



We the People

THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

STATE HEARING QUESTIONS 2019–2020

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

1. “It is impossible to read of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy.”* How did the Founders’ knowledge of the history of republics (or democracies) and confederations affect their ideas about government?

- Why do you suppose that republican government in the United States has not been “kept in a state of perpetual vibration between the extremes of tyranny and anarchy”?
- What have the past 230 years of our experiment as a constitutional republic taught us about the ability of people to self-govern on behalf of “we the people”?

* Alexander Hamilton, “The Union as a Safeguard against Domestic Faction and Insurrection,” *Independent Journal*, January 23, 1788, The Federalist Papers: No. 9, The Avalon Project: Documents in Law, History and Diplomacy, Yale Law School, accessed August 19, 2019, https://avalon.law.yale.edu/18th_century/fed09.asp.

2. Nation-states developed relatively recently in history. What significant changes in people’s minds and senses of identity accompanied the rise of nation-states? How have those changes affected the evolution of governments?

- What challenges, if any, does the United States face in being a diverse nation-state?
- What are some possible solutions for those challenges?

3. Ideas of power, rights, and limited government varied in the first state constitutions in the United States. Identify and explain some of these ideas and explain why there were some marked differences among the state constitutions.

- What are some classical republican and natural rights ideas in the Constitution that were first articulated in state constitutions?
- What role do state constitutions continue to play in the evolution of our constitutional system of government?



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Unit Two: How Did the Framers Create the Constitution?

1. Abigail Adams said that individuals involved in Shays' Rebellion were "ignorant, restless desperadoes, without conscience or principals, [who] have led a deluded multitude to follow their standard, under pretence of grievances which have no existence but in their imaginations."* To what extent would you agree with her assessment?

- What other events of the Confederation Period were cause for concern for many Americans?
- In your view, have there been other events in our nation's history that were similar to the "crisis of the Confederation Period"?

* Abigail Adams to Thomas Jefferson, "To Thomas Jefferson from Abigail Adams, 29 January 1787," January 29, 1787, *Founders Online*, National Archives, accessed August 19, 2019, <https://founders.archives.gov/documents/Jefferson/01-11-02-0087>.

2. One historian has suggested that the secrecy rule of the Philadelphia Convention allowed a "group of elite nationalists ... some space to maneuver independent of public opinion."* What were the reasons for the secrecy rule? In your opinion, were they legitimate?

- What other rules of the convention, if any, were as important as the secrecy rule?
- In your opinion, are there any circumstances that warrant government proceedings to be shielded from public scrutiny?

* Michael J. Klarman, *The Framers' Coup: The Making of the United States Constitution* (New York: Oxford University Press, 2016), 253.

3. "I do not recollect to have met with a sensible and candid Man who has not admitted that it would be both safer and better if amendments were made to the Constitution ... Some thinking that a second Convention might do the business, whilst others fear that the attempt to remedy by another Convention would risk the whole."* What were some of the amendments proposed by the Anti-Federalists? Should they have been added before the adoption of the Constitution? Why or why not?

- Why did Federalists oppose prior amendments to the Constitution?
- In your opinion, why have there been so few amendments to the Constitution?

* Richard Henry Lee to Edmund Pendleton, "Richard Henry Lee to Edmund Pendleton," May 26, 1788, ConSource, accessed August 19, 2019, <https://www.consource.org/document/richard-henry-lee-to-edmund-pendleton-1788-5-26/20130122083153/>.



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

1. **“The right of voting for persons charged with the execution of laws that govern society is inherent in the word liberty, and constitutes the equality of personal liberty.”* Although voting is essential for liberty and equality, individuals and groups in our country have been denied this right. How and why has this occurred?**
 - Which branch of government is responsible for expanding voting rights, and how did it accomplish this expansion?
 - Are voting rights best protected and expanded by state or national governments? Explain your position.

2. **What is the difference between procedural and substantive due process, and what are the origins of these principles?**
 - Are the protections of procedural due process more fully guaranteed in an adversarial or inquisitorial system of justice? Explain your position.
 - Does procedural or substantive due process cause more conflict between the national and state governments? Why? Give examples.

3. **“The benefits from discussion lie in the fact that even representative legislators are limited in knowledge and the ability to reason. No one of them knows everything the others know, or can make all the same inferences that they can draw in concert. Discussion is a way of combining information and enlarging the range of arguments.”* Does John Rawls’ statement accurately reflect the discussion taking place among political parties today in our legislative branch? Why or why not?**
 - What are the benefits and costs of having multiple political parties in a legislative branch?
 - Parliamentary government has proven to be very effective in other countries. What might be the advantages and disadvantages of the United States changing to a parliamentary form of government?

* Thomas Paine, “Thomas Paine - Agrarian Justice,” Social Insurance History, Social Security Administration, accessed August 19, 2019, <https://www.ssa.gov/history/paine4.html>.

* John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, MA: The Belknap Press, 2003), 315.



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

1. Professor Michael J. Klarman argues that “the immediate backdrop against which the delegates in Philadelphia were designing the executive branch—state constitutions—was one of emasculated executives.”* Why would this be, and do you agree with this assessment? Why or why not?

- To what extent did the Framers have to imbue the new executive branch with powers not found in state constitutions?
- What were the Framers’ fears of moving toward a more powerful executive in the U.S. Constitution, and have those fears been realized over the years? Explain your position.

* Michael J. Klarman, *The Framers’ Coup: The Making of the United States Constitution* (New York: Oxford University Press, 2016), 214.

2. According to historian Joseph Ellis, “there was no single source of sovereignty in the new Constitution. What he [James Madison] had initially regarded as the great failure at the Constitutional Convention—the coexistence of federal and state claims to authority—was, albeit inadvertently, in fact the great achievement.”* Do you agree or disagree with Ellis’s assessment of Madison’s view of shared sovereignty? Why or why not?

- How has this “shared sovereignty” led to ongoing arguments in our federal system today?
- How has our federal system created both majority and minority control of state and national governments? What are the advantages and disadvantages of this system?

* Joseph J. Ellis, *American Dialogue: The Founders and Us* (New York: Alfred A. Knopf, 2018), 139.

3. “Of all times to abandon the Court’s duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government. Part of the Court’s role in that system is to defend its foundations. None is more important than free and fair elections.”* Do you agree with Justice Elena Kagan’s dissent on the Court’s role, or should the courts not get involved in political questions? Why or why not?

- Under what circumstances have the courts intervened in “political questions” in the past?
- Looking forward, what role, if any, should the courts play in preserving free, fair, and frequent elections in the United States?

* *Rucho v. Common Cause*, 588 US __ (2019)



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

1. “The Self-Incrimination Clause of the Fifth Amendment is an unsolved riddle of vast proportions, a Gordian knot in the middle of our Bill of Rights.”* Do you agree or disagree with this quote? Explain your position.

- What is the history of the Fifth Amendment’s self-incrimination clause, and why might it be controversial?
- Should refusing to give up your mobile phone’s passcode be protected under the self-incrimination clause of the Fifth Amendment? ** Why or why not?

* Akhil Reed Amar and Renee B. Lettow, “Fifth Amendment First Principles: The Self-Incrimination Clause,” *Michigan Law Review* 93, no. 5 (March 1995): 857–928.

** Katelin Eunjoo Seo v. State of Indiana, 18S-CR-595 (2018).

2. The U.S. Supreme Court has used a two-pronged test to evaluate speech. First, speech can be prohibited if it is “directed to inciting or producing imminent lawless action” and second, if it is “likely to incite or produce such action.”* Using this test, the Court held that an Ohio law violated Clarence Brandenburg’s right to speech in *Brandenburg v. Ohio*. Do you agree or disagree with the Court’s decision and the use of a two-pronged test?

- Under what conditions, if any, should freedom of expression be limited?
- Why is freedom of expression a necessary part of representative government?

* *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

3. In 1784, Patrick Henry proposed a general tax called the Bill Establishing a Provision for Teachers of the Christian Religion. In reaction, James Madison wrote, “The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.”* Do you agree with Patrick Henry or James Madison? Why?

- How have the courts interpreted the establishment clause of the First Amendment?
- How is the right of free exercise of religion balanced against other interests of society?

* James Madison, “Memorial and Remonstrance against Religious Assessments, [CA. 20 June] 1785,” June 20, 1785, *Founders Online*, National Archives, accessed August 19, 2019, <https://founders.archives.gov/documents/Madison/01-08-02-0163>.



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

1. National citizenship is defined as follows: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”* Should the definition be changed to reflect additional or different criteria for national citizenship? Why or why not?

- What are the rights and responsibilities of citizenship?
- What are the opposing positions regarding “birthright citizenship” and what might be the consequences of either side prevailing? Explain your position on this issue.

* Fourteenth Amendment, 1868

2. “The Americans, on the contrary, are fond of explaining almost all the actions of their lives by the principle of interest rightly understood; they show with complacency how an enlightened regard for themselves constantly prompts them to assist each other, and inclines them willingly to sacrifice a portion of their time and property to the welfare of the State.”* What is the meaning of the concept of self-interest rightly understood, and does it still apply today?

- What role, if any, does participating in civil society have for a well-functioning democracy?
- Should schools require community service in order to promote the concept of self-interest rightly understood? Why or why not?

* Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve (Washington, D.C.: Regnery, 2002), 484.

3. “We define populism as a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, ‘the pure people’ versus ‘the corrupt elite,’ and which argues that politics should be an expression of the *volonté générale* (general will) of the people.”* Do you agree or disagree with this definition of populism? Why?

- What challenges, if any, have populist movements presented to our representative democracy?
- What are some examples of populist movements around the world, and what impact have they had on their respective political systems?

* Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (New York: Oxford University Press, 2017), 5–6.