



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

STATE HEARING FOLLOW-UP QUESTIONS 2022–2023

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

1. **“To understand political power right [correctly], and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.”***
If humans are in a state of perfect freedom, why is government necessary?
 - How do natural rights philosophy and classical republicanism explain the purposes of and need for government differently?
 - How are the principles and ideas of classical republicanism and natural rights philosophy represented in our governmental institutions and public policies today?

* John Locke, *The Second Treatise of Civil Government*, ed. John W. Gough (Oxford: Basil Blackwell, 1946), https://www.norton.com/college/history/archive/resources/documents/ch04_03.htm.

Suggested follow-up questions:

- a. How were protections of life, liberty, and property built into British documents, such as the Magna Carta or the English Bill of Rights?
- b. What does the natural right to liberty include?
- c. What types of government best represent the ideas and ideals of classical republicanism?
- d. Is classical republicanism compatible with human nature? Why or why not?
- e. What situations might justify a violation of someone’s natural rights?



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2. Article VI of the U.S. Constitution reads, “this Constitution ... shall be the supreme Law of the Land.” Why is a constitution considered a higher law? What are the major characteristics of a higher law?

- How did the Founders believe legitimate government was established?
- How could higher law be used as a justification for a revolution?

Suggested follow-up questions:

- a. How can it be determined whether a “regular” law violates higher law?
- b. How are delegated powers related to higher law?
- c. How does federalism complicate the idea of higher law?
- d. Is a federal statute also considered a higher law? Explain.
- e. Does the Declaration of Independence justify a revolution? Explain.
- f. What kinds of “abuses and usurpations” justify “altering or abolishing” higher law?



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3. The royal charter granted to the Virginia Company states that “the Persons ... which shall dwell ... within every or any of the said Colonies and Plantations, and every of their children ... shall HAVE and enjoy all Liberties, Franchises, and Immunities ... as if they had been abiding and born, within this our Realm of England.”* How did this tradition of expressing rights become an essential part of American constitutions?

- What basic ideas of constitutional government did the colonial governments use?
- Who benefited and who did not benefit from English common law in the colonial governments, and how did this differ across the colonies?

* “The First Charter of Virginia; April 10, 1606,” The Avalon Project, Yale Law School: Lillian Goldman Law Library, https://avalon.law.yale.edu/17th_century/va01.asp.

Suggested follow-up questions:

- a. What are the differences between the rights of Englishmen and natural rights?
- b. How did their colonial experiences prepare Americans for independence?
- c. What are some examples of checks on governmental power today that you believe may have been influenced by the Framers’ experiences with colonial governments before the Revolutionary War?
- d. Do we see the influence of English common law in our constitutional system?
If so, where is it evident?
- e. How should different interpretations of common law be resolved?



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Unit Two: How Did the Framers Create the Constitution?

1. George Washington said of the Articles of Confederation, “no Morn ever dawned more favourable than ours did—and no day was ever more clouded than the present! Wisdom, & good examples are necessary at this time to rescue the political machine from the impending storm.”* What were the problems resulting from the Articles of Confederation?

- What do you consider the most important achievements of government under the Articles of Confederation?
- Do you think the Constitution effectively remedied the problems of the Articles of Confederation?

* “From George Washington to James Madison, 5 November 1786,” Founders Online, National Archives, <https://founders.archives.gov/documents/Washington/04-04-02-0299>.

Suggested follow-up questions:

- a. How did the Articles of Confederation reflect the Founders’ views on natural rights? On republicanism?
- b. To what extent, if at all, did the Articles of Confederation protect rights? Whose rights did the Articles protect?
- c. How does the idea of sovereignty differ in the Articles of Confederation compared to the Constitution?
- d. How did the expectations of government held by the framers of the Articles of Confederation compare to your expectations of government today?
- e. If the Articles of Confederation failed as a system of government, why bother studying them today?



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2. At the Philadelphia Convention, the delegates agreed that “nothing spoken in the House be printed, or otherwise published, or communicated without leave.”* Do you agree or disagree that the convention proceedings should have been kept secret? Why or why not?

- Evaluate the delegates’ other rules to govern debates in the Philadelphia Convention.
- Some deliberations are still held in secret, such as the deliberations of juries, certain congressional committees, and those of the Supreme Court. Are these secret deliberations justifiable? Why or why not?

* “Madison Debates: May 29,” record of May 29, 1787, from James Madison’s notes on the debates of the federal convention, The Avalon Project, Yale Law School: Lillian Goldman Law Library, https://avalon.law.yale.edu/18th_century/debates_529.asp.

Suggested follow-up questions:

- a. Which convention rules adopted by the Framers in Philadelphia were the most important? Why?
- b. What, if any, rules of civil discourse should be in place today in government or other public proceedings?
- c. If a new constitutional convention were to be held today at either the federal or state level, what rules would you recommend be adopted?
- d. Under what circumstances, if any, do you think the meetings of government bodies or agencies should be closed to the public?
- e. Should all congressional hearings, including Supreme Court and judicial branch hearings, be televised?



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3. James Madison observed, “it seems now to be pretty well understood that the real difference of interests lies not between the large and small but between the northern and southern states. The institution of slavery and its consequences form the line of discrimination.”* What were the Framers’ views on slavery at the time of the Philadelphia Convention?

- In what ways did the existence of slavery in the states shape the powers of Congress and the clauses in the Constitution?
- Which issues left unaddressed by the Philadelphia Convention are most relevant today?

* “Madison Debates: July 14,” record of July 14, 1787, from James Madison’s notes on the debates of the federal convention, The Avalon Project, Yale Law School: Lillian Goldman Law Library, https://avalon.law.yale.edu/18th_century/debates_714.asp

Suggested follow-up questions:

- a. How did the slavery clauses in the Constitution both limit and expand slavery’s impact?
- b. How were some of the questions left unresolved in Philadelphia addressed in the Fourteenth Amendment?
- c. Have regional differences like this continued into the twenty-first century? How might Madison explain or group the states’ interests today?
- d. If a new constitutional convention were to be called today, what would be the major issues that would be up for debate and compromise?
- e. What other constitutional amendments addressed slavery, and did they do so effectively?



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

- 1. Some constitutional scholars say that the Supreme Court should not “find” rights that are not specifically enumerated in the Constitution. They argue that the American people should amend the Constitution if they want to recognize certain rights. Do you agree or disagree? Why?**
 - Is the amendment process the best way to change the Constitution?
 - What rights, if any, that are not yet recognized or formally recognized by the courts as having constitutional protection do you believe should be enumerated in new amendments to the Constitution? Explain.

Suggested follow-up questions:

- a. What do you see as the proper role of the Supreme Court in protecting individual rights?
- b. Under what circumstances should Congress propose a constitutional amendment instead of passing legislation?
- c. Is the process of amending the Constitution overly difficult, or is it the right balance? Why?
- d. How are the Ninth and Tenth Amendments important in judicial interpretations?
- e. How do differences in judicial philosophy explain why judges sometimes decide constitutional issues differently?



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2. “The Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies [remedies] that defect, allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate equally upon all.”*
In what ways has selective incorporation altered the federal system?

- In what ways, if any, does the equal protection clause of the Fourteenth Amendment limit American governments? How does it limit private organizations?
- Do all classifications that result in different treatment of persons violate the guarantee of equal protection of the laws? Why or why not?

* Thaddeus Stevens, May 8, 1866 (Cong. Globe, 39th Cong., 1st Sess., p. 2459), Library of Congress, <https://memory.loc.gov/ammem/amlaw/lwcglink.html>.

Suggested follow-up questions:

- a. Why wasn't the Bill of Rights incorporated immediately upon its ratification?
- b. In your opinion, what guidelines should be used to determine the incorporation of a right?
- c. How is equal protection related to the rule of law and due process of law?
- d. In your opinion, what are the most important or pressing equal protection issues in the United States right now?
- e. How has selective incorporation affected state court decisions?



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3. In *Washington v. Glucksberg*, Chief Justice William Rehnquist said, “the Due Process Clause guarantees more than fair process, and the ‘liberty’ it protects includes more than the absence of physical restraint. The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests.”* Do you agree with this interpretation of the due process clause? Why or why not?
- How has the Supreme Court defined “fundamental rights”?
 - What effect has the doctrine of selective incorporation had on fundamental rights?

* *Washington v. Glucksberg*, 521 U.S. 702, June 26, 1997, Cornell Law School: Legal Information School, <https://www.law.cornell.edu/supremecourt/text/521/702>.

Suggested follow-up questions:

- a. Does the Fourteenth Amendment leave room for different interpretations of fundamental rights?
- b. What additional evidence, if any, should we consider in determining whether a right is fundamental?
- c. Is one branch of government more capable of identifying fundamental rights than the others? Why?
- d. What is the constitutional basis for substantive due process?
- e. Do you think the Supreme Court is correct when it has delineated the levels of scrutiny for the different levels of rights?



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

1. What are the major functions of the House of Representatives and the Senate? What institutional checks exist between the two chambers?

- How has political polarization influenced the function of Congress? To what extent have political compromises overcome political differences?
- Which do you think has the most influence on a congressional representative: the interests of their constituents, party leadership, or ideology? Why?

Suggested follow-up questions:

- a. Why did the Framers think the new national government under the Constitution required a bicameral legislature rather than a unicameral one?
- b. How are political parties different from interest groups?
- c. Why do third parties have a hard time surviving in our political system?
- d. To what extent has social media contributed to political polarization?
- e. In your view, are there groups still unrepresented in the current Congress? If so, which groups?



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2. Sir Francis Bacon stated that “judges ought to remember that their office is ... to interpret law and not to make or give law.”* Has the Supreme Court done a good job maintaining this standard?
- What checks are there on the power of the Supreme Court, if any?
 - If a majority of people disagree with a Supreme Court decision, in what ways, if any, can they change the ruling?

* Francis Bacon, “Of Judicature,” in *The Essays or Counsels, Civil and Moral*, of Francis Ld. Verulam Viscount St. Albans, n.d., Project Gutenberg, https://www.gutenberg.org/files/575/575-h/575-h.htm#link2H_4_0056.

Suggested follow-up questions:

- a. How does the Supreme Court compare in its power to the other two branches of government? Is it the most powerful? Least powerful? Why?
- b. Should the appointment process for justices be altered? If so, how? If not, why?
- c. If you were president and had the opportunity to make an appointment to the Supreme Court, what factors would you use to choose your nominee?
- d. What role, if any, should historical experience, current political realities, or changing social values play in interpreting the Constitution?
- e. Some state-level judges are elected to their positions. Do you think elections change how judges think about cases in front of them? Why or why not?



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3. The Framers of the Constitution wanted to ensure that the presidency was *energetic* as opposed to the *deliberative* nature of Congress. Did the Framers achieve this aim based on the constitutional powers given to the president?

- At the Philadelphia Convention, what were the various measures proposed to check and balance the power of the executive?
- How, if at all, has the role of the president evolved?

Suggested follow-up questions:

- a. What were the various proposals for selecting the president at the Philadelphia Convention? Why was this such a complicated question for the Framers?
- b. Does the president have any powers that are ultimately not checked?
- c. What do you think is the most effective check on the president?
- d. Which amendments have changed the presidency?
- e. How has the growth of administrative agencies affected the power of the president?



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

1. **“It is said that the insertion of a bill of rights would be an argument against the present liberty of the people. ... If the people do really possess them [rights], there can be no harm in expressing what is meant to be understood.”* Does it matter whether protected rights are identified in the body of a constitution or in a separate bill of rights?**

- What are negative and positive rights, and how are they protected differently?
- How do different methods of constitutional interpretation affect the meaning of various provisions of the Bill of Rights?

* A Federal Republican, “A Review of the Constitution,” November 28, 1787, Center for the Study of the American Constitution, University of Wisconsin–Madison,
https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/A_Federal_Republican.pdf.

Suggested follow-up questions:

- a. Why did some Framers insist that a bill of rights was necessary and others argue it was not?
- b. Would you agree or disagree with James Madison that a system of checks and balances is more effective than a bill of rights in preventing the abuse of power?
- c. Do you think the Bill of Rights would be effective without judicial review?
- d. Looking back at U.S. history, have there been times when specific rights were emphasized over others?
- e. Can certain rights, like the right to privacy, be inferred from the Constitution and the Bill of Rights?



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

2. Does the Constitution protect the right to privacy? How does it do so, or how do you know it does not?

- Why and to what degree may the government limit individuals' right to privacy?
- What other Supreme Court decisions have protected unenumerated rights?

Suggested follow-up questions:

- a. Do the First Amendment's freedoms conflict with a right to privacy? How? Should one outweigh the other?
- b. Do you have a right to privacy at school? How, if at all, are your rights at school different from those outside school?
- c. What are the tests for determining whether an unenumerated right should be protected?
- d. Are the tests for determining whether an unenumerated right should be protected sufficient? Or should we have a more explicit process for protecting unenumerated rights?
- e. How have technology and social media affected the right to privacy?



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

3. **“The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.”*** Many of the first state constitutions specifically protect freedom of the press. Why was the protection of a free press so important to the Framers?

- Are different types of media treated differently under the First Amendment today? Why or why not?
- How, if at all, do you think the government should strike a balance between protecting freedom of the press and preventing the spread of “fake news”?

* Massachusetts Constitution, Part the First, Article XVI, June 15, 1780, <https://malegislature.gov/laws/constitution>.

Suggested follow-up questions:

- a. In what ways does freedom of the press support individual freedom?
- b. What limits, if any, do you believe there should be on the press?
- c. What should editors and newsrooms do to improve public trust in news media?
- d. How do you tell the difference between facts, opinions, spin, and misinformation?
- e. What, if anything, should be the role of the individual in fighting against misinformation?
- f. Some people see the press and the media as a fourth branch of government. Do you agree? Why or why not?



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

1. The Constitution lays out the privileges and immunities of citizenship. By the end of the Civil War, however, the idea that each sovereign state could define its own qualifications for citizenship was preeminent. What are the “privileges and immunities” of citizens?

- Is state citizenship still relevant in the twenty-first century? Why or why not?
- Should the United States provide more or less assistance to immigrants seeking to become citizens? What kind of assistance should be provided? What role, if any, should current citizens play in the process?

Suggested follow-up questions:

- a. What does the privileges and immunities clause mean in the twenty-first century?
- b. In what areas are state policies most directly related to people’s daily lives?
- c. What are some of the conflicts today between national unity and state sovereignty?
- d. What is the significance of the Fourteenth Amendment’s provision that no state can “deprive any *person* within its jurisdiction” of due process of law or of equal protection of the laws?
- e. Is citizenship an inalienable right?
- f. Should permanent residents, who are not citizens, be allowed to vote?



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

2. At the Philadelphia Convention, the Framers established rules to promote civil discourse, including limiting how often one could speak, ensuring that attention was focused on the speaker, and allowing for reconsideration of any decisions. How did this promote civil discourse at the convention?

- What rules would be necessary today to promote civil discourse in government?
- What, if anything, needs to be done to promote and improve civil discourse in the media and public life?

Suggested follow-up questions:

- a. What are additional challenges to civil discourse brought about by social media?
- b. How important is it that a range and diversity of citizens' voices be heard in public deliberations? Why?
- c. Americans continue to face issues that divide them along social, cultural, economic, religious, and political lines. Other than civil discourse, what are some ways for peacefully resolving their differences?
- d. Does the internet encourage or discourage civil discourse? How?
- e. Is incivility ever necessary? If so, when? If not, why?



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3. Following the Philadelphia Convention, someone asked, “Well, Doctor, what have we got—A Republic or a Monarchy?” Benjamin Franklin responded, “A Republic, if you can keep it.”* What did Franklin mean, and what is the responsibility of citizens in maintaining their system of government?

- What responsibilities do our elected or appointed officials hold for maintaining our republic?
- What role, if any, should schools play in maintaining our republic?

* *Respectfully Quoted: A Dictionary of Quotations Requested from the Congressional Research Service*, ed. Suzy Platt (Washington: Library of Congress, 1989), <https://www.bartleby.com/73/1593.html>.

Suggested follow-up questions:

- a. How can individual citizens and/or organizations in civil society help to promote representative democracy, constitutional government, and respect for fundamental rights?
- b. What factors influence citizens’ decisions to vote and participate in the political process in other ways?
- c. What responsibilities, if any, do Americans have if they believe that the principles embodied in the U.S. Constitution are being violated?
- d. How might social media be used to enhance the power and effectiveness of citizens?
- e. Is the United States a republic, a democracy, or a democratic republic? Does your answer make a difference regarding what we do as citizens?