



# We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

## MIDDLE SCHOOL NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2018–2019

### Unit 1: What Were the Founders' Basic Ideas about Government?

#### 1. According to the Founders, what are major characteristics of a constitution and higher law, and why are they essential to the protection of our natural rights?

- How does our Constitution both empower and limit government?
- How does the organizational structure of the Constitution prevent the abuse of power?
- Is the fact that a constitution is written a sufficient protection of citizens' rights? Why or why not?

#### 2. “The doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary [random] power. The purpose was not to avoid friction but ... to save the people from autocracy.”\* Why did the Founders fear the abuse of power?

- How would you explain the doctrine of separation of powers, and what are its major features?
- How would you differentiate between “checking” and “balancing” the powers of government? Why are both checking and balancing important?
- In what ways can citizens monitor the exercise of power by the government, and how can they act to help restrain it?

\* “Dissent, Brandeis,” *Myers v. United States*, Cornell Law School Legal Information Institute, accessed January 30, 2019, [https://www.law.cornell.edu/supremecourt/text/272/52#writing-USSC\\_CR\\_0272\\_0052\\_ZD1](https://www.law.cornell.edu/supremecourt/text/272/52#writing-USSC_CR_0272_0052_ZD1).

#### 3. “Rights [natural rights] and republicanism [classical republicanism] may be said to be the twin pillars of the American political tradition. These pillars are planted in the soil of our history so firmly and seem to reinforce each other so strongly, that it is hard for us at first to credit any suggestion that there may be some tension or problem in their coexistence.”\* Should these two “Rs” be considered the twin pillars of our political tradition? Why or why not?

- What might be the tensions between these two principles? How might they reinforce each other?
- How successful has the Constitution been in reconciling those tensions? What evidence supports your position?
- Where does a third “R”—responsibilities—fit into our political tradition?

\* Thomas L. Pangle, *The Ennobling of Democracy: The Challenge of the Postmodern Age* (Baltimore: The Johns Hopkins University Press, 1993), 93.



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### Unit 2: What Shaped the Founders' Thinking about Government?

**1. The Declaration of Independence says, “We hold these truths to be self-evident, that all men are created equal.” The philosopher Isaiah Berlin said that ““every man to count for one and no one to count for more than one’ ... appears, more than any other formula, to constitute the irreducible [impossible to make less or smaller] minimum of the ideal of equality.”\* Do you agree or disagree with this idea? Explain your position.**

- Since people are not equal in their knowledge, skills, and abilities, why, if at all, should everyone have equal political rights? Explain your position.
- What acts of Congress have furthered the goal of political equality?
- What evidence is there of political inequality in the United States today, and what, if anything, do you think should be done about it? Explain your position.

\* Isaiah Berlin, “Equality,” in *Equality and Justice: Volume 2, The Demands of Equality*, ed. Peter Vallentyne (New York: Routledge, 2003), 81.

**2. According to Alexander Hamilton, “The confederation itself is defective and requires to be altered; it is neither fit for war, nor peace.”\* Do you agree or disagree with Hamilton? What were the strengths and weaknesses of the Articles of Confederation?**

- What problems, if any, did the Founders face in writing the Articles of Confederation?
- What impact, if any, did Shays' Rebellion have on the Founders' thinking about government?
- What is the significance of the Northwest Ordinance of 1787?

\* Alexander Hamilton, “Alexander Hamilton, 1755–1804,” in *Something That Will Surprise the World: The Essential Writings of the Founding Fathers*, ed. Susan Dunn (New York: Basic Books, 2006), 113.

**3. Shortly after the start of the Revolutionary War in 1775, many of the new states began to write their constitutions. All of them included some basic principles. What were those basic principles and why were they important?**

- How would you explain legislative supremacy, and why did most states favor it?
- What ideas drawn from natural rights philosophy were reflected in the new state constitutions?
- Why do you think most state constitutions began with a preamble and a declaration of rights?



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### Unit 3: What Happened at the Philadelphia Convention?

- 1. In the Virginia Plan, James Madison proposed proportional representation in both houses of Congress. The delegates rejected Madison’s proposal in favor of the Great Compromise introduced by Roger Sherman and Oliver Ellsworth, delegates from Connecticut. What is the Great Compromise, and how was it justified?**
  - Do you think the justification is acceptable today? Explain your position.
  - What has been the impact of equal representation in the Senate on our political system?
  - What would be some of the benefits and costs of changing the Senate to proportional representation? Explain what position you would take on this issue.
- 2. During the debate over ratification of the Constitution, many Americans were fearful of creating a “mighty and splendid President,” who possessed power ‘in the most unlimited manner’ that could be easily abused.”\* How, if at all, has presidential power expanded since the founding?**
  - What are the powers of the president listed in Article II of the Constitution?
  - What limits, if any, are placed on the power of the president?
  - What are the advantages and disadvantages of the use of executive orders by the president?
- 3. What were the rules governing the Philadelphia Convention of 1787? Are there any rules you would change? Why or why not?**
  - The secrecy rule remains controversial. Thomas Jefferson said it set an “abominable precedent.”\* Others claim it enabled delegates to think out loud, to change their minds, and to compromise. What is your judgment?
  - Define *civil discourse*. Which rules adopted at the convention furthered it? Which rules hindered it?
  - How would you rate the civility of public discourse and debate today, and what, if anything, could be done to enhance it?

\* Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: The Penguin Press, 2011), 231.

\* Carol Berkin, *A Brilliant Solution: Inventing the American Constitution* (New York: Harcourt, Inc., 2002), 65.



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### Unit 4: How Was the Constitution Used to Establish Our Government?

**1. The amendment process “seems to be stamped with every mark of propriety [correctness]. It guards equally against that extreme facility [easiness], which would render the Constitution too mutable [changeable]; and that extreme difficulty, which might perpetuate [continue or preserve] its discovered faults.”\* Do you agree or disagree with James Madison’s assessment? Why?**

- What is the amendment process, and what are its advantages and disadvantages?
- What amendments to the Constitution have made the country more democratic?
- Are there any amendments that were mistakes and should be amended today?

\* Publius (James Madison), “The Same Subject Continued (The Powers Conferred by the Constitution Further Considered) for the Independent Journal” (Federalist 43), *New York Packet*, The Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/fed43.asp](http://avalon.law.yale.edu/18th_century/fed43.asp).

**2. “Contemporary political scientists suspect that democratic politics is fundamentally unworkable without parties and partisanship. Parties connect the ordinary citizen to government and politics and offer them broad policy choices, thereby giving voters a chance to direct and control government through party politics.”\* Do you agree or disagree? Why? What evidence can you offer to support your response?**

- Why did the Founders initially oppose the formation of political parties, and why did they change their stances?
- In what ways does America’s two-party system promote its constitutional principles?  
In what ways might it hinder them?
- Why do you think the United States has remained essentially a two-party system, while many democracies have multiparty systems?

\* Rick Valelly, “Who Needs Political Parties?” in *Princeton Readings in American Politics*, ed. Richard M. Valelly (Princeton, NJ: Princeton University Press, 2009), 513.

**3. Is the power of judicial review that allows courts to overrule state laws and laws made by Congress consistent with democratic principles and ideas? Why or why not?**

- How did Chief Justice John Marshall justify the use of judicial review?
- In what ways do justices of the U.S. Supreme Court determine the meaning of the Constitution?
- What are the checks, if any, on the U.S. Supreme Court?



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### Unit 5: How Does the Constitution Protect Our Basic Rights?

1. **“When a choice must be made, it is better to allow those who preach racial hate to expend their venom [hatred] in rhetoric [speechmaking] rather than to be panicked into embarking on the dangerous course of permitting the government to decide what its citizens may say and hear.”\* Do you agree with U.S. District Court Judge Bernard Decker’s upholding the First Amendment rights of Nazis to march in Skokie, Illinois? Why or why not?**

- What criteria has the U.S. Supreme Court used to limit freedom of expression?
- What, if any, benefit is there from the presentation of ideas that are designed to alarm, antagonize, and offend members of society?
- Should the “fighting words” doctrine of *Chaplinsky v. New Hampshire* be reinvigorated (or revived) and applied on a broader scale to deny First Amendment protection to volatile (explosive) speech like that expressed in places like Charlottesville, Virginia, in August of 2017? Why or why not?

\* *Collin v. Smith*, 447 F. Supp. 676 (N.D. Ill.1978), Justia, accessed January 30, 2019, <https://law.justia.com/cases/federal/district-courts/FSupp/447/676/1621085/>.

2. **“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”\* What is due process of law and how has it evolved since the Magna Carta?**

- Where in the Constitution and subsequent amendments is due process protected?
- How can the rights of individuals and the rights of society conflict?
- What are the advantages and disadvantages to a right to counsel guaranteed in juvenile delinquency hearings?

\* “Magna Carta 1215,” Collection Items, British Library, accessed January 30, 2019, <https://www.bl.uk/collection-items/magna-carta-1215>.

3. **The Fourteenth Amendment’s promise of equal protection of the laws, said one of its key advocates, was to give “to the humblest, the poorest, the most despised of the race, the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty.”\* To what extent has that promise been realized? Cite historical and contemporary evidence to support your answer.**

- In what ways does the equal protection clause relate to natural rights philosophy and to the founding documents of the United States?
- Why do you think the Fourteenth Amendment guarantees equal protection of the laws, but not equality of condition?
- Under what circumstances might it be justifiable to treat any person unequally?

\* Irving Brant, *The Bill of Rights: Its Origin and Its Meaning* (Indianapolis: Bobbs Merrill, 1965), 337.



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### Unit 6: What Are the Responsibilities of Citizens?

1. **“The first requisite of a good citizen in this Republic of ours is that he shall be able and willing to pull his weight.”\* Do you agree or disagree with President Theodore Roosevelt? Why or why not? What are the attributes of good citizenship?**

- How is citizenship defined in the Fourteenth Amendment?
- What, if any, are the responsibilities of citizenship in the United States?
- Is criticizing the government, when necessary, consistent with good citizenship? Why or why not?

\* Theodore Roosevelt, *Addresses and Presidential Messages of Theodore Roosevelt, 1902–1904*, introduction by Henry Cabot Lodge (New York: G.P. Putnam’s Sons, 1904), 85.

2. **According to the American Immigration Council, “immigration to the United States is based upon the following principles: the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity.”\* Does today’s immigration policy reflect these principles? Why or why not?**

- What are the major cultural and political issues regarding immigration that Americans face today?
- What changes, if any, should be made to our current immigration policy?
- Should the United States admit more refugees in view of the worldwide crisis of displaced persons? Why or why not?

\* American Immigration Council, “How the United States Immigration System Works,” 2016, accessed February 4, 2019, <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works>.

3. **“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”\* How has the right to vote expanded throughout American history?**

- What laws might enhance voting, and what laws might limit voting?
- More than twenty countries around the world have mandatory voting. What are the advantages and disadvantages to mandatory voting?
- Should people who are not American citizens be allowed to vote in local elections? Why or why not?

\* “Opinion, Black,” *Wesberry v. Sanders*, Cornell Law School Legal Information Institute, accessed January 30, 2019, <https://www.law.cornell.edu/supremecourt/text/376/1>.