



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.

HIGH SCHOOL NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2012–2013

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

1. Why did the Founders prefer a representative or republican form of government to direct democracy as the better or best form of government?

- To what extent, if any, are the reasons used by the Founders to support a republican form of government over a democracy relevant today?
- What major changes have taken place in American history that have resulted in the republic as envisioned by the Founders becoming the democratic republic or representative democracy it is today? How were these changes related to the political philosophy contained in the Declaration of Independence, Preamble to the Constitution, and Gettysburg Address?

2. What are the major differences between classical republicanism and natural rights philosophy?

- In what ways, if any, can the differences between the purposes of government set forth in classical republicanism and natural rights philosophy be reconciled? Should they be reconciled? Why?
- What do you think the essential purposes of government should be? How should they be obtained? Justify your position in terms of natural rights philosophy, classical republicanism, or your own ideas.

3. What do you believe are the most important principles contained in the Magna Carta? Why?

- In what ways, if any, are those principles related to constitutional government or constitutionalism?
- What is the relationship, if any, of the Magna Carta to the idea of government by agreement or contract?



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Unit Two: How Did the Framers Create the Constitution?

- 1. An American historian recently described the ratification debates as “one of the greatest and most probing public debates in American history.”* Do you agree or disagree with her characterization? Why or why not?**
 - What was the significance of having the Constitution ratified by the people in special conventions instead of by state legislatures?
 - How would you compare today’s debates over the Constitution with those that ranged widely among Americans during the ratification period?
- 2. “The constitution-makers of 1787 never forgot a central lesson about constitutional design—that a constitution grants power as well as limiting it.”* How and why does the Constitution provide for three competing but complementary branches of government?**
 - Why did the delegates enumerate the powers of Congress but fail to enumerate the powers of the executive and judicial branches in the same detail?
 - How well has the checking and balancing relationship among the three branches intended by the Framers been maintained? What evidence can you offer to support your response?
- 3. An American historian writes that ideas put forth by the Anti-Federalists have surfaced again and again among later generations of Americans. “Those ideas,” he claims, “are a vital element in the American political tradition and are properly viewed as part of the philosophy of the Constitution.”* Do you agree or disagree? Why?**
 - Why did the Anti-Federalists object to what they claimed were very broad grants of power to the federal government, such as these phrases in the Constitution: “necessary and proper” and “the general welfare”?
 - Nearly all Anti-Federalists agreed that transfer of sovereignty to a national government would mean states would retain “but a shadow of their former power.”** Evaluate their argument.

* Pauline Maier, *Ratification: The People Debate the Constitution, 1787–1788* (New York: Simon & Schuster, 2010), ix.

* R.B. Bernstein, *The Founding Fathers Reconsidered* (New York: Oxford University Press, 2009), 57.

* *The Anti-Federalist Papers and the Constitutional Convention Debates: The Clashes and the Compromises That Gave Birth to Our Form of Government*, edited and with an introduction by Ralph Ketcham (New York: Signet Classics, 2003), xxxi.

** Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781–1788* (Chapel Hill and London: University of North Carolina Press, 1961), 120.



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Unit Three: How Has the Constitution Been Changed to Further the Ideals Contained in the Declaration of Independence?

1. The Emancipation Proclamation is said to be “perhaps the greatest document of social reform in American history.”* Do you agree or disagree with that assessment? Why?

- On what constitutional grounds did Lincoln issue the Emancipation Proclamation?
- In signing the Emancipation Proclamation Lincoln wiped out “property” worth millions. Did Lincoln violate the “takings clause” of the Fifth Amendment, or was the Emancipation Proclamation justified by the Constitution, which empowers Congress to “make Rules concerning Captures on Land and Water” (Article I, Section 8, Clause 11)?

* William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008), 261.

2. What were the most important constitutional issues that the Civil War provoked?

- What important constitutional issues did the Civil War resolve? How?
- What important constitutional issues did the Civil War leave unresolved? Why?

3. “Despite its seemingly traditional language, the Thirteenth Amendment...marked a radical break with the antebellum federal Constitution.”* What were those “breaks” or “changes”? Should they be considered “radical” or not? Why?

- What new duties or limits did the Thirteenth Amendment impose on states? Why were they important?
- What new powers did the Thirteenth Amendment’s closing words confer on Congress, and why have those powers proved to be significant?

* Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005), 30.



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Unit Four: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

1. “The principal sources of executive power within Article II are all rather open-ended.... The precise nature of that power is nowhere specified in the Constitution.”* What are the benefits or advantages, if any, of leaving the president’s powers unspecified or open-ended?

- How and why has presidential power continued to expand over time?
- Some legal scholars claim that “the principal danger to be guarded against is an ever-encroaching executive branch that threatens to displace legislative power unless Congress asserts itself.”** How effective or ineffective has Congress been in asserting itself against executive power? What evidence can you offer to support your response?

* Michael C. Dorf with Trevor W. Morrison, *The Oxford Introductions to U.S. Law: Constitutional Law* (New York: Oxford University Press, 2010), 105.

** Ibid., 115.

2. “Although Presidents and members of Congress from time to time assert their authority to limit the jurisdiction of the federal courts, no effort to cut back substantially on the power of judicial review itself has come close to succeeding.”* Why do you think that statement has proven to be true?

- In what ways, if any, can the power of the Supreme Court be checked?
- What limits, if any, should be put upon the power of judicial review?

* Michael C. Dorf with Trevor W. Morrison, *The Oxford Introductions to U.S. Law: Constitutional Law* (New York: Oxford University Press, 2010), 31.

3. Federalism “assures a decentralized government that will be more sensitive to the diverse needs of a heterogeneous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.”* Do you agree or disagree with the opinion expressed here? Why?

- Federalism was an entirely new political system invented at the Philadelphia Convention of 1787. What are its essential features and most important principles?
- Evaluate the claim that one of the values of federalism is that states can act as “laboratories of democracy.”

* Gregory v. Ashcroft, 501 U.S. 452, 458 (1991). Sandra Day O’Connor, concurring.



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

1. In Federalist 51, Madison famously asserted that “it is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part.”* In what ways do the Bill of Rights and the amendments protect individuals from oppression by its rulers?

- In what ways, if any, does the Bill of Rights protect individuals or groups against infringement of their rights by other individuals and groups?
- Madison also said in Federalist 51 that in a society where the weaker faction is not protected from the stronger faction, anarchy reigns. Do you agree or disagree? Why?

* Michael Loyd Chadwick, ed., *The Federalist* (Springfield, Virginia: Global Affairs Publishing Co., 1987), 283.

2. Although the First Amendment is expressed in absolute terms, under what circumstances, if any, are limitations on freedom of expression justifiable? Why?

- Is it preferable to have a single standard to use in limiting all forms of expression, or should there be separate standards for different forms of expression, such as for so-called “hate speech”? Why or why not?
- What are the benefits of freedom of expression to individuals and to society? The costs?

3. Due process of law is often referred to as the “bedrock of civil liberty.” What are the essential requirements of due process included in the Constitution and Bill of Rights, and in what ways, if any, do they constitute the “bedrock of civil liberty?”

- Why is it important that criminal defendants’ rights are protected not only during trial, but before and after trial as well?
- Two legal scholars claim that “today probably no other right guaranteed to the criminally accused is more important than the right to counsel.”* Do you agree? Why or why not?

* Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America* (Washington, D.C.: Congressional Quarterly Press, 2005), 572.



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Unit Six: What Challenges Might Face American Constitutional Democracy in the Twenty-first Century?

- 1. When the Universal Declaration of Human Rights was presented for adoption by the General Assembly of the United Nations, Eleanor Roosevelt described it as a “Magna Carta of the Future.”* Was that an appropriate comparison? Why or why not?**
 - Which of the rights proclaimed in the Universal Declaration are found in the Magna Carta or the Bill of Rights?
 - Which, if any, of the rights in the Universal Declaration—sometimes called “aspirational goals”—should be added to the rights in the U.S. Constitution? Why or why not?

* Geoffrey Hindley, *A Brief History of the Magna Carta: The Story of the Origins of Liberty* (Philadelphia: Running Press Publishers, 2008), 296.

- 2. One of the most recurrent arguments in the nation’s history has been over immigration and the criteria for naturalization and citizenship. What are the current arguments over these topics today, and which do you find most persuasive?**
 - Should the Fourteenth Amendment be changed to reflect additional or different criteria for national citizenship? Explain your position.
 - Should all Americans be required to demonstrate their knowledge of American history and government, as naturalized citizens must do? Why or why not?
- 3. What fundamental political and social changes in the United States have been brought about by civil rights movements?**
 - What were the major legal achievements of the civil rights movement and what more, if anything, remains to be achieved? Why?
 - Some critics claim that the Equal Rights Amendment is no longer necessary because other legislation making it unlawful to discriminate against women has achieved its goals. Do you agree or disagree? Why?