exist without the consent of those who agree to be governed? Do you agree or disagree with Jefferson? Why?**
 - What is meant by the term “social contract”? How is it connected to the idea that government derives its authority from the consent of the governed?
 - How do we as present day Americans give our consent to be the governed and how can we withdraw it?

- 2. What are the major differences between the natural rights philosophy and classical republicanism?**
 - How did the Founders adapt these opposing ideas to suit the new form of government they created?
 - What is the difference between a democracy and a republic? What aspects of the U.S. government are characteristic of a democracy? What aspects are characteristic of a republic?

- 3. What are the major differences between the U.S. Constitution and the British constitution?**
 - Magna Carta (1215) was the first great landmark of British constitutionalism. What principles enunciated in Magna Carta did Americans incorporate into the U.S. Constitution?
 - The English Bill of Rights (1689) is another landmark of British constitutionalism. What principles enunciated in the English Bill of Rights influenced our Constitution and Bill of Rights?



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Unit Two: How did the Framers Create the Constitution?

- 1. In letters to friends, George Washington and James Madison repeatedly used the word “miracle” to describe what happened in Philadelphia in 1787. Since then, some historians and even a chief justice of the Supreme Court also have used the word “miracle” in their assessments of the work of the Constitutional Convention.**
 - What were the most serious obstacles to the success of the Convention? How did the delegates meet those challenges and how successful have their responses proved to be over time?
 - Based on your study and reflection, do you think that the Constitutional Convention was a “miracle”—or is this description a hyperbole? Explain the reasons for your response.
- 2. The Framers struggled to define the proper role of the executive branch of the new system of government. What were the most important issues in respect to the executive branch that they had to decide and how did they resolve those issues?**
 - The Framers hoped the Constitution would balance power among the three branches of government. How well do you think power is balanced today? What evidence can you offer in support of your opinion?
 - What specific limits does the Constitution place on the powers of the president? Should additional limits be added? If so, what should those limits be?
- 3. Are the Preamble and the “general welfare” and “necessary and proper” clauses of the Constitution so general and vague that, instead of a government of “enumerated powers,” the federal government can do practically anything?**
 - Madison believed in “energetic” government, but Jefferson thought that a “very energetic government” is “always oppressive.” With whom do you agree and why?
 - Do constitutional provisions that separate and share governmental powers reflect eighteenth-century ideas and concerns that are less important today? Explain.



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

- 1. In the body of the United States Constitution, three important groups of rights are protected:**
 - political independence and other rights of public officials,
 - individual rights against violation by state governments, and
 - individual rights against violation by the federal government.

What are some examples of specific rights in each of those three categories and why is their protection of significance today?

- What experiences under colonial government prompted the Framers to write these protections into the Constitution?
 - Why did the Framers believe it was necessary to protect the individual's rights against both state and federal governments?
- 2. Judicial review is an American invention. It is the United States' novel contribution of political theory and the practice of constitutional government. In the most celebrated case in American history, Chief Justice John Marshall declared, "It is emphatically the province and duty of the judicial department to say what the law is." Why has judicial review continued to be controversial? What are the major arguments advanced for and against judicial review?**
 - In your opinion, which of those arguments is most persuasive? Why?
 - All courts, state and federal, may exercise judicial review. What are the advantages and disadvantages of this broad dispersal of power?
 - 3. How has the evolution of factions into contemporary political parties influenced our governmental processes? Should the Constitution be amended to include the functions of major political parties?**
 - How might new ways of communicating and transmitting information diminish the importance of political parties?
 - Should we make it easier for new political parties to form and to qualify for a place on the ballot—perhaps through greater public funding of campaigns?



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

1. When James Madison introduced the Bill of Rights to the First Federal Congress, James Jackson, a representative from Georgia, objected. He said:

*When the propriety of making amendments shall be obvious from experience, I trust there will be virtue enough in my country to make them.**

* Speech Introducing Proposed Constitutional Amendments. James Madison, June 8, 1789. Reprinted in *The American Republic: Primary Sources*. Edited by Bruce Frohnen. Indianapolis: Liberty Fund, 2002, p. 333.

- Although there was “virtue” enough to make the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution following the Civil War, there was not “virtue” enough to see that their objectives were realized. Explain why.
- Was the failure of the Civil War Amendments primarily the responsibility of elected officials or of private citizens? What evidence can you offer in support of your answer?

2. Alexis de Tocqueville was impressed by Americans’ veneration of the law. He wrote:

*Scarcely any political question arises...which is not resolved, sooner or later, into a judicial question... [T]he spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society...**

* Alexis de Tocqueville, *Democracy in America* 1:357-58 (Frances Bowentrans, 1862), 1835 and reprinted in Fred R. Shapiro’s *The Oxford Dictionary of Legal Quotations*. New York: Oxford University Press, 1993, p. 241.

- What evidence can you cite to prove or disprove Tocqueville’s assertion that most political questions in the United States sooner or later become judicial questions?
- What might be the advantages of relying on the legal system to resolve political or constitutional issues? What might be the disadvantages?

3. More than a century ago, the U.S. Supreme Court declared that the right to vote is “a fundamental right, because it is the preservation of all rights.” What is a fundamental right? Do you agree or disagree with the Court’s decision that the right to vote is a fundamental right? Why or why not?

- Nowhere in the U.S. Constitution is there an explicit declaration of the right to vote. But that right is certainly implicit in various provisions of the Constitution. What provisions in the body of the Constitution and which Amendments clearly imply a right to vote?
- In the United States, fewer than 50 percent of the potential voters actually participate in most elections. What are the consequences of such low turnout? What might be done to improve voter participation, particularly that of young voters?



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

1. **“The First Amendment... requires the state to be a neutral in its relations with groups of religious believers and non-believers. It does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.” That was the opinion of Justice Hugo L. Black in *Everson v. Board of Education*.***

* Hugo L. Black. *Everson v. Board of Education*, 350 U.S. 1, 18 (1947).

- Do you agree or disagree with Justice Black’s interpretation of the meaning of the First Amendment? Why or why not?
 - In what ways has state power been used to handicap religions? To favor them? Which of those ways, if any, do you believe are justifiable? Why?
2. **The First Amendment protects the people’s freedom to assemble and to petition the government for redress of grievances. Another right recognized by courts is the right to freedom of association. How are those three rights related to one another and how and why are they mutually reinforcing?**
 - What were the historical origins of the rights of assembly and petition?
 - How have courts justified treating the right of association as a constitutional right since it is not specifically mentioned in the First Amendment?
 3. **Some have argued that the “exclusionary rule” unduly hinders the efforts of police to effectively perform their jobs. Should the exclusionary rule be eliminated or changed in order to enhance the powers of the police? Why or why not?**
 - Do you believe the exclusionary rule should still apply even when the illegal actions of the police were inadvertent? Why or why not?
 - Should an exception to the exclusionary rule be made for terrorist-related crimes? Why or why not?



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

1. **Noah Webster, compiler of the first American dictionary, was an ardent Federalist. In 1787, he spoke in favor of ratification of the new Constitution. He declared:**

*The origin of the American Republic is distinguished by peculiar circumstances. Other nations have been driven together by fear and necessity... . In the formation of our constitution, the wisdom of all ages is collected—the legislators of antiquity are consulted—as well as the opinions and interests of the millions who are concerned. In short, it is “an empire of reason.”**

* Noah Webster, “An Examination of the Leading Principles of the Federal Constitution.” October 10, 1787. Reprinted in *The American Republic: Primary Sources*. Edited by Bruce Frohnen. Indianapolis: Liberty Fund, 2002, p. 281.

- Is Webster correct in saying our Constitution is a collection of the wisdom of all ages? Why or why not? What evidence can you offer to support your answer?
 - What do you think Webster meant by calling the American Republic “an empire of reason”? Is that an apt description? Why or why not?
2. **What are the major differences between the natural rights philosophy and classical republicanism in respect to the role of the citizen?**
- How would you define the common good and how do you think it should be determined?
 - How would you distinguish between self-interest and enlightened self-interest and how can the enlightened self-interest of Americans be encouraged?
3. **How might giving citizens the right to approve or reject constitutional decisions of the U.S. Supreme Court encourage a greater degree of political participation among citizens?**
- Should the Constitution be amended so that citizens have this power?
 - Would such a plan help to protect, or might it threaten, basic rights of citizens? What evidence can you cite in support of your answer?