



## 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 2014–2015

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

**1. The British Constitution has been described as “evolutionary”\* and as “a tapestry, deftly woven and embellished over time.”\*\* Are those fitting descriptions? Why or why not?**

- Which are the most significant of the documents that make up that “tapestry”? Why?
- What is the relationship of these documents to the concepts of limited government and the rule of law?

\* See Martin Loughlin, *The British Constitution: A Very Short Introduction* (Oxford: Oxford University Press, 2013), passim.

\*\* Robert L. Maddex, *Constitutions of the World*, 3rd ed. (Washington, DC: CQ Press, 2008), 469.

**2. “The independence of America, considered merely as a separation from England, would have been a matter but of little importance had it not been accompanied by a revolution in the principles and practices of governments.”\* Do you agree or disagree with this assertion? Why?**

- What new or “revolutionary” principles were set forth in the Declaration of Independence and in state constitutions?
- A French scholar, the Abbé Raynal, wrote a book in 1782 claiming that the Americans had revolted over nothing greater than a petty tax complaint. How would you respond to that allegation?\*

\* Thomas Paine quoted in Yuval Levin, *The Great Debate: Edmund Burke, Thomas Paine, and the Birth of Right and Left* (New York: Basic Books, 2014), 19.

\*\* Ibid., 169.

**3. In what ways, if any, can the Magna Carta be associated with the concepts of rule of law and constitutionalism?**

- Why has Chapter 39 of the Magna Carta proven to be of continuing significance? What important principles did it proclaim?
- Evaluate the argument Publius makes in Federalist 84 that bills of rights “such as Magna Carta don’t belong in constitutions founded on the power of the people. ... Here, strictly speaking, the people surrender nothing. And since they retain everything, they have no need of specific reservations.”\*

\* Federalist 84, paragraph 8 in Mary E. Webster, ed., *The Federalist Papers in Modern Language: Indexed for Today’s Political Issues* (Bellevue, WA: Merril Press, 1999), 347–8.



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## Unit Two: How Did the Framers Create the Constitution?

**1. At the Philadelphia Convention of 1787 “There was hard bargaining to be done. ...Political as well as intellectual skills were essential. ...The framers built their Constitution with the bricks and mortar of political compromise.”\* Do you agree with this appraisal? Why or why not? What evidence can you offer to support your position?**

- What political and what intellectual skills were essential to the success of the Philadelphia Convention? Why were these skills essential?
- Were the Framers justified in going beyond their limited mandate to “revise” rather than replace the Articles of Confederation? Why or why not?

\* Sanford Levinson, “Compromise, Contestation, and the U.S. Constitution,” *Perspectives on Politics* 12, no. 1 (2014): 153–4.

**2. Writing about the Philadelphia Convention, a historian claims that “of all the rules adopted, the two most important were the secrecy rule...and a rule allowing delegates to reconsider previous issues and change their votes.”\* Do you agree or disagree? Why? What evidence can you offer to support your response?**

- In what ways, if any, do closed-door, nontransparent negotiations come into conflict with democratic norms, such as accountability and citizens’ right to know?
- In what ways, if any, do “sunshine laws” requiring televised or public government meetings encourage public posturing and the hardening of positions rather than just negotiation? Why? What evidence can you offer to support your position?

\* Harlow Giles Unger, *Lion of Liberty: Patrick Henry and the Call to a New Nation* (Cambridge, MA: Da Capo Press, 2010), 188.

**3. An American historian claims that the ratification debates were “one of the greatest and most probing public debates in American history.”\* Do you agree or disagree? Why? What evidence can you offer to support your response?**

- Evaluate the central arguments the Federalists advanced in support of the ratification of the Constitution.
- Evaluate the major arguments the Anti-Federalists put forth in opposition to ratification of the Constitution.

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



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

1. **“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 stance?
- In what ways does America’s two-party system promote its constitutional principles? In what ways might it thwart them?

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

2. **A distinguished American lawyer has defined “great cases” as those that “ask the courts to resolve deeply contested issues that seem to touch the foundations of American culture.”\*** According to that definition, should *Dred Scott v. Sandford* qualify as a “great case”? Why or why not?

- What “foundations of American culture,” if any, were in controversy in the *Dred Scott* case?
- What other cases in American history, if any, do you think should be classified as “great cases”? Why?

\* G. Edward White, *Law in American History, Vol. 1: From the Colonial Years through the Civil War* (New York: Oxford University Press, 2012), 368.

3. **“The tendency of a common and easy resort to this great function [judicial review], now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility.”\*** Do you agree or disagree with this assertion? Why or why not? What evidence can you offer in support of your response?

- How was judicial review established in the United States?
- Evaluate the arguments that John Marshall used to justify his declaration that it is “the province and the duty of the Judicial Department to say what the law is.”\*\*

\* James Bradley Thayer quoted in *The Oxford Dictionary of American Legal Quotations*, ed. Fred R. Shapiro (New York: Oxford University Press, 1993), 212.

\*\* *Marbury v. Madison*, 5 U.S. 137 (1803).



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

1. **“Since the 19th century, Parliament has rarely made any major impact on the content of legislation. Responsibility for proposing and drafting the vast bulk of legislation rests with the government which, because of its parliamentary majority, is generally able to have its Bills enacted into law in the desired form.”\*** How is the British system of mingling executive and legislative powers different from the American system of separation of powers?

- What might be the advantages of the parliamentary system of mingling powers?
- What might be the disadvantages of the parliamentary system of mingling powers?

\* Martin Loughlin, *The British Constitution: A Short Introduction* (Oxford: Oxford University Press, 2013), 57.

2. **“The Constitution envisions a healthy contestation between Congress and the president, whose separate functions, but overlapping powers, create a constitutional struggle for the authority to exercise power.”\*** Do you agree or disagree with this assertion? What evidence can you offer to support your response?

- What purposes, if any, does a “healthy contestation” between the president and Congress serve? Why?
- When and why might a “contestation” between the president and Congress become “unhealthy”?

\* Benjamin A. Kleinerman, “The Court Will Clean It Up: Executive Power, Constitutional Contestation, and War Powers” in *The Supreme Court and the Idea of Constitutionalism*, eds. Steven Kautz et al. (Philadelphia: University of Pennsylvania Press, 2009), 254.

3. **“Congress is becoming more like a parliamentary system where everyone simply votes with their party and those in charge employ every possible tactic to block the other side.”\*** Do you agree or disagree with this statement? Why? What evidence can you offer to support your response?

- How would you distinguish among deliberating, debating, and bargaining in Congress? Which is preferable? Why?
- What problems can arise when Congress becomes gridlocked, or simply fails to act, and how does gridlock shift the balance of power among the three branches of government?

\* Former senator Olympia Snowe of Maine quoted in Sarah A. Binder and Frances E. Lee, “Making Deals in Congress” in *Negotiating Agreement in Politics: Report of the Task Force on Negotiating Agreement in Politics*, eds. Jane Mansbridge and Cathie Jo Martin (Washington, DC: American Political Science Association, 2013), 69.



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

**1. James Madison considered three rights—trial by jury, freedom of the press, and liberty of conscience—to be “the great rights.”\* Why do you think he singled out these three? Do you agree with his selections? Why or why not?**

- Some scholars object to what they call “a clausebound approach” to studying the Bill of Rights “because it misses the way in which rights are related to one another and to important linkages between the original Constitution and the Bill of Rights.”\*\* How valid is that objection? What evidence can you cite in support of your response?
- Thomas Jefferson declared that “a bill of rights is what the people are entitled to against every government on earth.”\*\*\* How did he try to justify that assertion in the Declaration of Independence? On what other theories did he draw?

\* Joseph Gates, ed., *Annals of Congress, 1789–1824* (Washington, DC: Gales and Seaton, 1834–56), 436, and in Akhil Reed Amar and Les Adams, *The Bill of Rights Primer* (New York: Skyhorse Publishing, 2013), 45.

\*\* Akhil Reed Amar and Les Adams, *The Bill of Rights Primer* (New York: Skyhorse Publishing, 2013), 166.

\*\*\* Letter from Thomas Jefferson to James Madison, December 20, 1787, in Amar and Adams, *supra*, 167.

**2. The jury has been defined as “the democratic branch of the judiciary power—more necessary than representatives in the legislature.”\* Do you agree or disagree with this contention? Why or why not?**

- The local jury has been called the “close cousin” of the local militia.\*\* In what respects are they similar? In what respects are they different?
- What arguments can you make for and against the requirement that a jury needs to act unanimously in a criminal trial?

\* “Essays by a Farmer,” represented in Akhil Reed Amar and Les Adams, *The Bill of Rights Primer* (New York: Skyhorse Publishing, 2013), 138.

\*\* Akhil Reed Amar, *America’s Unwritten Constitution: The Precedents and Principles We Live By* (New York: Basic Books, 2012), 435.

**3. How would you explain procedural justice and what important purposes does it serve?**

- What procedural rights enumerated in the Fifth and Sixth Amendments guarantee that police, prosecutors, judges, and juries will deal fairly with criminal defendants?
- What is the relationship, if any, between procedural justice and the rule of law?



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

**1. A recent study of the endurance of constitutions discovered that the mean lifespan is approximately 19 years.\* The United States Constitution is now more than 225 years old. What factors do you think account for its longevity?**

- What role, if any, has judicial review played in the longevity of the Constitution? What evidence can you offer to support your response?
- What role, if any, has the separation of powers played in the durability of the Constitution? What evidence can you offer to support your response?

\* Sanford Levinson, “Compromise, Contestation, and the U.S. Constitution,” *Perspectives on Politics* 12, no. 1 (2014): 156.

**2. “Thirty-one countries have some form of mandatory voting. ...More than half back up the legal requirement with an enforcement mechanism.”\* Should the United States make voting mandatory for federal primary and general elections? Why or why not?**

- What are the advantages and disadvantages of mandatory voting?
- In what ways other than mandatory voting might the United States enhance turnouts at elections?

\* William A. Galston quoted in Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks* (New York: Basic Books, 2012), 141.

**3. “We have this thing called the Declaration of Independence, this document called the Constitution, in common. They define us...You know, you don’t take a DNA test to see if you bleed freedom. It’s taught and it’s learned...Each generation has to learn all over again what the Constitution means.”\* Do you agree with this statement? Why or why not?**

- In what ways, if any, might the Declaration of Independence and the Constitution be said to “define” Americans as a people?
- In what ways, if any, is what the Constitution *means* different from what the Constitution *says*?

\* Associate Justice Anthony Kennedy interviewed on June 25, 2009, in the Supreme Court’s West Conference Room. Interview reprinted in *The Supreme Court: A C-SPAN Book Featuring the Justices in Their Own Words*, eds. Brian Lamb, Susan Swain, and Mark Farkas (New York: PublicAffairs, 2010), 71.