



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

HIGH SCHOOL NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2015–2016

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

1. For the Founders, “Political Science became a kind of diagnostics, and history became an autopsy of the past. Those states that had died would be cut open, so to speak, and examined in order to discover why they had died.”* What “lessons” did the Founders take from their study of Greece?

- Why were the Founders especially interested in the “decline and fall of Rome”?
- What were the major conclusions that the Founders drew from their “autopsy” of the past?

*Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: Penguin, 2011), 325.

2. When the French finance minister, Turgot, heard of America’s new state constitutions, he fumed, “Why the complicated mechanisms of checks and balances, division of powers and bicameral legislature? All this clumsy apparatus is unnecessary.”* How would you respond to his criticism?

- How and why did the state constitutions reflect Americans’ fear of centralized political authority?
- What might be the advantages of a bicameral legislature? What might be the disadvantages?

*John Patrick Diggins, *John Adams* (New York: Henry Holt and Company, 2003), 40.

3. Why have the Magna Carta (1215), the Petition of Right (1628), and the English Bill of Rights (1689) been called “the landmark English charters of liberty”?* What important constitutional rights did they establish?

- How are these three “charters of liberty” related to natural rights philosophy?
- How are these “charters of liberty” related to classical republicanism?

*Akhil Reed Amar and Les Adams, *The Bill of Rights Primer: A Citizen’s Guidebook to the American Bill of Rights* (New York: Skyhorse Publishing, 2013), 201.



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Unit 2: How Did the Framers Create the Constitution?

1. Evaluate the claim that the Northwest Ordinance (1787) was the most significant measure passed by the Confederation Congress.

- What provisions of the Northwest Ordinance foreshadowed the Bill of Rights?
- In what ways did the Northwest Ordinance serve as the template for the addition of other territories acquired by the United States in the nineteenth and twentieth centuries?

2. Why do you think the Framers provided for the Constitution to be ratified by special ratifying conventions rather than by state legislatures?

- What is the relationship, if any, of the ratification conventions to social contract theory and to natural rights philosophy?
- What were the major disagreements between the two blocs that aligned themselves against one another during the ratification debates?

3. “The problem of power is the longest-lived issue in American constitutionalism. It was a central focus of the American Revolution; it became the critical problem of the Constitutional Convention; and it is a constant refrain in American politics.”* Do you agree or disagree with this opinion? Why? What evidence can you offer to support your response?

- Why and how does the Constitution create “a government of separated institutions sharing powers”?
- What are some of the major current issues regarding the sharing of powers or “checks and balances”?

*David J. Bodenhamer, *The Revolutionary Constitution* (New York: Oxford University Press, 2012), 94.



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

1. Why was the Thirteenth Amendment needed to “complete” the Emancipation Proclamation?

- Why do you think the Founders’ first successful amendment told Congress it could “make no law” over a certain domain, while the Thirteenth Amendment (Sec. 2) provides that “Congress shall have the power to enforce this article by appropriate legislation”?
- In what ways did the Emancipation Proclamation redefine the meaning and purpose of the Civil War?

2. Justice Oliver Wendell Holmes said that the Supreme Court’s power to review state laws was substantially more important to the Union than its power to review acts of Congress.* Do you agree or disagree? Why? What evidence can you offer to support your response?

- How important is the U.S. Supreme Court’s power to review executive orders?
- Why has judicial review continued to be controversial?

* Michael C. Dorf and Trevor W. Morrison, *The Oxford Introductions to U.S. Law: Constitutional Law* (New York: Oxford University Press, 2010), 13. (See citation to Oliver Wendell Holmes, “Law and the Courts” in *Collected Legal Papers* 291, 295–96 [1920].)

3. How and why has war proved to be a catalyst for each of the amendments to the Constitution that expanded the right to vote?

- How and why have Americans used the rights to assemble and petition to secure the right to vote?
- What arguments were used to justify property requirements for voting? What arguments were used to oppose property requirements for voting?



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

1. Americans “offered the world a new way of organizing government when they ‘invented’ federalism.”* How would you explain federalism and what was new and different about it?

- Why has conflict over federalism been a recurrent feature of American history?
- Evaluate the claim that federalism allows states to experiment with new programs that other states can adopt or modify.

* Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: Penguin, 2011), 184.

2. Compare the American and British ideas of representation. What are their most important differences? In what respects are they similar?

- Compare the relationship of the British prime minister to Parliament with the relationship of the president of the United States to Congress. What are the advantages and disadvantages of each arrangement?
- In the British system ministers of the Crown are simultaneously members of Parliament. Why did Americans reject this idea? What are the advantages and disadvantages of each arrangement?

3. A scholar claims, “The language of the Constitution permits either an active or a passive executive. A sufficiently vigorous president can overcome various checks and balances of the document without violating its design of limited power.”* Do you agree or disagree with this claim? Why? What evidence can you offer to support your response?

- Why did establishing the structure of the role of the executive branch pose a major problem for the Founders?
- Article I both allocates and limits the powers of Congress. Article II says only, “The executive power shall be vested in a President.” It fails to define executive power. How might you account for this difference in specificity? What problems, if any, has the failure to define “executive power” created?

* David J. Bodenhamer, *The Revolutionary Constitution* (New York: Oxford University Press, 2012), 107.



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

1. **“The security of the Nation is not at the ramparts alone. Security also lies in the value of our free institutions. A cantankerous press, an obstinate press, an ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know.”*** Do you agree or disagree with the opinion expressed here? Why? What evidence can you offer to support your response?

- Evaluate the argument that the First Amendment’s free speech clause complemented and extended Article I, Section 6 of the U.S. Constitution.
- “Speech concerning public affairs is more than self-expression; it is the essence of self-government.”** Do you agree or disagree? Why? What evidence can you offer to support your position?

* *United States v. New York Times Company*, 328 F. Supp. 324, 331 (S.D.N.Y. 1971). (District Judge Murray J. Gurfein.)

** *Garrison v. Louisiana*, 379. U.S. 74-75 (1964). (Justice William J. Brennan Jr. delivered the opinion of the Court.)

2. **A political scientist contends that “understanding the American experience of religious liberty and the meaning attached to it today must start with history.”*** Do you agree? Why or why not? What evidence can you offer to support your response?

- How would you differentiate between the competing principles of accommodation and strict separation. Why are they in tension?
- “In a free government, the security of civil rights must be the same as for religious rights. In one case, it consists of a multiplicity of interests and in the other a multiplicity of sects.”** Is this admonition of particular importance today? What might endanger the civil or religious rights of some Americans?

* John Ragosta, *Religious Freedom: Jefferson’s Legacy, America’s Creed* (Charlottesville: University of Virginia Press, 2013), 213.

** James Madison, *The Federalist Papers*, No. 51, in *The Federalist Papers in Modern Language Indexed for Today’s Political Issues*, ed. Mary E. Webster (Bellevue, WA: Merrill, 1999).

3. **In 1833 U.S. Supreme Court Associate Justice Joseph Story wrote, “The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.”*** Do you agree or disagree with Justice Story? Why is the meaning of the Second Amendment and government regulation controversial today?

- The justices’ opinions about the Second Amendment in *District of Columbia v. Heller* are very different. Which opinion do you most agree with and why?
- What limits, if any, should the federal and/or state governments place on gun ownership?

* Joseph Story, *Commentaries on the Constitution*, 3:§§ 1890–91, Vol. 5, Amendment II, Document 10, in Philip B. Kurland and Ralph Lerner, eds., *The Founders’ Constitution*, (Chicago: University of Chicago Press, 1987), accessed January 21, 2016, <http://press-pubs.uchicago.edu/founders/documents/amendIIs10.html>.



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

1. Evaluate the claim that modern international organizations, such as the United Nations, the North Atlantic Treaty Organization, and the European Union, “mimic” the Articles of Confederation in “their bold aims and weak structures.”*

- What are the major purposes of the United Nations, and how successful has it been in achieving them?
- How would you explain the concept of collective security, and why has the United States continued to play a major role in organizations concerned with collective security?

* David C. Hendrickson, “Articles of Confederation,” in *The Concise Princeton Encyclopedia of American Political History*, eds. Michael Kazin, Rebecca Edwards, and Adam Rothman (Princeton: Princeton University Press, 2011), 28.

2. Thomas Jefferson wrote, “Though written constitutions may be violated in moments of passion or delusion, yet they furnish a text to which those who are watchful may again rally and recall the people, they fix, too, for the people the principles of their political creed.”* Do you agree or disagree with Thomas Jefferson? Why or why not?

- What examples from history can you provide in which the U.S. Constitution may have been “violated” in a “moment of passion or delusion.”
- Rather than violating the Constitution, how important is it that all Americans understand the amendment process as one of the basic principles embodied in the U.S. Constitution?

* Thomas Jefferson, letter to Joseph Priestley, 1802, in *The Writings of Thomas Jefferson* (Memorial Edition, 20 vols.), eds. Andrew A. Lipscomb and Albert Ellery Bergh (Washington, DC: Thomas Jefferson Memorial Association, 1903–1904), vol. 10, 325.

3. “In our time (as it was in the time the Fourteenth Amendment was written), immigration is a bitter cultural and political issue.”* Why has immigration continued to be a difficult issue for Americans over the course of history?

- What were the major cultural and political issues regarding immigration and citizenship at the time the Fourteenth Amendment was proposed?
- What are the major cultural and political issues regarding immigration today?

* Garrett Epps, *American Epic: Reading the U.S. Constitution* (New York: Oxford University Press, 2013), 165.