



## 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.

### NATIONAL HEARING QUESTIONS ACADEMIC YEAR 2009–2010

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

- 1. Why was the history of the Roman Republic both an example and a warning to America's founding generation?**
  - Why do you think the Founders chose a republican or representative government rather than other known forms of government?
  - In *Federalist 39*, Madison argues that "It is *essential* to such a [republican] government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it." Do you agree or disagree? Why?
- 2. What important principles were contained in Magna Carta?**
  - Why were those principles important to the later development of constitutional government?
  - What principles in the United States Constitution or your state's constitution can you trace back to Magna Carta?
- 3. In what ways did the Renaissance and the Reformation change peoples' thinking about the concepts of the individual and of society?**
  - Why did that new thinking pose a threat to most established institutions and authority?
  - How and why did the Renaissance and Reformation contribute to what James Madison called "the new science of politics"?



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

1. **“The Preamble ... [b]y itself alone it can afford no basis for a claim either of governmental power or of private right. It serves, nevertheless, ... important ends.\* What are those “ends” or purposes and why are they important?**

- What is the relationship, if any, between the Preamble and the Declaration of Independence?
- What is the relationship, if any, between the Preamble and the concept of limited government?

\* Edwin S. Corwin. *The Constitution and What It Means Today*. 14<sup>th</sup> ed., revised by Harold W. Chase and Craig R. Ducat. Princeton, New Jersey: Princeton University Press, 1978, 1.

2. **“Although posterity has tended to emphasize the work of the Constitution’s framers in the Federal Convention of 1787, the ratification of the U.S. Constitution in 1787–1788 was a landmark in the history of government.”\* What evidence can you offer to support or dispute this claim?**

- In what ways, if any, was the plan for ratification an example of social contract theory?
- What precedents were established by the ratification process and why have they continued to be important?

\* R.B. Bernstein. *The Founding Fathers Reconsidered*. New York: Oxford University Press, 2009, 58–59.

3. **“I can’t help but think that the Founders would be pleased with how the separated system has developed, most importantly because many of the same institutional issues that were debated in Philadelphia remain as core topics today.”\* Do you agree or disagree with this assessment? Why?**

- What were the major issues regarding the separation of powers that were debated in Philadelphia?
- How well has the checking and balancing relationship among the three branches intended by the Framers been maintained? What evidence can you offer to support your answer?

\* Charles O. Jones. *The American Presidency: A Very Short Introduction*. New York: Oxford University Press, 2007, 109.



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

1. An American scholar claims that “because democracy is a government by persuasion and deliberation, it implies the existence of what in the British tradition is known as the *loyal opposition*. So long as the opposition is attached to the fundamental principles upon which democratic government is based, organized opposition to the prevailing government is not only legitimate but essential to its proper functioning.”\* Do you agree or disagree? Why?

- How would you describe or define *loyal opposition* and how would you distinguish it from obstructionism?
- What purposes does/should loyal opposition serve in a democracy?

\*John H. Hallowell. *The Moral Foundation of Democracy*. Amagi Books: Liberty Fund Indianapolis, 1953, 55.

#### ABRAHAM LINCOLN BICENTENNIAL QUESTION

2. Many historians believe that the great Senate debates of the 1850s were the most significant in the history of our country.\* Do you agree or disagree? Why?

- How and why did concepts based on the ideals in the Declaration of Independence figure in these debates?
- What were the major arguments in the debate about whether the Constitution was a pro-slavery or an anti-slavery document?

\* Jay Winik, presidential historian, writing in *Wall Street Journal*. August 28, 2009, A. 15.

3. “The Due Process Clause is a constitutional guarantee that includes the interests of *the whole public*, not just defendants.”\* Do you agree or disagree with this contention? Why?

- How would you distinguish between procedural and substantive due process and why are both important?
- How is the idea of fundamental rights related to natural rights philosophy?

\* Tracey L. Meares. “The Progressive Past” in *The Constitution in 2020*. Jack M. Balkin and Reva B. Siegel eds. New York: Oxford University Press, 2009, 216.



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

1. **“Presidents are not and cannot be as powerful as most people think.... (The Founders) wanted effective government, one in which the president would lead by being attentive to the legitimate roles played by other branches.”\* How well have the Founders hopes for the presidency been realized? What evidence can you offer to support your answer?**

- How does the Constitution limit or restrain the powers of a president?
- What responsibilities, if any, do Congress and the judiciary have for checking and balancing the powers of a president?

\* Charles O. Jones. *The American Presidency: A Very Short Introduction*. New York: Oxford University Press, 2007, 22.

2. **In *Federalist 51* Madison insisted that “the necessary partition of power among the several departments laid down in the Constitution” be maintained and that the parts have “the means of keeping each other in their proper places.” Why did Madison believe “partition of power” was necessary? Do you agree or disagree? Why?**

- What provisions of the Constitution provide “the means for keeping each other in their proper places”?
- How and why has the Supreme Court played an important role in maintaining “the necessary partition”?

3. **“Congress is the only national legislature in the world whose members are elected both separately from the executive branch and entirely from single-member districts.”\* What are the benefits or advantages of this arrangement?**

- What might be the advantages of mingling executive and legislative powers, such as in the British Parliamentary system? The disadvantages?
- Why has the creation of congressional districts been controversial throughout American history?

\* Paul J. Quirk and Sarah A. Binder. “Congress and American Democracy: Assessing Institutional Performance” in *The Legislative Branch*. Paul J. Quirk and Sarah A. Binder eds. New York: Oxford University Press, 2005, 531.



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

- 1. Although the First Amendment is expressed in absolute terms, under what circumstances, if any, are limitations on freedom of expression justifiable? Why?**
  - Is it preferable to have a single standard that applies to all forms of expression or should there be a separate standard for so-called “hate speech”? Why or why not?
  - What are the benefits of freedom of expression to individuals and to society? The costs?
- 2. An American scholar argues that Americans’ religious faith is not itself a source of deep division; the division is over the role that religious values should play in political choices.\* Do you agree or disagree? What evidence can you offer to support your position?**
  - Under what circumstances is protecting the health of the community more important than the religious beliefs or values of particular sects?
  - What are the advantages and disadvantages of religious diversity in society?
- 3. “We need procedures that translate the values of the Fourth Amendment (with its warrant requirement) ... into a new technological context.”\* Do you agree or disagree with this claim by a legal scholar? Why?**
  - What values are inherent in the Fourth Amendment and why are they important?
  - Some scholars argue that government can use surveillance data collection and data-mining technologies for good purposes such as keeping America safe from terrorist attacks, preventing crime, and delivering social services. Do such uses outweigh possible negative uses? Why or why not?

\* See Alan Wolfe. “The Transformation of American Religion: How We Actually Live our Faith.” New York: Free Press, 2003. Cited in *The Constitution In 2020*. Jack M. Balkin and Reva B. Seigel, eds. New York: Oxford University Press, 2009, 229.

\* Jack M. Balkin. “The Constitution in the National Surveillance State” in *The Constitution In 2020*. Jack M. Balkin and Reva B. Seigel, eds. New York: Oxford University Press, 2009, 207.



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

1. In his last public letter, written ten days before his death, Thomas Jefferson expressed this hope for the Declaration of Independence: *May it be to the world what I believe it will be ... the Signal of arousing men to burst the chains ... and to assume the blessings and security of self-government.*\* To what extent have Jefferson's hopes for the Declaration of Independence been realized?

- What evidence can you offer to support your response?
- Was Jefferson correct in asserting that self-government affords “blessings” and “security”? Why or why not?

\* Thomas Jefferson to Roger C. Weightman, June 24, 1826. Library of Congress. Reprinted in R.B. Bernstein's *The Founding Fathers Reconsidered*. New York: Oxford University Press, 2009, 49.

2. In her 1948 speech to the United Nations General Assembly, Eleanor Roosevelt called the Universal Declaration of Human Rights “the international Magna Carta of all humankind” and expressed the hope that it would take its place alongside the Magna Carta and the U.S. Bill of Rights. To what extent has that hope been realized?

- What are the essential similarities among the three documents?
- What are the essential differences among the three documents and why are those differences important?

3. “In comparison to other democracies the American political culture still contains many of the values that make for vibrant democracy, and these may have even increased over the past several decades. Tocqueville would not recognize contemporary America, but he still might conclude that his observations about democracy in America generally hold true today.”\* Do you agree or disagree? Why?

- Tocqueville said there was greater opportunity and condition among people in America than anywhere else. Is that still true? What evidence can you offer to support your position?
- Tocqueville said Americans sought to rely on their own efforts to solve problems and “resist the evils and difficulties of life.” Is that still true today? What evidence can you offer?

\* Russell J. Dalton. *The Good Citizen: How a Younger Generation is Reshaping American Politics*. Washington, D.C.: Congressional Quarterly Press, 2008, 160.