



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

HIGH SCHOOL NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2016–2017

Unit 1: What Are the Philosophical and Historical Foundations of the American Political System?

1. What do you think Thomas Jefferson meant when he included the right to the “pursuit of happiness” in the Declaration of Independence instead of the more commonly used “right to property”? Where might the concept have come from?

- How, if at all, might the concept of the pursuit of happiness be related to ancient Greek thinkers like Aristotle or to classical republicanism?
- Would you consider the right to be a positive or a negative right? Explain your position. If it were to be considered a positive right, upon whom or what would it place obligations? If it were to be considered a negative right, upon whom or what would it place obligations? What would they be? Explain your position.

2. “When in its resolution of May 10 and 15, 1776, the Continental Congress advised the thirteen colonies to reorganize their governments solely on the basis of ‘the authority of the people,’ American political leaders found themselves faced with a task that had never before been accomplished in political entities of comparable size.”* What were some of the provisions the framers of state constitutions placed in their constitutions that were intended to ensure that their governments were based on the “authority of the people”; that is, governments in which the leaders were the servants, not the masters, of the people?

- Why did most state constitutions begin with declarations of rights? Why didn’t the U.S. Constitution begin with a declaration of rights?
- Why do you think most state constitutions chose to place more power in their legislatures than in the other two branches of government? Do you agree or disagree with their reasoning? Explain your position.

* Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2001), 61.

3. According to Milton Friedman, “The existence of a free market does not of course eliminate the need for government. On the contrary, government is essential both as a forum for determining the ‘rules of the game’ and as an umpire to interpret and enforce the rules decided on.”* To what extent, if any, are Friedman’s ideas seen in the development of capitalism in western civilization?*

- To what extent and in what ways, if any, is a free-market economy consistent with the principles and values that underlie the Constitution?
- Are extreme differences in wealth, income, and political power an inevitable consequence of a free-market economy? Why or why not?

* Milton Friedman, *Capitalism and Freedom*, fortieth anniversary edition (Chicago: The University of Chicago Press, 2002), 15.

** This question is sponsored by the Bill of Rights Institute. The class providing the best response to this question will receive the Special Question Award.



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Unit 2: How Did the Framers Create the Constitution?

1. Alexander Hamilton wrote that the Constitution ensures that “the process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States.”*
Do you agree or disagree with Hamilton? Why?

- What was the rationale for the establishment of the Electoral College to select the president? What basic democratic principles and values are involved in this topic? To what extent, if any, is the rationale used to justify the Electoral College relevant today? Explain your position.
- What might be the advantages and disadvantages of selecting the president by popular vote? What impediments, if any, would there be to adopting this procedure? How might they be overcome? Explain your position.

* Alexander Hamilton, “The Mode of Electing the President” (Federalist 68), *New York Packet*, March 14, 1788, The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/fed68.asp.

2. “Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.”* **Do you agree or disagree with Alexander Hamilton? Why? What were the central disagreements between the Federalists and Anti-Federalists over the executive branch of government?**

- What assumptions and what fundamental democratic principles and values underlie the positions of the Federalists and Anti-Federalists regarding the executive branch of government? Which position do you prefer? Why?
- Does Article II adequately specify and limit the powers of the presidency? How does it compare with articles empowering the executive branch in the constitutions of other advanced democracies, such as those of Canada, South Africa, and Germany? Explain your position.

* Alexander Hamilton, “The Executive Department Further Considered” (Federalist 70), *New York Packet*, March 18, 1788, The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/fed70.asp.

3. In a speech to his fellow Virginians in 1775 Patrick Henry noted, “I have but one lamp by which my feet are guided, and that is the lamp of experience.”* **What lessons from history and experiences led the colonists to develop and structure their legislatures and their relationships to their executives and judiciaries the way they did in their new state constitutions?**

- To what extent, if at all, did both the Federalists and the Anti-Federalists use the “lamp of experience” in their arguments over the legislative branch during the ratification debates?
- Why did the Framers of the Constitution reject the concept of legislative supremacy? Is legislative supremacy found today in other advanced democracies? What arguments can you make for and against the concept of legislative supremacy?

* James McClellan, *Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government* (Indianapolis: Liberty Fund, 2000), 13.



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Unit 3: How Has the Constitution Been Changed to Further the Ideals Contained in the Declaration of Independence?

1. In a letter to Abigail Adams, Thomas Jefferson wrote that the Constitution “meant that its co-ordinate branches should be checks on each other. But the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action but for the legislature and executive also in their spheres, would make the judiciary a despotic branch.”* Do you agree or disagree with Thomas Jefferson’s opinion about judicial review? Why?

- What limits, if any, should be placed upon the Supreme Court’s power of judicial review? Explain your position.
- To what extent, if any, does the power of judicial review exist in other democracies? What useful lessons, if any, can be learned by understanding how judicial review is practiced in other nations? Explain your position.

* Thomas Jefferson to Abigail Smith Adams, 11 September 1804, *Founders Online*, National Archives, last modified December 28, 2016, <http://founders.archives.gov/documents/Jefferson/99-01-02-0348>.

2. According to Kermit Hall, “The Civil War obliterated the institution of slavery and the doctrines of state sovereignty and secession that supported it. Such sweeping changes forced a wholesale reexamination of federalism and civil rights that lasted for almost a quarter-century.”* What impact have the Thirteenth, Fourteenth, and Fifteenth Amendments had on civil rights in America? What have been the limitations on their impact?

- What impact, if any, did the three amendments have on the balance of power between the national and state governments? What evidence supports your position?
- What historical events in American history led to the advancement of the goals of the three amendments? To what extent have the goals of the three amendments been fully realized? Explain your position.

* Kermit L. Hall, ed., *Major Problems in American Constitutional History*, vol. I (Lexington, MA: D.C. Heath and Company, 1992), 524.

3. James Madison wrote in *Federalist 10*, “There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests. It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires.”* Do you agree with Madison that liberty will inevitably lead to the development of factions? Explain your position.

- Madison claimed that since factions were the inevitable result of liberty, it would be best if there were numerous factions. What are the advantages and disadvantages of having numerous factions today? What means would you suggest for enhancing the advantages and reducing the disadvantages of factions without unfairly restricting liberty?
- Does a political system that embraces liberty inevitably lead to the development of political parties? If so, are numerous parties desirable? Explain your position.

* James Madison, “The Same Subject Continued: The Union as a Safeguard against Domestic Faction and Insurrection” (*Federalist 10*), *New York Packet*, November 23, 1787, The Avalon Project, Yale Law School, http://avalon.law.yale.edu/18th_century/fed10.asp.



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Unit 4: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

- Regarding the Supreme Court's decision in *Brown v. Board of Education*, scholar Francis Fukuyama wrote, "What was arguably one of the most important changes in American public policy came about not because Congress as representative of the American people voted for it but because private individuals litigated through the court system to change the rules."* Should such policy changes be made by Supreme Court justices or by a majority of elected representatives in Congress? Why?**
 - What decisions of the Supreme Court have made significant changes in public policy throughout American history? What impact, if any, did those decisions have on individual rights? What evidence supports your position?
 - According to Erwin Chemerinsky, "Now, and throughout American history, the Court has been far more likely to rule in favor of corporations than workers or consumers; it has been far more likely to uphold government abuses of power than to stop them."** What evidence is there to support or refute this claim?
- On January 17, 1961, President Dwight Eisenhower said, "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist."* What is the military-industrial complex referred to by President Eisenhower? What evidence is there of its existence and influence? Should it be considered a legitimate part of the political process? Explain your position.**
 - What powers of the government over the military are listed in the Constitution? Are they sufficient? Why or why not?
 - Under what circumstances, if any, should the United States go to war with other nations? Explain your position.
- James Madison wrote that "the problem to be solved is, not what form of Govt. is perfect, but which of the forms is least imperfect." The choice is then "between a Republican Government in which the majority rule the minority, and a Govt. in which ... a lesser number or the least number rule the majority. ... The least imperfect ... [is the] will of the majority."* What arguments can you make to support the principle of majority rule among political equals in making decisions that affect them?**
 - How can the majority overriding the will of the minority be justified? What position do you take on this question? Why?
 - Are there any situations in which a minority should be allowed to block the will of the majority? What examples in our system of minorities blocking the will of majorities can you identify? How might they be justified? Explain your position.

* Francis Fukuyama, "America in Decay: The Sources of Political Dysfunction," *Foreign Affairs*, September/October 2014, <https://www.foreignaffairs.com/articles/united-states/2014-08-18/america-decay>.
** Erwin Chemerinsky, *The Case Against the Supreme Court* (New York: Penguin Books, 2014), 6.
* Dwight D. Eisenhower, "Farewell Address," January 17, 1961, Miller Center, University of Virginia, <http://millercenter.org/president/eisenhower/speeches/speech-3361>.
* James Madison to unknown, December 1834, Founders Early Access, The University of Virginia Press, <http://rotunda.upress.virginia.edu/founders/default.xqy?keys=FOEA-print-02-02-02-3066>.



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Unit 5: What Rights Does the Bill of Rights Protect?

1. Philip Kurland wrote that between 1954 and 1964, a period he described as a “fateful decade,” the Supreme Court under Chief Justice Earl Warren “wrought more fundamental changes in the political and legal structure of the United States than during any similar span of time since the Marshall Court had the unique opportunity to express itself on a tabula rasa.”* What do you think were some of the most important decisions made by the Warren Court? What democratic principles and values, if any, did they promote or violate? Do you agree or disagree with the decisions? Explain your position.

- What controversies, if any, did the decisions of the Warren Court provoke? How, if at all, were these controversies resolved?
- How did the focus of the Supreme Court under Chief Justice Warren differ from that of prior and subsequent courts? What do you think should be the focus of the Supreme Court today? Explain your position.

* Philip B. Kurland, “Foreword: ‘Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government,’” *Harvard Law Review* 78, 143 (1964), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=11819&context=journal_articles.

2. “No man can set his foot upon his neighbour’s close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour’s ground, he must justify it by law.”* Do you agree or disagree with Lord Camden’s statement? Why? Under what conditions, if any, should government be able to search or seize your property?

- What fundamental rights in addition to privacy might be jeopardized by government searches and seizures of personal property? Explain your position.
- Under what conditions, if any, should individuals agree to limit their right to privacy in order to promote the common good? Explain your position.

* *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765).

3. Supreme Court Associate Justice Oliver Wendell Holmes Jr. wrote, “I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”* Do you agree or disagree with Justice Holmes? Why?

- Under what circumstances, if any, should freedom of expression be limited? Explain your position.
- How does freedom of expression benefit the individual, the community, and the advancement of knowledge? What are the potential benefits and costs of freedom of expression to the communication and advancement of knowledge?

* *Abrams v. United States*, 250 U.S. 616, 630 (1919).



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Unit 6: What Challenges Might Face American Constitutional Democracy in the Twenty-first Century?

1. **“The states that we watch most closely in cyberspace remain Russia, China, Iran, and North Korea. Russia has very capable cyber operators who can and do work with speed, precision, and stealth. Russia is also home to a substantial segment of the world’s most sophisticated cyber criminals, who have found victims all over the world. We believe there is some overlap between the state-sponsored and criminal elements in cyberspace, which is of concern because Russian actions have posed challenges to the international order.”*** **To what extent are cyber threats a danger to the United States? Explain your position.**

- In what ways, if any, is the conduct of cyber warfare by the United States consistent with the principles found the Declaration of Independence and the Constitution?
- What role, if any, should Congress, the executive, and the courts have in the conduct of cyber warfare by the United States and around the world? Explain your position.

* Michael S. Rogers, “Statement of Admiral Michael S. Rogers, Commander United States Cyber Command, before the Senate Armed Services Committee,” United States Senate Committee on Armed Services, April 5, 2016, 3–4, http://www.armed-services.senate.gov/imo/media/doc/Rogers_04-05-16.pdf.

2. **On November 9, 2016, former vice president Al Gore wrote, “Today, I am as optimistic and resolved as ever that we will solve the climate crisis. Our collective efforts are dependent not on politics or ideology—or elections—but on our commitment to each other, to the health of our planet and to a sustainable future for all.”*** **Do you agree or disagree with Vice President Gore’s position on climate change? Why or why not?**

- What scientific evidence suggests that humans are mainly responsible for climate change? What scientific evidence suggests that natural causes are mainly responsible for climate change? What is your position on this issue and how can you justify it?
- What responsibility, if any, does the U.S. government have in helping to reduce greenhouse gases in the United States and around the world? What environmental policies has the U.S. government enacted to deal with climate change, and what have been the consequences?

* Al Gore, “The Road Forward,” The Climate Reality Project, November 9, 2016, <http://www.climateRealityproject.org/blog/road-forward> (accessed January 27, 2017).

3. **“Compared with the political systems of the other advanced democratic countries, ours is among the most opaque, complex, confusing, and difficult to understand.”*** **Do you agree or disagree with this statement by Robert Dahl? Why? What institutional arrangements established by the Constitution, if any, make our political system difficult to understand?**

- What policies and practices exist in the public and private sectors that are designed to make our political system easier for the average citizen to understand? How effective are they?
- What institutional arrangements do some other advanced democratic countries have that might make them easier to understand? For example, how might parliamentary systems be easier to understand?

* Robert A. Dahl, *How Democratic Is the American Constitution?* 2nd edition (New Haven, CT: Yale University Press, 2003), 115.