



# *We the People* *The Citizen and the Constitution*

Directed by the Center for Civic Education  
Funded by the U.S. Department of Education by act of Congress



## **National Hearing Questions** **Academic Year 2003-04**

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

#### **1. Why did John Locke's conception of natural rights represent a bold, new departure from previous uses of the term "rights"?**

- How did Locke's view of natural rights influence his ideas about what type of government is best?
- How were Locke's ideas about natural rights incorporated into the Declaration of Independence and the United States Constitution?

#### **2. "The American Constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove. There is little in this Constitution that is absolutely new. There is much that is as old as Magna Carta."\***

**Do you agree or disagree with this statement about the United States Constitution? What historical and documentary evidence can you offer in support of your answer?**

- What principles that were important in the Roman Republic are evident in the United States Constitution and why have they proved to be significant?
- What is the value of declaring rights in documents such as the Magna Carta and the U.S. Constitution? What more than the declaration of rights is necessary to protect individuals from unfair or unreasonable treatment by government?

\* James Bryce, *The American Commonwealth* 1:25-26 (1888).

#### **3. What basic ideas of British constitutionalism were incorporated in the governments of the American colonies?**

- Why and how did colonial governments become more representative than Britain's government?
- Why and how did the colonial experience prepare Americans for independence?



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## **National Hearing Questions** **Academic Year 2003-04**

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

1. **“Although no person had done so much to create the Constitution, Madison generously but rightly stressed to the end of his life that it was not the ‘offspring of a single brain’ but the ‘work of many heads and many hands.’”\***

**What evidence can you offer to support or dispute Madison’s assertion that the Constitution was “the work of many heads and many hands”?**

- Why is Madison singled out for having done more than any other American to create the Constitution? What has been the lasting significance of Madison’s work?
- What were the most challenging tasks that the delegates to the Constitutional Convention faced and how did they respond to them?

\* Statement made by Gordon S. Wood, “The American Science of Politics,” in *The Creation of the American Republic 1776-1787*. (Chapel Hill: University of North Carolina Press, 1969), pp. 593-618.

2. **In Federalist 70, Alexander Hamilton wrote: “Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to enquire, what are the ingredients which constitute this energy?”**

**How would you define an energetic executive? Do you agree with Hamilton that an energetic executive is “a necessity” in our system of government? Why or why not?**

- Hamilton also raised the question of how this energy could “be combined with those other ingredients that constitute safety in the republican sense?” How would you answer Hamilton’s question?
- What provisions of the Constitution act as restraints on the executive’s energy? What provisions encourage energy on the part of the executive?



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- 3. In Federalist 51, James Madison argues that “a dependence on the people is no doubt the primary control on government, but experience has taught mankind the necessity of auxiliary precautions.”**

**Is Madison correct that people are the primary control of government, and, if so, how can and should the people exercise that control?**

- What are “auxiliary precautions,” where can they be found in the Constitution, and how effective have they proved to be?
- What “experiences” can you cite that have “taught mankind the necessity of auxiliary precautions”?



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## **National Hearing Questions** **Academic Year 2003-04**

### **Unit Three: How Did the Values and Principles Embodied in the Constitution Shape American Institutions and Practices?**

- 1. Among the most controversial and talked about provisions of the Bill of Rights, the Second Amendment has received relatively little attention in the nation's courts. Its constitutional meaning and reach have rarely been tested in federal courts. In your opinion, to what extent does the Second Amendment allow the federal government to control civilian ownership and use of firearms? What restrictions, if any, does that Amendment impose on state or local governments?**
  - Is the right of self-defense part of that "liberty" protected by the due process clause of the Fourteenth Amendment? Why or why not?
  - Why might the Founders have believed that the civilian bearing of arms helped to promote civic virtue?
  
- 2. Do courts need the power of judicial review to protect minority interests against legislatures and the executive that reflect the interests of the majority? What evidence can you cite in support of your answer?**
  - Did the Framers intend the federal courts to exercise judicial review? What evidence can you cite in support of your answer?
  - Should courts composed of unelected members defer to the elected institutions of government? Why or why not?
  
- 3. Protection of states rights in a federal system was one of the concerns of the Founders. What prompted concern for the protection of states rights at the Philadelphia Convention? How are concerns about states rights today like and different from what they were in 1787?**
  - In theory, both federal and state governments in a federal system are to be supreme in their particular fields. How well has that theory worked out in practice? What evidence can you cite to support your answer?
  - How is the role of the state different in unitary, confederal, and federal systems of government?



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## **National Hearing Questions** **Academic Year 2003-04**

### **Unit Four: How Have the Protections of the Bill of Rights Been Developed and Expanded?**

- 1. An American scholar contends that “...These three amendments [Thirteenth, Fourteenth, and Fifteenth] established new federally enforceable standards of personal liberty and civil rights. Each markedly enlarged the federal governments mandate and reduced state authority. Together these amendments and the ideas upon which they rested justified the label sometimes given the decade of the 1860s: ‘the second American Revolution.’”\***

**Do you agree or disagree with that assessment? What evidence can you offer in support of your answer?**

- What “standards of personal liberty and civil rights were these amendments intended to secure? How effective were they when first adopted?
- Which of these amendments has had the greatest impact over time on the protection of “personal liberty and civil rights”? Explain your reasoning.

\* David E. Kyvig, *Explicit Authentic Acts: Amending the U.S. Constitution 1776-1995*. (Lawrence, Kansas: University of Kansas Press, 1996), p. 155.

- 2. It has been said that “the incorporation doctrine ranks among the most significant developments in American constitutional history.”\***

**Do you agree with this statement? What evidence can you offer in support of your answer?**

- How did adoption of the Fourteenth Amendment spur changes in how the Supreme Court interpreted the Bill of Rights?
- What is selective incorporation and what are the arguments for and against it?

\* Jack C. Plano and Milton Greenberg, *The American Political Dictionary* 11<sup>th</sup> edition. (Fort Worth: Harcourt College Publishers, 2002), p. 350.



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3. **“There are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that ‘an unjust law is no law at all.’”\***

**Martin Luther King, Jr. wrote those words from Birmingham City Jail in defense of the idea of civil disobedience. Do you agree or disagree with his reasoning? Why?**

- What is the relationship of the doctrine of civil disobedience to the natural rights philosophy?
- What limits, if any, should be placed on protests that use civil disobedience?

\* Martin Luther King, Jr, “Letter from Birmingham City Jail” as reprinted in *We the People: The Citizen and the Constitution*. (Calabasas, California: Center for Civic Education, 1997), p. 252..



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## **National Hearing Questions** **Academic Year 2003-04**

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

#### **1. What are the costs and benefits of the adversary system of justice practiced in the United States compared to the inquisitorial system, as practiced in some Western European countries?**

- Compare the role of the judge in the adversarial and inquisitorial systems. Which do you believe is more likely to result in justice for the defendant? Why?
- Some legal scholars say that in the adversary system the defendant is the subject and director of his own trial. In the inquisitorial system the defendant is an object of investigation.\* Would you agree or disagree with that distinction? What evidence can you offer to support your answer?

\* See George P. Fletcher, *Basic Concepts of Criminal Law*. (New York: Oxford University Press, 1998), p. 54.

#### **2. What are commonly accepted limitations on freedom of expression? Should all of those limitations apply in times when national security is threatened?**

- The Supreme Court has held that Congress has “the power to prohibit acts intended to overthrow the government by force and violence.” But the Court added “The question ... is ... whether the means which it employs conflict with the First and Fifth Amendments.”\* What is your assessment of whether the means currently used to combat terrorism comport with the First and Fifth Amendments?
- What criteria would you use to determine when, if ever, the right of freedom of expression, conflicts with the common good?

\* *Dennis et.al. v. United States*, 391 U.S. 494 (1951) Chief Justice Vinson announcing the judgment of the Court.

#### **3. Over the years, due process rights have been expanded to try to equalize power of the individual and power of the government. How well balanced do you think power is now? What evidence can you cite in support of your answer?**

- How is procedural due process related to the concept of “the rule of law”?
- Why and how has the concept of procedural due process been expanded to protect the liberty and property rights of persons not charged with criminal offenses?



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## **National Hearing Questions** **Academic Year 2003-04**

### **Unit Six: What Are the Roles of the Citizen in American Democracy?**

- 1. How would you describe an effective citizen in a constitutional democracy? What knowledge, skills, and dispositions are essential to effective, democratic citizenship? Why?**
    - Compare your portrait of an effective citizen with that of a natural rights philosopher and that of a classical republican?
    - How do you think people in a constitutional democracy learn to be effective citizens?
  
  - 2. In an influential book, Robert Putnam issued this challenge to his fellow Americans: “Let us find ways to ensure that by 2010 many more Americans will participate in the public life of our communities—running for office, attending public meetings, serving on committees, campaigning in elections, and even voting.” How do you think we can meet that challenge?**
    - Compare Putnam’s ideas of good citizenship with those of Alexis de Tocqueville.
    - In what ways, if any, is the fulfillment of one’s private interests connected to one’s participation in public, political life?
- \* Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*. (New York: Simon & Schuster, 2000), p. 412.
- 3. What are the most important similarities and differences between the United States’ form of constitutional government and other forms of constitutional democracy?**
    - How would you respond to critics who say that the American system of separating and sharing of powers is inefficient and undemocratic?
    - Compare the civil and political rights guaranteed to Americans with other constitutional democracies’ guarantees of rights.