



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

STATE HEARING QUESTIONS 2018–2019

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

1. “In the democratic vision, the freedom achieved by a democratic order is above all the freedom of self-determination in making collective and binding decisions: the self-determination of citizens entitled to participate as political equals in making the laws and rules under which they will live together as citizens.”* What relationship, if any, does the right to self-determination have with the idea of popular sovereignty?

- Where in America’s founding documents, acts of Congress, or decisions by the Supreme Court do you find evidence of your right to self-determination and participation as an equal in the making of rules and laws under which you will live together as citizens? What limits, if any, should be placed upon these rights? Explain your position.
- In order for the right to self-determination to be meaningful, what other rights must exist and where can they be found in the fundamental documents of our political system? Explain the relationship of any rights you identify to the right to self-determination.

* Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989), 326.

2. The Declaration of Independence says, “We hold these truths to be self-evident, that all men are created equal.” The American philosopher Isaiah Berlin said that “‘every man to count for one and no one to count for more than one’ ... appears, more than any other formula, to constitute the irreducible minimum of the ideal of equality.”* Do you agree or disagree with this idea? Explain your position.

- Since people are not equal in their knowledge, skills, and abilities, why, if at all, should everyone have equal political rights? Explain your position.
- What evidence is there of political inequality in the United States today and what, if anything, do you think should be done about it? Explain your position.

* Isaiah Berlin, “Equality,” in *Equality and Justice: Volume 2, The Demands of Equality*, ed. Peter Vallentyne (New York/London: Routledge, 2003), 41.

3. The Framers created a form of government that embodied both the natural rights and classical republican philosophies. What are the basic ideas of the natural rights and classical republican philosophies and how might they conflict?

- What are the similarities and differences in the purposes of government in the Declaration of Independence and the Preamble to the Constitution, and how do they relate to the natural rights and classical republican philosophies?
- Which of the two philosophies seems to have had the greatest influence on government and Americans’ ideas about the purposes of government today? What changes in emphasis on the ideas of either of these philosophies, if any, do you think should be made? Explain your position.



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Unit Two: How Did the Framers Create the Constitution?

- 1. Anti-Federalists believed in classical republicanism, the idea that representative government dedicated to the common good could only work in small communities with similar interests. Do you agree or disagree with this statement? Why?**
 - How did the Federalists respond to Anti-Federalist objections to the proposed constitution?
 - Why did the Anti-Federalists object to the supremacy and necessary and proper clauses of the Constitution? Explain your position on this issue.
- 2. In the Virginia Plan, James Madison proposed proportional representation in both houses of Congress. The delegates rejected Madison's proposal in favor of the Great Compromise introduced by Roger Sherman and Oliver Ellsworth, delegates from Connecticut. What is the Great Compromise and how was it justified? Do you think the justification is acceptable today? Explain your position.**
 - What has been the impact of equal representation in the Senate on our political system?
 - What would be some of the benefits and costs of changing the Senate to proportional representation? Explain what position you would take on this issue.
- 3. Alexander Hamilton claimed that the national government was too weak during the Revolutionary War. He argued that if the states did not cooperate during a time in which they all faced extreme dangers, they were not likely to cooperate at all during times of peace and security. Therefore, a stronger national government was needed. What evidence supports Hamilton's position?**
 - What were the strengths and weaknesses of the Articles of Confederation?
 - What were the efforts to amend the Articles of Confederation and why did they fail?



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

1. The amendment process “seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults.”* Do you agree or disagree with James Madison’s assessment? Why?

- What is the amendment process and what are its advantages and disadvantages?
- What amendments to the Constitution have made the country more democratic?

* James Madison, “The Same Subject Continued: The Powers Conferred by the Constitution Further Considered,” *Independent Journal*, January 23, 1788, The Federalist Papers: No. 43, The Avalon Project: Documents in Law, History and Diplomacy, Yale Law School, accessed August 23, 2018, http://avalon.law.yale.edu/18th_century/fed43.asp.

2. “No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”* How has due process of law evolved since the Magna Carta?

- What is procedural due process, and how is it related to the principle of limited government?
- Where in the Constitution and its amendments can you find protections of your right to due process of law? What powers do they limit?

* William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John*, second edition (Glasgow: James MacLehose and Sons, 1914), 375, <https://archive.org/details/cu31924022604734>.

3. What is the role and importance of political parties in our political system?

- Why does the United States have a two-party system instead of a multiparty system, like most other advanced democracies?
- What has been the impact of third parties, and why have there been so few effective third parties in our history?



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

1. Federalist 51 states that “in republican government, the legislative authority necessarily predominates.”* John Locke said, “The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others.” Do you agree with these ideas? Why or why not?**

- To what extent, if any, do you think Congress has given some of its legislative responsibilities to the executive or judicial branches? Why might it do so, and what evidence do you have to support your position?
- What legislative powers are held by the executive and judicial branches? What problems might be posed for democracy if the balance of legislative power were to shift to these branches? Explain your position.

* Alexander Hamilton or James Madison, “The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments,” *New York Packet*, February 8, 1788, *The Federalist Papers*: No. 51, *The Avalon Project: Documents in Law, History and Diplomacy*, Yale Law School, accessed August 24, 2018, http://avalon.law.yale.edu/18th_century/fed51.asp.

** John Locke, *Second Treatise of Government* (1690), Sect. 141, <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

2. Alexis de Tocqueville wrote in 1835 that “the power vested in the American courts of justice of pronouncing a statute to be unconstitutional, forms one of the most powerful barriers which has ever been devised against the tyranny of political assemblies.” Do you agree or disagree with Tocqueville? Why or why not?

- Is the power of judicial review consistent with the principle of majority rule? Why or why not?
- Under what conditions, if any, should the Supreme Court have the power to overrule a decision by a majority of the people’s representatives in our legislative branches? Explain your position.

* Alexis de Tocqueville, *Democracy in America*, trans. by Henry Reeve (Clark, NJ: The Lawbook Exchange, Ltd., 2003), 83.

3. How does the exercise of presidential power in the twenty-first century compare with the views of the Framers of the Constitution? Does the current extent of presidential power represent a threat to the constitutional system created in 1787? Why or why not?

- Have the actions of presidents represented a departure from the power asserted by their predecessors throughout American history? Why or why not?
- What are the constitutional checks upon the presidency and are they still effective?



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

1. **“The Government’s collection of telephony metadata from a third party such as a telecommunications service provider is not considered a search under the Fourth Amendment.”* Do you agree or disagree with Judge Brett Kavanaugh? Why or why not?**

- Should searches and seizures conducted by the National Security Agency be held to the same Fourth Amendment standard as searches and seizures by the police? Why or why not?
- Under what conditions, if any, should police be able to search and seize people or their property without obtaining a warrant?

* *Klayman v. Obama*, No. 15-5307 (D.C. Cir. 2015), <http://pdfserver.amlaw.com/nlj/11-20-15%20en%20banc%20denial%20kavanaugh.pdf>.

2. **In a 2005 Supreme Court opinion, Associate Justice Anthony Kennedy wrote, “It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime.”* Do you agree or disagree with Justice Kennedy’s opinion? Why or why not?**

- Does the death penalty for a capital crime violate the Eighth Amendment’s protection against cruel and unusual punishment? Why or why not?
- Should the Eighth Amendment prohibit a state from executing a prisoner whose mental disability leaves him or her with no memory of the commission of the capital offense? Why or why not?

* *Roper v. Simmons*, 543 U.S. 551 (2005).

3. **“When a choice must be made, it is better to allow those who preach racial hate to expend their venom in rhetoric rather than to be panicked into embarking on the dangerous course of permitting the government to decide what its citizens may say and hear.”* Do you agree with U.S. District Court Judge Bernard Decker’s upholding the First Amendment rights of Nazis to march in Skokie, Illinois? Why or why not?**

- What, if any, benefit is there from the presentation of ideas that are designed to alarm, antagonize, and offend members of that society?
- Should the “fighting words” doctrine of *Chaplinsky v. New Hampshire* be reinvigorated and applied on a broader scale to deny First Amendment protection to volatile speech like that expressed in places like Charlottesville, Virginia, in August of 2017? Why or why not?

* *Collin v. Smith*, 447 F. Supp. 676 (ND Ill.1978).



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

1. As the number of younger voters grows in relation to older voters,* what responsibility, if any, do younger voters have to better understand government and the Constitution and Bill of Rights?

- More than twenty countries around the world have mandatory voting. What are the advantages and disadvantages to mandatory voting?
- Should non-citizens be allowed to vote in local elections? Why or why not?

* Richard Fry, “Millennials and Gen Xers outvoted Boomers and older generations in 2016 election,” Pew Research Center, July 31, 2017, <http://pewrsr.ch/2vXBBR2>.

2. In a recent article for the *Journal of Democracy*, Paul Howe wrote that “since 1995, support for key democratic principles has eroded, while a surprising degree of openness to nondemocratic alternatives has appeared. Disconcertingly, it is younger citizens who are most likely to express a weaker sense of attachment to democracy.”* How do you account for this trend?

- What are the main differences between authoritarian and democratic governments? Why might people be attracted to authoritarian or democratic governments?
- What is meant by democratic norms or dispositions, such as respecting the rights of others, and what is their importance?

* Paul Howe, “Eroding Norms and Democratic Deconsolidation,” *Journal of Democracy* 28, no. 4 (October 2017): 15, accessed August 24, 2018, <https://www.journalofdemocracy.org/article/eroding-norms-and-democratic-deconsolidation>.

3. According to the American Immigration Council, “immigration to the United States is based upon the following principles: the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity.”* Does today’s immigration policy reflect these principles? Why or why not?

- What are the major cultural and political issues regarding immigration that face America today?
- What changes, if any, should be made to our current immigration policy?

* American Immigration Council, “How the United States Immigration System Works,” 2016, accessed August 23, 2018, <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works>.