



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 2002-03**

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

- 1. In his famous *Second Treatise of Government*, John Locke asked these questions: “If man in the state of nature be so free, as has been said, if he be absolute lord of his own person and possessions, equal to greatest and subject to nobody, why will he part with his freedom?” “Why will he give up this empire and subject himself to any other power?”***

How did Locke, himself, answer those two questions? Do you agree or disagree with Locke’s answers? Why?

* John Locke. *Second Treatise of Government*. Chapter 9 “Of the Ends of Political Society and Government.” Reprinted in *Political Writings of John Locke*. Edited and with an Introduction by David Wooton. New York: Penguin Books, 1993, p. 324.

- Explain why both John Locke and Thomas Jefferson claimed that there were rules or “natural law” in a state of nature? Do you agree or disagree with their reasoning? Why?
- What did Locke mean by “the social contract”? Why did he think it necessary and what obligations does it place on government and on the individual?



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- 2. How and 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 James Madison translate and adapt the ideas of classical republicanism to make them applicable to the new American republic?
 - To what extent do you think the common good in today's American society depends on the classical republican idea of civic virtue and to what extent does it depend on the natural rights philosophy idea of each individual pursuing his or her own self-interest? What evidence can you offer to support your position?



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3. The political theory accepted by most American colonists, according to a professor of legal history, was “that unchecked monarchy degenerated into tyranny, unchecked aristocracy degenerated into oligarchy, and unchecked democracy degenerated into mobocracy.”* What experiences of the American colonists might have justified such beliefs? What experiences of the colonists could have countered those beliefs?

* John Phillip Reid. *Constitutional History of the American Revolution*. Madison: University of Wisconsin Press, 1991, p. 131.

- What constitutional arrangements did the colonists develop to thwart tyranny, oligarchy, and “mobocracy”?
- Do you think any or all of that political theory is viable in the world today? What evidence can you offer in support of your opinion?



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National Hearing Questions **Academic Year 2002-03**

Unit Two: How Did the Framers Create the Constitution?

- 1. In assessing the Articles of Confederation, an historian has written that, “despite its many shortcomings, our nation’s first instrument of national government was by no means a total failure.”* Do you agree or disagree with that assessment? What evidence can you offer in support of your position?**

* James McClellan. *Liberty, Order and Justice: An Introduction to the Constitutional Principles of American Government*. Indianapolis: Liberty Fund, 2000, p. 161.

- What were the major shortcomings of the Articles of Confederation and why were they significant?
- What were the major achievements of government under the Articles of Confederation and why were they significant?



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- 2. The issue of representation was hotly contested at the Philadelphia Convention. Initially, James Madison, James Wilson, Rufus King, and others argued for proportional representation in both Houses of Congress. Do you agree or disagree with their initial position? Why or why not?**
- How did the Connecticut or Great Compromise accommodate the wishes of both the large and the small states?
 - Has the Senate acted, as Madison in Federalist 63 predicted it would, to defend the people against their own “temporary errors and delusions”? What historical and contemporary evidence can you offer in support of your answer?*

* The Federalist No. 63. James Madison in *The Federalist Papers*. Edited and with an Introduction by Gary Wells. New York: Bantam Books, 1982, p. 320.



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3. **What basic ideas of the natural rights philosophy, republicanism, and constitutional government were included in the constitutions adopted by the states after independence was declared?**
 - Did the revolution return the colonists to a state of nature? Why or why not?
 - Which basic ideas in the early state constitutions influenced the framing of the U.S. Constitution and the Bill of Rights? Why are those ideas of significance?



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National Hearing Questions **Academic Year 2002-03**

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

- 1. When James Madison introduced the Bill of Rights in his historic speech to the First Congress, he said: “It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention.”* Why did Madison refer to declarations of rights as “paper barriers”? What evidence, historical and contemporary, can you cite to prove or disprove the claim that declarations of rights are no more than paper barriers?**

* James Madison. Speech Introducing Proposed Constitutional Amendments, June 8, 1789. Reprinted in *The American Republic: Primary Sources*. Edited by Bruce Frohnen. Indianapolis: Liberty Fund, 2002, p. 340.

- Was Madison correct when he said a Bill of Rights was one means “to control the majority from those acts to which they might be otherwise inclined”? Why or why not? What other means of controlling the majority does the Constitution provide?
- How important a role does public opinion play in creating respect for the Bill of Rights? What evidence can you offer in support of your response?



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2. What differences in political philosophy led the Federalists and the Republicans to become opposing political parties in the 1790s?

- Many of the Founders believed that the norm for society should be consensus on its goals and the rules of the game. A party or “faction,” in their view, represented minority interests working against the larger public interest. Evaluate that position.
- In Federalist 10, James Madison argued that, “Liberty is to faction, what air is to fire, an aliment, without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be wish the annihilation of air, which is essential to animal life, because it imports to fire its destructive agency.”* Evaluate Madison’s argument.

* James Madison. Federalist 10. Reprinted in *The American Republic: Primary Sources*. Edited by Bruce Frohnen. Indianapolis: Liberty Fund, 2002, p. 246.



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

3. **“The basic structure of American federalism provided in the Constitution does not encourage a highly coordinated or efficient approach to government... but it allows the heterogeneity and freedom that give strength to American democracy.”* Do you agree or disagree with that assessment? Why? What evidence can you offer to support your position?**

* Robert Heineman, Steven Peterson, and Thomas Rasmussen. *American Government*, second edition. New York: McGraw Hill, 1995, p. 48.

- Why is the U.S. Constitution said to be a combination of both unitary and confederate systems of government? Why has this combination given rise to many disputes?
- What did the Framers hope to achieve by establishing a federal system of government? How successful do you think they have been? Why?



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

- 1. The opening paragraph of the Declaration of Independence proclaims that:
When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume [a]... separate and equal station ... a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.**

What were the causes set out by the Southern states which they claimed justified their secession from the Union and the formation of the Confederate States of America?

- Why did Lincoln and most Northerners believe the Southern states had no constitutional right to secede from the Union?
- John Calhoun of South Carolina, chief spokesman in Congress for the South, argued that democratic decisions should be made only with the concurrence of **all** major segments of society. Without such concurrence, he claimed, a simple majority decision should not be binding on those groups whose interests it violates. How would you respond to that argument? Why?



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2. **What are the similarities and differences in how the Civil War Amendments and civil rights legislation have attempted to protect the rights of all Americans? Which have proved to be more effective over time? What evidence can you offer to support your position?**
 - The Thirteenth Amendment was aimed primarily at ending slavery, but it also outlaws “involuntary servitude except as punishment for crime.” Constitutional scholar, Edward S. Corwin, writes that, “the words have long had larger meaning than slavery.”* How would you define involuntary servitude? What is that “larger meaning”? How and why has constitutional prohibition of involuntary servitude been used to challenge laws related to labor, debts, contracts, and military service?
 - What were the moral and the political reasons which impelled Congress to propose the Fourteenth and Fifteenth Amendments to the Constitution?

* Edward S. Corwin. *The Constitution and What It Means Today*. Revised by Harold W. Chase and Craig R. Ducat, 14th edition. Princeton, N.J.: Princeton University Press, 1978, p. 456.



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3. The Fourteenth Amendment forbids any state to “deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” In a unanimous decision, the Supreme Court held that:
- ...the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The ‘equal protection of the laws’ is a more explicit safeguard of prohibited unfairness than ‘due process of law,’ and, therefore, we do not imply that the two are always interchangeable phrases.*

How would you explain the concepts of “equal protection” and “due process”? In what ways are those concepts different? In what ways are they mutually reinforcing?

* Chief Justice Earl Warren in a unanimous decision for the Supreme Court in *Bolling v. Sharpe*, 347 U.S. 497 (1954).

- Do you agree or disagree with the Court’s opinion in *Bolling v. Sharpe*? What evidence can you offer to support your position?
- Some scholars claim that the most significant words in the Fourteenth Amendment are “*any state*” and “*any person*.” What important changes in the Constitution do those words imply? Why have those words proved to be of significance?



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

- 1. In his dissent in a search and seizure case, the late Justice William Brennan wrote:
While the machinery of law enforcement and indeed the nature of crime itself have changed dramatically since the Fourth Amendment became part of the Nation's fundamental law in 1791, what the Framers understood then remains true today—that the task of combating crime and convicting the guilty will in every era seem of such pressing concern that we may be lured by the temptations of expediency into forsaking our commitment to protecting individual liberty and privacy.***

Do you agree or disagree with Justice Brennan's opinion? Why? What historical and contemporary evidence can you offer in support of your position?

* Justice William Brennan in dissent. *United States v. Leon*, 468 U.S. 897 (1984).

- How does the Fourth Amendment attempt to balance the government's need to gather evidence with the citizen's right not to suffer unnecessary government intrusion? How successful have we, as Americans, been in achieving that balance?
- Given the increased risks of terrorism, what modifications, if any, do you think are necessary in the rules regarding search and seizure?



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

- 2. How does the Sixth Amendment protect the integrity of the entire criminal process? What specific guarantees of a fair trial are included in the Sixth Amendment? Why is each important?**
 - The system of trial by jury is a distinctive feature of the Anglo-American system of justice. What are its historic roots in England and in the American colonies?
 - How and why does the Sixth Amendment impose limitations on government?



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

3. What is the relationship between the rights of peaceable assembly and of association? Why are those rights essential in a democratic society?

- The Supreme Court has ruled that government cannot interfere in a person's choices about whom to associate with in private life. However, in situations involving larger social purposes the government may force organizations not to discriminate on the basis of race, gender, or ethnic background. Is this distinction between choices in private life and situations with larger social purposes justifiable? Why or why not?
- Under what circumstances, if any, should the right of the people to peaceably assemble be limited? How can you justify those limitations?



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

1. The famous educator, Horace Mann, contended that:

The qualification of voters is as important as the qualification of governors, and even comes first in the natural order.... Education must prepare our citizens to become municipal officers, intelligent jurors, honest witnesses, legislators or competent judges of legislation.... It may be an easy thing to make a Republic, but it is a very laborious thing to make republicans.*

Do you agree or disagree with Horace Mann? Why?

* Horace Mann, "Twelfth Annual Report" (1848). Excerpts reprinted in Robert B. Westbrook, "Public Schooling and American Democracy" in Roger Soder, ed., *Democracy, Education and the Schools*. San Francisco, Josey-Bass, 1996, pp. 129-130.

- How might classical republicans and natural rights philosophers have responded to Mann's assertions? Why?
- How well do you think schools of today are preparing citizens for the responsibilities identified by Horace Mann? What evidence can you offer in support of your answer?



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

2. **What responsibilities, if any, do Americans have to promote representative democracy, constitutional government, and respect for human rights in other nations? Explain and justify your position.**
 - What elements of American constitutionalism have been most widely adopted by other nations? Which have most often been rejected? Why?
 - How can individual citizens and/or organizations in civil society help to promote representative democracy, constitutional government, and respect for human rights throughout the world?



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

- 3. The United States Constitution is the source of both liberty and order, but over time the right balance of these two elements has often been hard to find and maintain. How does the Constitution provide for liberty? For order?**
 - Under what circumstances, if any, should the power of government be limited to protect the rights to liberty of the individual? Why?
 - Under what circumstances, if any, should limits be placed on the freedom and rights of individuals to protect public order? Why?