

# **Practice Follow-Up Questions**

**Organized By Topic**

**With a Brief Guide to Follow-Ups**

Edited by Charles M. Hinderliter

Developed as a tool for civics teachers, specifically those who teach the *We the People: The Citizen and the Constitution* program of the Center for Civic Education.

### **Disclaimer**

This list was not created by the Center for Civic Education.

The use of list does not violate the rules of the competition as set forth by the Center for Civic Education. No prior knowledge of the questions existed before any competitions, and the purpose of this list is merely to provide teachers with examples of types of questions that could be asked, not the actual questions that will be asked. Any similarities between these questions and questions actually asked at competitions is coincidental, unless they stole it from here, which I highly doubt, or that we just guessed really well, which could happen.

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and Doug Linder and Father Joseph Koterski.

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University of Missouri –Kansas City. 26 January 2004.  
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/home.html>

Questions in this typeface come from:

Father Joseph Koterski. Course Guidebook from Natural Law and  
Human Nature. The Teaching Company, 2002.

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To access an on-line research page developed for a *We the People* class, go to  
<http://www.geocities.com/cmhinderliter/search.html>



*For Ken*

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## Uses for this list

If you are teaching the *We the People* course and do a showcase hearing in your classroom or community and do not intend to compete, this list can provide you with questions you can ask your students (or judges that you line up can ask), or at least examples of questions that may help you to develop your own.

If you are teaching the *We the People* course and intend to compete at the district, regional, state, or national competitions, then this list can give you questions to ask your students, or give selections to your students, so that they can prepare for the follow-up section of the competition.

## A brief guide for this practice list

Most of the simulated follow-up questions in this list will fall under one of two categories: (1) a general question that seeks the students' opinion supported by reason and specifics, or (2) a question that seeks a more factual answer that may or may not require any opinion. The vast majority of the questions asked at the competitions will fall under the first category. The questions of that sort in this list are primarily to prepare the students for that type of question, by getting them acquainted to the form of the questions, and by possibly guessing along the lines that the judges may ask. The second type of question is to probe the student's factual knowledge so that they will have the information they need to give specifics in support of their arguments in the first type of question. It is possible that judges will ask questions like these at the competitions, so they are useful in that regard, but are most useful for merely testing understanding and knowledge rather than preparation for the type of questions they will receive in the competitions.

## **Follow-ups in the Competition**

In the competition, follow-up questions typically last for six minutes, which follow the prepared statement the students wrote to answer the questions provided to them. For those ten schools that compete in the top ten at the national finals, the follow-up questions last for eleven minutes that Monday in Washington D.C.

### **The importance of the follow-up questions in the competition**

The scoring for the competition is broken up into six categories, each on a one to ten scale. They are not broken down in terms of prepared statement and follow-up questions. While judges and the Center have not commented on the weight of the follow-up section, the judges seem to treat the follow-up section with greater weight than the prepared statement. The consensus of a few teachers that regularly win state and go to nationals is that the follow-up questions are the most important part of the competition. It is in this section that the judges are able to interact with the students and to see how much they truly know. So in preparation for the competition, it is vital to prepare for the follow-up section of the simulated hearing.

### **Tips on preparing students for follow-up questions**

A good place to start for tips regarding the competition is a memo that Robert S. Leming wrote called "Tips for preparing your students." It can be found on the Center for Civic Education's website. In that memo, he looks at how to prepare students for follow-ups. He suggests:

Involve as many community experts and **We the People** alumni as possible in brainstorming sessions with your students. These sessions can



help students anticipate the types of questions they might be asked, increase their understanding of complex constitutional issues, and provide experience in the exchanging of ideas. If you need help identifying community experts and/or **We the People** alumni, contact your state or district coordinator.<sup>1</sup>

While this list in no way can replace the benefit students receive from alumni and community experts, it is a way to shorten the brainstorming process. Further brainstorming should be done, particularly in regard to interesting issues that students may bring up in their prepared statements that the judges may want to ask questions about. Also, it can give your students questions that may seem to be a little out of left field, yet show that they need to have an understanding of their entire unit as well as prepare them for questions that judges may well ask that may seem to be out of nowhere. Robert Leming goes on to list criteria, in addition to that on the score sheet that judges look for:

- comprehensive knowledge of the entire unit, not just the section that answers the question.
- understanding of underlying constitutional principles involved in the question.
- application of abstract principles to real-life situations.
- ability to support or refute different positions on issues.
- willingness to explore issues with the judges.<sup>2</sup>

The questions in this text are designed to tease out each of these facets that the judges will look for. Different questions are aimed at getting the students to think about each of these different criteria.

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<sup>1</sup> Leming, Robert S. "Tips for preparing your students." Center for Civic Education. [http://www.civiced.org/PDFS/wtp\\_studentprep.pdf](http://www.civiced.org/PDFS/wtp_studentprep.pdf). 11 February 2004.

<sup>2</sup> Leming, Robert S. "Tips for preparing your students." Center for Civic Education. [http://www.civiced.org/PDFS/wtp\\_studentprep.pdf](http://www.civiced.org/PDFS/wtp_studentprep.pdf). 11 February 2004.

### **Three methods of preparing students for follow-up questions**

The following are three methods that I have used to prepare students for follow-up questions. For each of the first two, it is very helpful to bring in other people to work with the students, as Leming mentioned in his tips. Community experts, alumni of the program, and other teachers are all very well suited to work with the students in preparation for follow-ups.

The first method is to have an individual, yourself or another person, sit down with a unit and quiz them on follow-ups from a list of questions that pertain to the question they are working on. This method works best if the students do not have prior knowledge of the questions to be asked, as they will not have that advantage when they compete. If the students do not know what the questions will be, they will get preparation in thinking on their feet, which is critical in the competition. After a set period of time, sit and discuss their answers. This debrief time will allow you to critique their performance, and also give the students an opportunity to discuss any issues they do not understand. This method is easy as it only requires one person to work with the students, and you have an abundance of questions to draw from in this list. Also, it gives the students a familiarity with how the competition will be, but in a more informal setting. Perhaps most importantly, it will bring out areas that they do not understand and then gives them the opportunity to discuss those issues.

The second method is to have a mock competition, or a run-through of sorts. This follows the same form as the previous method, but is more formal and works best if you have two or three people acting as judges, as there will be three judges on the panel at the competitions. This method calls for the students to read their prepared statement and then proceed in to the follow-up questions, just as is done in the competition. All of this should be timed so the students get

a feel for how long (or perhaps more appropriately, just how *short* six minutes of follow-ups can be). Like the previous method, it works best if the students do not know the follow-up questions in advance.

The third method is to provide the students with a list of practice follow-up questions and let them work on their own. First provide them with a list of questions that pertain to the topics that their district, state, or national questions cover. Second, instruct them to ask themselves three questions when looking at a possible follow-up question.

1.) Can I answer this question?

If yes, then they go to question 2.

If no, then they need to research and get to the point where they can.

2.) What is a general answer to this question?

They then give a brief response in general terms that answers the question. Here is where they need to develop an argument if it is an opinion based question.

3.) What specifics do I have to back up my answer with?

Here the students need to draw upon the knowledge they have and apply some specific example that supports their general answer (and/or argument). If they do not have a specific to back it up, then they need to research and find one.

Using this method, the students get in the habit of conciseness, answering the question asked, and supporting their arguments.

These are merely some methods; there are many others that work as well. The best way to prepare students is going to be a combination of the above mentioned methods, or used in conjunction with other techniques. If you are using one of the first two methods in conjunction with the third, ask the students questions that they have not seen ahead of time, then give them the list of questions you asked them for them to work on. That has worked well in my experience.

### **Organization of the List**

The topics of questions are organized more or less into the six different units and are not in alphabetical order. Just because a section of questions is lumped in with one unit does not mean that it may not be useful tool for another unit. Many of the topics are cross-referenced with other topics to ease the process of finding related questions.

### **For More Questions**

This list of questions is *not* exhaustive. It always helps to brainstorm to come up with more questions. Another great resource for more questions is the *We the People* text. It has a plethora of questions in it that can also be used, and many are of the style that the Center likes to use in follow-ups (hence their fondness of them in the text). The “What do *you* think” questions, the “Critical Thinking Exercise” questions, and the “Reviewing and Using the Lesson” questions are also good questions to use to test your students. These sections appear in each lesson, so find the lesson that best corresponds with the topic you are dealing with and ask questions from that. Also, Lesson 40 in the text is full of critical thinking exercises that could be applied to numerous different units. These are places to look for more questions in addition to the following list.

## **British Roots**

- How are life, liberty, and property rights seen in the Magna Carta?
- How are life, liberty, and property rights seen in the petition of rights?
- How are life, liberty, and property rights seen in the English Bill of Rights?
- How are life, liberty and property rights seen in the Colonial Charters?
- Would you say that the colonial governments were mere reflections of the British system?
- Is the Declaration of Independence based in Lockean or English rights theory?
- Compare the philosophy in the Magna Carta to the Philosophy in the Declaration of Independence.
- What were the differences between rights of Englishmen and Natural Rights?
- Was the Declaration of Independence a document based in natural rights, or English Rights theory?
- Why is the Magna Carta so important to America?
- What was the Magna Carta's role in the evolution of Due Process?
- Did the Magna Carta change our view on the philosophy of rights?
- Is the Equal Protection clause rooted in the Magna Carta?
- What were the British origins of Habeas Corpus?
- What are other fundamental documents of British Constitutionalism that Americans borrowed from?
- How would the executive branch be different in the US, if we followed the British system of Constitutionalism?
- How would the legislative branch be different in the US, if we followed the British system of Constitutionalism?
- How would the judicial branch be different in the US if we followed the British system of Constitutionalism?
- How did the traditional rights of Englishmen influence the development of state constitutions, the US Constitution, and the Bill of Rights?

- How did British Constitutionalism impact colonial governments?
- Is our rights evolution similar or dissimilar to the English evolution of their constitution?
- In your mind, are there any advantages to the British system of Constitutionalism as compared to the American system?
- What are the main differences between the parliamentary and presidential systems?
- What is parliamentary supremacy?
  - Why does it work in Britain?
- How did English history affect the due process rights put into the Bill of Rights?
- How do you explain the similarities between the British and American societies when the former has no formal constitution?
- Is consent a feature in the British documents?

### **Common Law**

- What is common law?
- What is the role of common law in our constitutional system?
- Is there such a thing as U.S. federal common law?
- What role does common law play in the states of the U.S.?
- Do we through our civil courts have common law tradition?
- Is due process the same thing as common law?
- How is constitutional law different from statutory law, administrative law, and common law?
  - (Think about differences in how each form of law is made, how it is interpreted, how it might be changed, and what subject matter it is likely to cover.)

### **Natural Law**

- What is natural law?
- How did natural law philosophy lead to the natural rights philosophy?
- How did natural law philosophy lead to the human rights philosophy?

- Is natural law relevant today?
- How does civil disobedience relate to natural law?

*See also **Natural Rights***

## **Higher Law**

- Define higher law.
- Do we have it today?
- In what way is our Constitution a higher law?
- How are delegated powers related to higher law?
- Is the 9<sup>th</sup> amendment a commitment to higher law?
- Is the Supreme Court the equivalent of higher law?
- How is precedent related to higher law?
- How do the various methods of interpretation relate to higher law?
- Can an unwritten constitutional system have higher law?
- How does federalism complicate the concept of higher law?
- Is consent the opposite of higher law?
- Which state constitution, in your opinion, was the best example of a commitment to higher law?
- What role has the executive branch had in preserving the principles of higher law? The Congress? The courts?
- Does judicial review emphasize the importance of or commitment to higher law?
- Does judicial review violate the principles of higher law?
- Is judicial activism a violation of higher law?
- Is higher law synonymous with natural rights?

## **Natural Rights**

- What are natural rights?
- Where do people derive their natural rights?
- Can you have Natural Rights without God? Without a belief in God?
- Not all of the Founders, and certainly not all Americans are Christian, so why should they accept the idea of natural rights if they come from God?

Where else could the natural rights originate?

- Can your natural rights ever be taken away? Why or why not?
- How did the idea of natural rights originate?
- Which of the three natural rights is most important?
- What does the natural right of "liberty" include?
- Can the state (or government) ever deny or take away someone's natural rights? Explain with examples.
- Which natural right is the most difficult to protect?
- What is self-evident about natural rights?
- Can inalienable rights be limited?
- Are natural rights universal?
- If natural rights are self-evident, why don't all countries recognize them?
- Can all of our rights be linked to a natural right?
- How are life, liberty, and property rights seen in the Magna Carta?
- How are life, liberty, and property rights seen in the petition of rights?
- How are life, liberty, and property rights seen in the English Bill of Rights?
- How are life, liberty and property rights seen in the Colonial Charters?
- Are natural rights possible if a society had great differences in wealth within its citizenry?
- Is higher law synonymous with natural rights?
- Which was most important to the Civil Rights Movement: class, Judeo-Christian tradition, or natural rights theory?
- Can you ever choose to give up your own natural rights? Why or why not?
- Is regulation in zoning appropriate if we have natural rights?
- What is the difference between natural rights, civil rights and political rights?
- Are human rights the same things as natural rights?



- The Universal Declaration of Rights uses the phrase “security of person”, where the natural rights philosophy says property. What difference does this make and why do you think that they chose to word it this way?
- How does the natural rights philosophy embodied in the Declaration of Independence differ from that in the Universal Declaration of Human Rights?
- Can the natural rights philosophy be used to justify secession? If so, how?
- Would you say inalienable means unrecognized?
- If someone's happy in their property, do they no longer have a right to pursue happiness?
- What kind of securities (those which we submit to when we pay taxes) does the government offer?
- Does a person have a natural right that protects them from unreasonable search and seizure?
  - What about voting?
- Do animals have natural rights? Why or why not?
- What is the difference between natural and constitutional rights?
- How did the Articles of Confederation reflect the country's views on natural rights, republicanism and constitutionalism?
- What were the differences between rights of Englishmen and Natural Rights?
- Was the Declaration of Independence a document based in natural rights, or English Rights theory?
- Is Substantive Due process the same thing as natural rights?
- The current trend seems to be a growth of the federal government. Is this an evolution of government that the Natural Rights philosophers would agree with?
- Do you believe that the natural rights philosophy dominates current political thought?
- Give an example of when the U.S. violated someone's natural rights.

- How does civil disobedience apply to established law, natural rights, or natural law?
- How is the 9<sup>th</sup> amendment related to the natural rights theory?
- How is the 10<sup>th</sup> amendment related to the natural rights theory?
- Which natural right is related to Due Process?
- Which natural right is related to Substantive Due Process?
- 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?
- How were Locke's ideas about natural rights incorporated into the United States Constitution?
- Are compulsory voting laws consistent with Lockean principles?
- Would John Locke have agreed with the North or the South in the debate over secession?
- Why did Locke and other philosophers think natural rights to be inalienable?
  - If I am an atheist, can I have natural rights?
- Mr. Locke didn't say anything about his or her. Is Locke not politically correct?
- How would you define the term inalienable?
- Which Lockean right is most important?
- Why was property the most important right for Locke?
- What would Jefferson (or Locke) have thought of unalienable rights and the 14<sup>th</sup> amendment where rights can be taken away with Due Process?
- Are Lockean rights compatible with Judeo-Christian individualism?
- What did John Locke have to say about the idea of the consent of the governed?
  - Where do we see this idea operable in the US system of government today?

- How do the branches of government reflect Lockean theory?
- Is the Declaration of Independence based in Lockean or English rights theory?
- Is the 14th amendment Lockean in its goals?
- Is section 5 of the 14th amendment Lockean in its goals?
- The standard list of “natural rights” includes life, liberty, property, and the pursuit of happiness. Are there any other basic rights you would add to the list?
- Do “natural rights” need somehow to be grounded in “human nature”?
- By what criteria might we distinguish a legitimate natural right from what we merely wish for (however intensely)?
- What rights would you consider to be “civil” rather than “natural”? That is, what rights are rights only because they have been granted by some civil society, rather than grounded in our human nature (regardless of whether a particular government recognizes them in law)?
- Is the right to free speech a natural or a civil right? Is it unlimited? By what criteria could it ever justly be restricted?

*See also **Natural Rights v. Classical Republicanism, Consent/Social Contract, Right of Revolution, Rights***

### **Natural Rights v. Classical Republicanism**

- Which philosophy do you agree with: Natural Rights or Classical Republicanism?
- Are you more a natural rights philosopher or a classical republican? Defend your reasons why.
- Compare the Natural Rights view of a state of nature to what the classical republicans would think of such a state.
- Have we inherited too much of the natural rights philosophy and not enough of the Classical Republicanism?

- How do the classical republicans and natural rights philosophers differ on their beliefs about the nature of man?
- Do you think America emphasizes natural rights philosophy or classical republicanism?
- Are affirmative action policies more Lockean or Classical Republican?
- Does the idea of association tie in more with the natural rights or the classical republican philosophy? Explain.
- Analyze the system of government designed by the Framers in terms of the major ideas of the classical republicans and the natural rights philosophers.
- In what ways was the requirement of a religious test for office-holding related to the ideas of both the classical republicans and the natural rights philosophers?
- How does the natural rights view on rights differ from the classical republican's view?

See also *Natural Rights, Classical Republicanism, General Philosophy*

### **Classical Republicanism**

- What is classical republicanism?
- What are the goals of government according to classical republicanism?
- Is classical republicanism relevant today?
- Do small homogeneous communities better protect the rights of individuals?
- How did the ideas of the importance of the individual and the purpose of government held by the Classical Republican and the Judeo-Christian view alike?
- In your opinion, which plan at the Constitutional Convention, the New Jersey or the Virginia plan, was more rooted in the Classical Republican philosophy?
- In what respects is the Declaration of Independence classical republican in nature? Explain your position.

- How would the U.S. have developed differently if the Constitution would have been written solely from a classical republican standpoint?
- Is our nation too large for any degree of classical republican notions of civic virtue to exist?
- What type of government today best displays the ideas of Classical Republicanism?
- Do you think that communism follows classical republicanism?
- Would you want to live in a society based on classical republicanism?
- Some people think that we live in a self-centered society. Do you agree or disagree with this? Do you think that our society could use some influence from the classical republicans?
- How do the branches of government reflect classical republican theory?
- If we did return to classical republican ideas post 9/11, was it a temporary state or a permanent change?
- Why did classical republicanism hold that military service is important? Do you agree with this argument? Should military service be mandatory or voluntary?
- Do you think Classical Republicanism is compatible with human nature?
- Some people think that we live in a self-centered society. Do you agree or disagree with this? Do you think that our society could use some influence from the classical republicans?
- Some observers say we do not have enough of the spirit of classical republicanism. Do you agree with this? Why or why not?
- Do the Guardians in Plato's republic give a representative view of the Classical Republic view on humans?
- How did Washington demonstrate the classical republican ideal?
- Name other founders and framers that demonstrated the classical republican ideal.
  - Does anyone in modern history demonstrate these ideals?
- How would you describe classical republican virtue in today's terms?

- How can we see the classical republican influence in education in America today?
- Do you feel we need more or less classical republican influence in education today?
- Some public schools teach character education. How does this relate to the classical republican idea of education?
- What were subjects that Classical Republicans thought were most important to be taught? (See Plato's Republic for one possible answer)
- Classical republicans maintain that moral education is necessary. Why did they take this position? Would you agree or disagree with this?
- Where is moral education to take place?
- Why did classical republicans believe that moral education was imperative? Do you agree or disagree? Why?
- So is moral education the province of our public school system? Or should it extend out into other aspects?

See also *Common Good, Civic Virtue/Virtue, Classical Republican v. Judeo-Christian Tradition, General Philosophy*

## **Roman Republic**

- What impact did the Roman Republic have on the Founders?
- What do the Federalist papers say about Rome?
- Do we have parts of our government that are plebeian and patrician?
- Are our House of Representatives and our Senate a reflection of the Roman plebeian and patrician system?
- What parts of the Roman experience did the founders fear?
- What parts of the Roman Republic did the founders reject?
- What did Polybuis have to say about Roman government?
- What did the founders draw from Cicero?
- Are there parallels between Rome and America today?
- Some people argue that America is poised to fall as the Roman Empire did. Do you agree or disagree with that assertion and why?

- In what ways was the Roman Republic oligarchic? In what ways was it representative?
- Why did the Roman Republic fall and turn into the Roman Empire?

## **Human Nature**

- What is your view of human nature?
- What was Madison's view of human nature?
- Do you think Classical Republicanism is compatible with human nature?
- How were the founders' views of human nature affected by Judeo-Christian philosophy?
- How do the classical republicans and natural rights philosophers differ on their beliefs about the nature of man?
- Why are forms of government related to conceptions of human nature?
  - (See Fed 10 and 51)
- Do "natural rights" need somehow to be grounded in "human nature"?
- What rights would you consider to be "civil" rather than "natural"? That is, what rights are rights only because they have been granted by some civil society, rather than grounded in our human nature (regardless of whether a particular government recognizes them in law)?

## **Common Good**

- Define the Common Good.
- How would you define Common Good? What are some examples of legislation or illustrations from your state that you think demonstrate something done for the common good?
- What are some examples of further laws or policies in your state that would advance the common good?
- Is there a difference between the common good and what the majority wants? If so, what is it?

- Can you give some examples of when the common good and individual rights are in conflict?
- What forms of government focus on the common good?
- Can a nation as large as the US ever figure out what the common good is?
- Do you think the restrictions imposed by the Constitution on the federal government make it more difficult for the government to protect individual rights and further the common good? If so, how can this be justified? If not, explain your position.
- Can there be too much emphasis on the common good?
- Can the common good become tyrannical? How did the Federalists' and anti-Federalists approach this idea of tyranny?
- Any current examples where we see the conflict between individual rights and the common good?
- Who or what is in the best position to determine the common good?
- Is it every appropriate to limit rights for the common good?
- Who best determines the Public Good?
- Who should determine the common good?
- Is the will of the people synonymous with the common good?
  - If so, who best represents to will of the people?
- Why should some people sacrifice their personal interests for the common good, if other people refuse to do so? How do we know what the common good is?
- With the trend in Public Education towards moral education, what role does it play in the common good and civic virtue?
- What provisions in the constitution are for the common good?
- What is a faction? Do they threaten the common good?
- Are Asian nations justified in claiming their societies' desire order over liberty?
- How might morality be related to considerations of the common good as it



relates to the press?

## **Civic Virtue/Virtue**

- What is civic virtue?
- Can virtue be taught? If so, by whom?
- Are virtues taught or ingrained?
- Can a government run without Civic Virtue?
- How is virtue related to the purpose of government?
- How is virtue related to the purpose of government, in the views of these two groups: Natural Rights philosophers and Classical Republicans?
- Can a government run without Civic Virtue?
- Can civic virtue be depended upon today? Why or why not? Give specific examples to prove your point.
- Could you identify a contemporary or historical figure that exemplifies civic virtue?
  - (Begg comparison between a contemporary and historical figure)
- What are some ways that America encourages civic virtue?
- In what ways does our government encourage civic virtue?
- Aristotle believed that a virtue is a thought expressed in intentional action. What is an intentional action that could be done to promote virtue?
- Has America become more civic virtue-minded in times of crisis?
- Do you think that civic virtue is important in America today?
- To what extent is civic virtue needed for our system?
- To what extent did the Framers rely on virtue to under gird our constitutional system?
- What safeguards did the Federalists create within the Constitution since they did not believe solely on the civic virtue of the people?
- Is our nation too large for any degree of classical republican notions of civic virtue to exist?
- Do you think that mandatory community service programs in schools foster civic virtue among students?

- Is civic virtue or its lack there of a factor in the creation or dissolving of national systems of governing?
- With the trend in Public Education towards moral education, what role does it play in the common good and civic virtue?
- The Founders looked to religion and education to foster civic virtue. What degree do you feel this occurs today?
- In comparison with the influence of religion and education, how do you think moral education today is different?
- How did the Founders perceive people would become virtuous?
- How does a unitary system of Government reflect that nation's notions of civic virtue?
- Are voting and Civic Virtue related?
- Are political action committees lacking in virtue?
- Is campaign finance reform a virtuous thing?
- Is the posting of the Ten Commandments an appropriate action to promote civic virtue?
- How do checks and balances promote civic virtue?
- How does filtered representation promote civic virtue?
- How does religion promote civic virtue?
- Who are our American Cincinnatus[es]?
- Are there such things as public "morals"? Civic "morals"?
- Should morals be taught in schools?
- Can you have morals without religion?
- Is philanthropy different than civic virtue?
- Does civic virtue decrease when times are good?
- Is civic virtue as reliable in the 20<sup>th</sup> century as the Framers believed it was in the 18<sup>th</sup> century?
- Are service projects in school curriculums teaching morals?
- How has diversity impacted our notions of morals?
- Is America too diverse for us to agree on civic virtue?

- How was Washington our Cincinnatus? Do we have a modern day Washington?
- Identify 3 people today that display civic virtue.
- Are factions always antithetical to civic virtue?
- Does volunteerism rely on civic virtue?
- What was the difference between the Federalists' and the Anti-Federalists' on virtue?
- Can we teach civic virtue in our schools today? Was it different during the time of the Founders?
- The Federalists realized they couldn't rely on civic virtue—what can we rely on?
- How did the Founders perceive people would become virtuous?
- Are factions a result of a lack of virtue?
- How would you describe classical republican virtue in today's terms?
- How do times of national crises factor into our civic virtue?
- Has virtue undergone a revival since 9/11?
- Is burning the flag a threat to civic virtue?
- What models other than civic virtue and enlightened self-interest are there for how a person can do good for the community?
- Do national religions serve as instructors of civic virtues?
- How can we have civic virtue with a separation of church and state?
- Is civic virtue always rooted in religion?
- Is there such a thing as secular morals?
- How trustworthy do you find Rousseau's readiness to trust morality to the spontaneous natural goodness latent in everyone?
- Is moral virtue really a matter of letting this inner inclination move freely, or is there a need for discipline and virtue to train and guide spontaneous inclinations?

### **State of Nature**

- What is a state of nature?

- Would you enjoy living in a state of nature?
- Why are people motivated to leave a state of nature?
- Has a true state of nature ever existed?
- Is there any such thing as perfect freedom? If so, what is that concept?
- What was Hobbes vision of a state of nature?
- What did Locke think of the state of nature?
- What did Rousseau think of the state of nature?

### **Social Contract**

- Where does the idea of social contract come from?
- Historically how have we seen the idea of social contract develop?
- Philosophically how have we seen idea of social contract develop?
- When did we consent to our social contract?
- Do Americans have the right not to vote? Is the right not to vote inherent in the social contract?
- How was the Mayflower Compact important to the notion of social contract?
- What does a social contract entail?
- Who enters into a social contract? Who is this contract between?
- How is a social contract between the people different from a social contract between the people and the government?
- What should the government do if citizens violate the social contract?
- What should the citizens do if the government violates the social contract?
- Are amendments "new social contracts"?

### **Consent**

- What did Thomas Hobbes have to say about the idea of consent of the governed?
- What did John Locke have to say about the idea of the consent of the governed?
- Where do we see this idea operable in the US system of government today?

- What is Lockean consent?
- The US Constitution was not the first political document to mention consent. Where do we see the idea of consent before the Constitution?
- What is David Hume's view of consent?
- Was Jefferson correct in his assessment of the English system in that there was no consent?
- Is consent a feature in the British documents?
- The Declaration of Independence says that governments derive "their just powers from the consent of the governed." In practice, how do people consent to government, and is the practice of consenting important today?
- Describe the difference between explicit and tacit consent.
- Explain tacit consent.
- How is tacit consent expressed?
- How is explicit consent expressed?
- How is volunteerism related to implicit consent?
- How is volunteerism related to explicit consent?
- Is it reasonable to assume tacit consent in native born Americans?
- How do we gauge consent?
- How does a government gauge consent of its people?
- Are having multiple forms of gauging consent too confusing?
- Some have said that our voting amendments are improvements in gauging consent. Do you agree?
- Does Federalism help or hurt in the gauging of consent?
- Is it possible to contract and set up a dictatorship? A monarchy?
- Can a people consent to slavery?
- Can a society consent to tyranny?
- How is civil disobedience related to consent?
- How is the 1<sup>st</sup> amendment related to consent?
- How is our naturalization process related to consent?
- What is the relationship between consent and representation?

- Which branch of government most reflects the consent principle?
- Does the act of immigration itself express consent?
- Is voting an expression of consent?
- Is our expansion of the right to vote an increase in the amount of consent?
- Is voting related to consent? To what degree?
- Are landslides victories in politics indicators of consent?
- Is 51% enough for claiming legitimacy of consent?
- Is indirect democracy a contradiction to the concept of consent?
- How does one withdraw their consent?
- Was the south justified in secession?
- Was the 2<sup>nd</sup> Continental Congress representative of the people?
- How is consent seen in the executive?
- How is consent seen in the legislature?
- How is consent seen in the courts?
- How is consent seen in the jury system?
- Some have said that the 1<sup>st</sup> amendment is the consent amendment.  
Would you agree?
- Was ratification important to our Constitutional system?
- At what point should we as a people revolt if the Electoral College isn't responding to our consent?
- What is legislative supremacy? Is it connected to consent in any way?
- Is diversity a problem in forming consent?
- What role does the media play in forming/creating consent?
- Will the Internet be a boon for consent?
- Who best represents the will of the people?
- How would the idea of consent be different if Patrick Henry and his supporters had gotten their way and the Constitution would have started out "We the States" instead of "We the People"?
- How does consent work in a republican form of government?
- Can consent be given, and then taken away? Explain.

- Is consent a realistic goal in a faction filled nation?
- Is it realistic to expect people 200 plus years later to consent to our system of government?
- Can consent be found in the idea of "Time Immemorial"?
- What if there's not majority consent (for example, on sending troops to Iraq), do they have a right to carry out this action, without a majority?
- What about the courts? We talk about the consent of the governed; is there a role for the courts?
- A way to remove the right of the government is by refusing to accept benefits. Is this a way of removing consent of the governed?
- Does majority consent of the governed, say 51%, give the government the right to act or is it more of a bigger picture idea than this?

### **Right of Revolution**

- Is revolution a right?
- Are there limitations on the right to rebel?
- What restrictions are there on the right of revolution?
- When does the right to rebel come into effect? When does a person or group have the right to exercise that right?
- Is revolution consistent with constitutional government?
- Can a Constitutional Democracy ever be so offensive that revolution is justified?
- Are there situations where some, but not all, individuals are justified in rebelling?
- Does the right to revolution fall under civil disobedience?
- When does civil disobedience end and violent revolution begin?
- Which is better to change government: evolution or revolution?
- Why did Jefferson say that every 19 years we should throw out the Constitution and leaders, and start over?
- According to the natural rights philosophers, under what circumstances are people justified in exercising their right of revolution?

- Does the Declaration of Independence advocate the right of *revolution*?
- How does the Declaration of Independence explain the right of revolution?
- The Declaration of Independence asserts that mankind is *more* disposed to suffer, while evils are sufferable, than to right themselves *by* abolishing the forms of government to which they are accustomed. Do *agree* or disagree? What examples from history can you cite to support your position?
- What is the difference between a rebellion and a revolution?
- Compare and contrast the colonists during the revolutionary era and the militia groups of today.
- Did the Branch Davidians have the Declaration of Independence on their side, in terms of the right to revolution?

See also *Declaration of Independence, American Revolution, Civil War*

## **Declaration of Independence**

- How does the natural rights philosophy embodied in the Declaration of Independence differ from that in the Universal Declaration of Human Rights?
- How were Locke's ideas about natural rights incorporated into the Declaration of Independence?
- What is the difference in using "pursuit of happiness" as opposed to using "property"?
  - Why, do you think, did Jefferson make the switch in the Declaration of Independence?
- Should we consider the Declaration of Independence as a foundational document on the level as the Constitution? Why or why not?
- How do you explain Jefferson's claims in the Declaration of Independence, and his practice of slavery?
- How does the Declaration of Independence explain the right of revolution?
- Did the Branch Davidians have the Declaration of Independence on their side, in terms of the right to revolution?



- The Declaration of Independence asserts that mankind is more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms of government to which they are accustomed. Do agree or disagree? What examples from history can you cite to support your position?
- Was Jefferson's list of grievances too long or too short?
- Does the Declaration of Independence advocate the right of revolution?
- In what respects is the Declaration of Independence classical republican in nature? Explain your position.
- Was the king or parliament more oppressive?

See also *Right of Revolution, American Revolution*

## **Republicanism**

- Define republicanism.
- What is republican government?
- What are the greatest strengths of a republic?
- What are the greatest weaknesses of a republic?
- How does consent work in a republican form of government?
- What did the Founders learn from historical republics?
- How republican is our system?
- How is the Electoral College related to republican theory?
- Why was Madison's theory of representation important to his view of republicanism?
- How has republicanism changed and developed over the last 200 years? In your view, have these changes been positive, or negative? Explain.
- What was the difference between the Federalists' and the Anti-Federalists' on representation?
- How is Judicial Review compatible with the republican principle?
- How did the Articles of Confederation reflect the country's views on republicanism?
- What is Madison's definition of a Republic? (see Federalist #39)

- Do you agree with it?
- What factors contributed to Madison's redefinition?
- How much of Article 1 Section 2 is Republican?

## **Constitutionalism**

- Define constitutionalism.
- In your opinion what is the most important concept of constitutionalism?
- Is limited government necessary for a country with a constitution? What about for a constitutional government?
- What is the difference between democracy and constitutionalism?
- Can a government be a constitutional government without a written constitution?
- Can a government be a constitutional government and not have separation of powers or checks and balances?
- How did the Articles of Confederation reflect the country's views on constitutionalism?
- In your view, is it better to have a written or unwritten constitution? What are the advantages of each?
- What makes a written Constitution better than an unwritten one? Is it more conservative than an unwritten one?
- Are there any characteristics that would be beneficial to constitutional government that the founders did not put in our constitution?
- How do Constitutions reflect the history of a people? (Body, Bill of Rights)
- Why do you suppose that so many countries are rejecting our form of constitutionalism?
- Is an unwritten tradition strong enough to curb power, or does everything need to be in a written constitution?
- How has our constitution influenced other nations' constitutions?
- How is rule of law related to constitutionalism?
- In what way is our Constitution a higher law?

- What is the difference between the phrases “The King is law” and “the law is king?”
  - How would that distinction be important?
- Who should create Constitutions?
- Can constitutions be good ones without rights listed?
- Can constitutions be good ones without separated powers?
- Can constitutions be good ones without divided powers?
- Can a monarchy be a constitutional government?
- Can a democracy be a constitutional government?
- How does a constitutional government respect the private domain of individuals?
- Is revolution consistent with constitutional government?
- How did southerners argue that the U.S. had ceased being a constitutional government?
- How has Britain been able to survive so long with an unwritten constitution? Explain.
- Is judicial review constitutional? Explain?
- Which branch of the federal government has been least affected by the development of this unwritten constitution? Explain.
- In your view why are all the state constitutions considerably longer in verbiage than the federal constitution?
- How are delegated powers related to constitutional government?
- Is the necessary and proper clause consistent with constitutional government?
- Is section 5 of the 14th amendment consistent with constitutional government?
- What is a constitution?
- How many constitutions are there in the United States?
- Does every country have a constitution?
- Do cities and counties have constitutions?

- Do private organizations sometimes have constitutions?
- How is constitutional law different from statutory law, administrative law, and common law? (Think about differences in how each form of law is made, how it is interpreted, how it might be changed, and what subject matter it is likely to cover.)
- What benefits come from a nation having a written constitution?
- Are there disadvantages in having a written constitution such as ours? If so, what might they be?

### **Judeo-Christian Tradition**

- What is the Judeo-Christian Tradition, and why is it important in America's history?
- Is America a Christian nation? Defend your position.
- How did the ideas of the importance of the individual and the purpose of government held by the Classical Republican and the Judeo-Christian view alike?
- Are Lockean rights compatible with Judeo-Christian individualism?
- Which was most important to the Civil Rights Movement: class, Judeo-Christian tradition, or natural rights theory?
- Does the Judeo-Christian tradition still influence our government today?
- What views today compete with the Judeo-Christian tradition?
- How was the view of human nature affected by Judeo-Christian philosophy?

See also *Classical Republican v. Judeo-Christian Tradition*

### **Classical Republican v. Judeo-Christian Tradition**

- Is the Preamble to the constitution more in line with classical republicanism or the Judeo-Christian tradition?
- Is our Declaration of Independence more Classical Republican in nature or does it follow the Judeo-Christian tradition?
- Is the Gettysburg Address more Classical Republican or more focused on the Judeo-Christian tradition?

- Is FDR's Four Freedom speech more Classical Republican or more in line with the Judeo-Christian Tradition?

See also *Classical Republicanism, Judeo-Christian Tradition, General Philosophy*

## **Enlightenment**

- Why was the Enlightenment important as a philosophical movement?
  - What impact did it have on the American Revolution?
- Was Locke a product of the Enlightenment?
- What impact did the Enlightenment have on the Founders?
- Which had more influence on the Founders: the Scottish Enlightenment or the French Enlightenment?
- Which do you think had a larger affect on the Framers: the Renaissance or the Enlightenment?
- Compare the influence of the Enlightenment on the American Revolution and the French Revolution.

See also *General Philosophy*

## **Reformation**

- Why was the Reformation important as a movement?
  - What impact did it have on America?
- How did the Reformation affect the founders' views?
- To what extent did the Protestant Reformation help to shape the intellectual and moral background of the Founders?
- If Carlyle was alive today do you think that he would choose the Internet instead of the printing as one of the "three great elements of civilization?"
- If Carlyle was alive today do you think that he would choose the nuclear weapons instead of gunpowder as one of the "three great elements of civilization?"
- If Carlyle was alive today what do you think that he would choose as the "three great elements of civilization?"

- Give two specific examples of the Printing Press's influence on the Founders of the American nation.
- Who do you think was the philosopher from the Reformation that most influenced the founders?

*See also **General Philosophy***

## **Renaissance**

- Why was the Renaissance important as a philosophical movement?
  - What impact did it have on America?
- Who do you think was the philosopher from the Renaissance that most influenced the founders?
- Which do you think had a larger affect on the Framers: the Renaissance or the Enlightenment?

*See also **General Philosophy***

## **General Philosophy**

- Who do you believe were some of the philosophers that influenced the founders the most?
- The French Revolution took place just after the American Revolution. How was the philosophy behind both similar? How was the way it was acted upon different?
- Which is better to change government: evolution or revolution?
- What is the difference between power and authority?
- Why was Edmund Burke important in political philosophy?
- Why was Thomas Hobbes important in political philosophy?
- Why was John Stuart Mill important in political philosophy?
- Why was Jean Jacques Rousseau important in political philosophy?
- Why was Hugo Grotius important in political philosophy?
- Why was Plato important in political philosophy?
- Why was Aristotle important in political philosophy?
- Why was Cicero important in political philosophy?

## **Colonial Experience**

- How are life, liberty and property rights seen in the Colonial Charters?
- Would you say that the colonial governments were mere reflections of the British system?
- How did British Constitutionalism impact colonial governments?
- What were the significant differences between colonial and British political institutions?
  - What was the influence of local conditions on these differences?
  - Did the separation and distance from Britain affect these differences?
- What impact did the colonial experience have on the Articles of Confederation?
- What impact did the colonial experience have on the Constitution?
- Name a colonial event where the British abused a right later listed in the body of the constitution.
- Why and how did colonial governments become more representative than Britain's government?
- Why and how did the colonial experience prepare Americans for Independence?
- What in colonial history made the framers fearful of creating a stronger executive branch? Do you think those fears were founded?
- In colonial times Americans believed they were oppressed by government. Some people today also feel that government is oppressive. What are some examples of checks on government power today compared to the powers of colonial government before the American Revolution?

## **American Revolution**

- Was the American Revolution justified?
- How was *Common Sense* important in the American Revolution?
- What role did John Adams play in the revolution?

- What do John Adams letters to his wife show us about the American sentiment at the time of the revolution?
- When the revolution began, did it have the support of the people?
  - Did it need to have greater support to be legitimate?
- In your opinion, who were some of the most important figures in the American Revolution and why?
- How important were the Articles of Confederation in the success of the American Revolution?
- The French Revolution took place just after the American Revolution. How was the philosophy behind both similar? How was the way it was acted upon different?

See also *Right of Revolution, Declaration of Independence*

### **Articles of Confederation**

- Should we have given the Articles of Confederation more time?
- Were the Articles of Confederation an expression of Anti-Federalist theory?
- Do you think that the Constitution remedied the problems of the Articles of Confederation?
- What are some abuses that we saw under the state governments during the Articles of Confederation after the Revolutionary War?
- Please list a few problems encountered under the Articles of Confederation and then how they were addressed in the Constitution.
- Was the Articles of Confederation a predictable outcome given the history before its creation?
- Is the Constitution a predictable step from the Articles of Confederation?
- How did the Articles of Confederation reflect the country's views on natural rights, republicanism and constitutionalism?
- How did the Articles of Confederation play into the debate over federalism and how did they set the stage for it?
- To what extent did the Articles of Confederation protect rights?



- The Articles of Confederation demonstrate distrust of strong national government. What were some physical and philosophical reasons Americans had this distrust?
- The Articles of Confederation forbade Congress from allowing complete jurisdiction in passing laws. What were the benefits and downfalls of this provision?
- Are there countries or organizations that resemble the Articles of Confederation today?
  - Historically have there been some?
- What parallels are there between the Articles of Confederation and the United Nations?
- There may be a parallel between the Articles of Confederation and United Nations. Has the U.N. had anything comparable to the Northwest Ordinance?
- Articles of Confederation failed to provide for national judicial branch. What are the strengths and weaknesses of the judiciary we have today?
- It has been said that the Articles of Confederation did not recognize people, only states. Do you agree or disagree?
- Do you agree with the argument that the Articles of Confederation only needed minor changes to make it sufficient for governing the United States? Explain your answer.
- The authors of the Articles of Confederation believed that the best way to protect individual rights was to create a relatively weak central government. Explain your agreement or disagreement with this position.
- Do you agree or disagree that the Articles of Confederation are full distrust?
- Why did foreign governments not want to trade with the U.S. under the Articles of Confederation?
- What is the meaning of sovereignty within Article 2 of the Articles of Confederation?

- How was sovereignty different in the Constitution and the Articles of Confederation?
- Did the U.S. live up to its commitments to the loyalists in the Treaty of Paris?
- What do you think was the single biggest weakness of the Articles of Confederation?
- Do you think they could have added a Bill of Rights to the Articles of Confederation?
- Do you think the U.N. has been more effective than the Articles of Confederation?
- Some have said that the Articles did not aspire to set up a national government, and therefore should be judged by that standard. Do you agree or disagree?

### **Northwest Ordinance**

- What did the Northwest Ordinance do?
- Why is the Northwest Ordinance important?
- Was the Northwest Ordinance the only positive thing to emerge from the Articles of Confederation?
- What has been the legacy of the Northwest Ordinance?
- How is the Northwest Ordinance related to education?
- How is the Northwest Ordinance related to slavery?
- What prompted the Northwest Ordinance?
- The Northwest Ordinance declares, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Does this conflict with the ideas set forth in the 1<sup>st</sup> amendment?
  - (Recall that the Northwest Ordinance preceded the 1<sup>st</sup> amendment, and was readopted by the same Congress that passed the 1<sup>st</sup> amendment.)

## The Founders

- Who were the Founders?
- Who were the Framers?
- What is the difference between the Founders and the Framers?
- Who were the most important people among the Founders or Framers?
- How did the Founders perceive people would become virtuous?
- Were the framers and founders like Plato's Philosopher Kings?
- What rights were most important to the Founders?
- Have the founders' fears regarding an executive been fulfilled? The judiciary?
- Why was a written constitution considered important to the framers?
- What do you think George Washington's greatest accomplishment was?
- Which of George Washington's attributes do you consider to be his most important?
- Can you think of any other revolutionaries that were as successful as George Washington?
- How is what George Washington did different from what many other revolutionaries did?
- Do you think that we should look upon George Washington with any less respect or admiration because he owned slaves?
- What qualities of Washington generated such great affection? Why is it so hard today to live up to Washington's standard?
- Should we judge historical figures by eternal standards, contemporary standards, or at the time standards? Explain.
- Why didn't Washington speak out against slavery and more about the evils of slavery?
- In your mind, is Washington's image tarnished because of the fact that he held slaves?
- As an African American, can I look respectfully at Washington although he held slaves?

## **Constitutional Convention**

- What was the biggest concern at Philadelphia in 1787?
- What compromises occurred at Philadelphia in 1787?
- Were there any compromises that made little sense?
- What were the major compromises at the Philadelphia Convention?
- Which of the major compromises was the most important and why?
- If we didn't compromise to create a Senate, how might our history be different?
- Were there clear-cut winners and losers in the compromises at Philadelphia?
- Is compromise still the oil of government? Are politicians today as willing to compromise as they were back then?
- Should Madison be considered the Great Compromiser at the Philadelphia Convention?
- What other methods of electing the executive were considered at Philadelphia?
- If a new Constitutional convention were to be called in America, what would be the major issues that would be debated?
- What instructions were given to the delegates? Did they have the right to ignore those instructions?
- Should we have given the Articles of Confederation more time?
- Was the Philadelphia convention illegitimate?
- Was the writing and subsequent adoption of the Constitution legal?
- Did it form a legitimate system of government?
- Was the ratification legitimate?
- Should Washington have been more involved at Philadelphia?
- Webster said that the Constitution is derived from the interests of the millions concerned. Is this true? Did the millions have a voice?
- Do you think the privately held debates were held on more popular political ideas or on ancient trends of the Grecians and Romans?

- Who do you think were the 3 most important delegates to contribute to the Constitution? Justify your choices.
- Brutus and other writers were critical of what happened during the convention. What if anything could have been done to prevent these criticisms?
- Who were some important political people who weren't at the convention? What influence might have these people had at the convention?
- Was the idea of holding special meetings to discuss constitutional changes an American idea? What were the benefits of this idea?
- Thomas Jefferson later characterized the Constitutional Convention as a conference of demagogues. Would you agree or disagree with him?
- How wise was the delegates' decision to keep what happened in the convention secret?
- In what ways was the constitution written that surprising due to the fact of the homogeneity of the framers?
- What was Madison's national veto?
- Was there debate at the Constitutional Convention over whether to give the courts power of judicial review?
- Should all have signed the document, as Franklin urged?
- Would you have signed the Constitution? Why or why not?
- Would you have voted for the Constitution with the 3/5 compromise in it?
- Was slavery being protected a necessary evil?
- Some have said the issue of slavery was "a witch at the christening". Would you agree or disagree?
- Abolitionists later claimed that the Constitution was a pact with the devil. What was the basis of their claim?
- Charles Beard said that the economic interest was the driving force at the convention. Do you agree or disagree?
- How much a factor was George Washington at the convention?
- Which was more important: the writing of the Constitution in 1787 or

ratification of it in 1788?

- Is it time for another constitutional convention? Why or why not?
- If we were to have a new constitutional convention, who should attend?
- Some have said the Supreme Court is an ongoing Constitutional Convention. Do you agree or disagree?
- Why in your opinion is there so much interest in our constitutional convention and not ratification?
- Jefferson called them demigods. Do you agree or disagree with that assessment?
- Why was a written constitution considered important to the framers?
- Was it good for the convention to be held in secret?
- Would the constitution have been different if Adams and Jefferson had been there?
- Was Madison the most important delegate?
- Some have said that the Philadelphia Convention was just a summer long debate over federalism. Do you agree or disagree and why?
- Have some fears of the Philadelphia delegates been proven true in our history of the presidency?
- Do the big states threaten the small states today?

*See also Virginia and New Jersey Plans*

### **Virginia and New Jersey Plans**

- What was the Virginia Plan?
- What was the New Jersey Plan?
- Why do you think the Virginia Plan served as the basis for most of the discussions at the Philadelphia Convention?
- What made the Virginia plan so objectionable to some at Philadelphia?
- What made the NJ plan so objectionable to some at Philadelphia?
- Why didn't the framers choose to use the Virginia plan's mode of electing the president?

- The Virginia Plan proposed a national veto of state laws. Would that have been a good thing?
- Why do you think that the bulk of the New Jersey plan was rejected?
- Which plan (New Jersey or Virginia) was more rooted in the Classical Republican philosophy?
- Under the proportional system in the Virginia Plan, would that have impacted the taxation policy in our history?

### **Federalists**

- Which of the Federalist papers is your favorite?
- What were the Federalist arguments for judicial review?
- Have Hamilton's arguments against a bill of rights been proven right or wrong?
- What do you think were the most compelling reasons for ratification made by the Federalists?
- Why were the Federalists opposed to a Bill of Rights?
- Summarize Federalist # 84—do you agree with the argument?
- Is today's federalism the same federalism Madison wrote about in Federalist #45?
- The Federalists realized they couldn't rely on civic virtue—what can we rely on?
- Was Madison an “ever-changing federalist”?

### **Anti-Federalists**

- Who were the Anti-Federalists?
- What were the Anti-Federalist arguments against judicial review?
- The Anti-Federalists attacked the Constitution by saying that the separated powers were not separated, by shared. You say that they are shared, so were their criticisms valid?
- Have the Anti-Federalist fears of a standing army been proven to be true?
- Have the Anti-Federalist's fears about the powers granted the national government been validated in our history?

- What arguments did the Anti-Federalists make against the Electoral College?
- Have the Necessary and Proper clauses proven as dangerous as the Anti-Federalists feared?
- What is your favorite of the writings of the Anti-Federalists?
- Why did the Anti-Federalists feel so strongly that a Bill of Rights needed to be added to the Constitution?
- Is the Branch Davidian standoff or the put down of the Seattle riots proof of the anti-federalist fear of a standing army?
- How would the Anti-Federalists define federalism?
- Would the Anti-Federalists think that we have become too democratic?
- What would the Anti-Federalists think of the 16th amendment?
- What would the Anti-Federalists think of the 17th amendment?
- Where the Anti-Federalists right on anything?
- Was the Anti-Federalist desire for a Bill of Rights sincere?
- Were the Articles of Confederation an expression of Anti-Federalist theory?
- Do small homogeneous communities better protect the rights of individuals?
- Would the Anti-Federalists be happy with how our system has turned out?
- Would the Anti-Federalists' be in favor of term limits?
- Would the Anti-Federalists' be in favor of the 14<sup>th</sup> amendment?

### **Federalists vs. Anti-Federalists**

- If you were alive during the ratification debate, would you have been a federalist, or an anti-federalist? Why?
- In the context of today's world, are you more a Federalist or an Anti-Federalist?
- Are we more Federalist or Anti-Federalist today?
- What was the difference between the Federalists' and the Anti-Federalists' on federalism? On representation? On virtue?



- Has history shown us that the Federalists or Anti-Federalists were correct in their arguments?
- Has history shown us that the Federalists or Anti-Federalists were correct in their arguments concerning the Bill of Rights?
- Why did Madison oppose certain Anti-Federalists suggestions when constructing the Bill of Rights?
- Did the Federalists or the Anti-Federalists have the greatest impact on the government to form under the Constitution?
- Can the common good become tyrannical? How did the federalists' and anti-federalists approach this idea of tyranny?
- Are the modern political parties similar to the federalists' and anti-federalists'?
- Articulate both the Anti-Federalist and Federalist arguments concerning the "necessary and proper" clause.
  - In your mind, whose argument was more valid and why? Give specific historical examples to prove your point?
- The Anti-Federalists feared the power of the federal government under the Constitution, while the Federalists claimed that federal power would be sufficiently limited and would not be abused. Looking at our government today, which side do you think was right?
- Who is either Federalists and/or Anti-Federalists hero and why?
- How did the Federalists and Anti-Federalists differ about the need for small, homogeneous communities? How important do you think their differences on this issue were?
- What were Madison's reasons for arguing that republican government would be more effective in a large heterogeneous state? Do you think that the Anti-Federalists made a stronger argument for their position?
- Comparing the Federalists and the Anti-Federalists, which side believed civic virtue to be more essential to the success of the American experiment? Were they right? What evidence do you see that civic virtue is increasing or declining?

- The Federalists argued that the Constitution provided the Congress with clearly enumerated limited powers. The Anti-Federalists argued that the "necessary and proper" and "general welfare" clauses of Article 1, Section 8 gave Congress virtually unlimited power to pass whatever laws it wished. Whose argument was a better prediction of the future?

## **U.S. Constitution**

- What are some specific protections listed in the body of the original Constitution?
- Is the body of the Constitution more important than the Bill of Rights?
- Do you think that the Constitution is better or worse because of the compromises involved in creating it?
- What were the major compromises in the Constitution?
- What safeguards did the Federalists create within the Constitution since they did not believe solely on the civic virtue of the people?
- Do you think that the Founders created a good, lasting constitution that has worked, or has it failed in its purpose?
- Why do you think that the Constitution has or has not stood the test of time?
- Should we create a new Constitution?
- How did the traditional rights of Englishmen influence the development of the U.S. Constitution and the Bill of Rights?
- Would you have been an advocate of the 3/5 clause?
- Why has our Constitution survived for over 200 years?
- Why might the U.S. Constitution be considered unique in western history?
- How do Constitutions reflect the history of a people? (Body, Bill of Rights)
- How would the idea of consent be different if Patrick Henry and his supporters had gotten their way and the Constitution would have started out "We the States" instead of "We the People"?
- What provisions in the constitution are for the common good?
- What are the solutions for majority tyranny in the Constitution?

- Why do you suppose that so many countries are rejecting our form of constitutionalism? Of judicial review?
- How has our constitution influenced other nations' constitutions?
- How would the U.S. have developed differently if the Constitution would have been written from a classical republican standpoint?
- In relation to what Washington said of the constitution, what did Ben Franklin have to say of the document?
- Do you feel that the Constitution was written in too vague of a fashion? Why or why not?
- Do you think that the Constitution remedied the problems of the Articles of Confederation?

### **Necessary and Proper Clause**

- Have the Necessary and Proper clauses proven as dangerous as the Anti-Federalists feared?
- Articulate both the Anti-Federalist and Federalist arguments concerning the "necessary and proper" clause.
  - In your mind, whose argument was more valid and why? Give specific historical examples to prove your point?
- Who has the power and authority to decide what is necessary and proper?
- What, if any, stipulations does the Constitution place on the necessary and proper clause?
- How did *McCullough v. Maryland* affect the interpretation of the necessary and proper clause?
- Is the supremacy clause more dangerous than the necessary and proper?
- Does necessary and proper change over time?
- Does the idea of enumerated powers refute the idea of the necessary and proper clause?
- How does the necessary and proper clause relate to the 10<sup>th</sup> amendment?
- Is the Necessary and Proper clause an 18<sup>th</sup> power of congress?

- If the necessary and proper clause gave Congress no new powers, why include it?
- Is the necessary and proper clause consistent with constitutional government?
- Are necessary and proper two things, or one thing?
- Does the necessary and proper clause invite judicial review?
- Does the necessary and proper clause negate Madison's view of enumerated powers?
- Is our necessary and proper clause the equivalent to Parliaments' Declaratory Act of 1766?
- What role does crisis play in determining necessary and proper?
- Do you agree with Marshall's interpretation of the Necessary & Proper clause in *McCullough v. Maryland*?
- Why did the Anti-Federalists fear the Necessary & Proper clause so much?
- How does Federalism relate to the Necessary & Proper clause?
- Is it Necessary & Proper to limit rights?
- What power, not listed in Article I, would you add?
- How has the commerce clause been used with the Necessary & Proper clause?
- Where are the "Necessary and Proper" and "general Welfare" clauses found in the Constitution?
- What are the implied powers? How does the Necessary and Proper clause fit into the idea of implied powers?
- Does the Necessary & Proper clause make the legislature supreme?
- The Federalists argued that the Constitution provided the Congress with clearly enumerated limited powers. The Anti-Federalists argued that the "necessary and proper" and "general welfare" clauses of Article 1, Section 8 gave Congress virtually unlimited power to pass whatever laws it wished. Whose argument was a better prediction of the future?

## **Article 1 Section 9 of the Constitution – Individual Rights in the Body**

- What are some specific protections listed in the body of the original Constitution?
- Which of the protections in the body of the Constitution do you feel is most important?
- Which of the rights protected in the body of the Constitution is most important to you today and why?
- Name a colonial event where the British abused a right later listed in the body of the constitution.
- Were any of the rights listed in Article I section 9 abused under state governments prior to the Constitution?
- Were the rights in Article I section 9 new ideas by the framers, or were they ones that had been seen before? If they were not new, where did they come from?
- Why have ex post facto laws been, in Alexander Hamilton's words, "one of the favorite and most formidable instruments of tyranny?"
- How are the powers of government limited by defining treason narrowly?
- Is the treason clause appropriate?
- Were the rights included in the body of the Constitution made irrelevant by the ratification of the Bill of Rights?
- Do you agree with the federalist argument that the rights protected in the Constitution and state Constitutions were sufficient, or with the anti-federalists that a Bill of Rights was needed?

See also *Habeas Corpus*

## **Legislature**

- Who best represents the will of the people?
- What is legislative supremacy? Is it connected to consent in any way?
- Explain the differences between proportional and equal representation.
- Has TV enhanced the power of the executive over the legislature?

- What in your opinion are the strengths and weaknesses of the Great Compromise? Did it give too much power to the small states? Too much to the large states?
- Is the veto democratic?
- Should minorities seek help from the legislature rather than the courts since it better represents the people?
- Do we still need the distinction between the house and the senate?
- What are some of the differences between the powers of the Senate and the powers of the House?
- House members now spend more time campaigning than anything else in their two-year term. Isn't that bad? What should we do about it?
- Why do you think that the framers gave Appropriation Bills to the House?
- Should there be term limits in congress?
- Have regulatory agencies made Congress obsolete?
- Should all congressional hearings be open to the public?
- Should we elect our president from Congress?
- Has the Committee system of Congress worked well or not?
- Have legislatures been consistent in protecting individual rights?
- In your opinion, does the committee system work?
- What is a select committee?
- What is a joint committee?
- What is a standing committee?
- Isn't gridlock bad? Shouldn't the government be more efficient now?
- Is gridlock preferable to efficiency in government?
- Most of the checks in the body of the Constitution and in the Bill of Rights are directed at controlling congress. Why do you think that is the case?
- Are there too many representatives in the House?
- Should there still be a distinction between the House and Senate with the passage of the 17th amendment?

- James Madison was in favor of a legislative supremacy. Do you think that we have this in our system today?
- Who do you think should have the power to remove members of congress?
  - Who does have that power?
    - How is it exercised?
- Would congressional term limits improve our system of government?
- Do you believe there are any reasons why there should be a limit in the number of terms for Senators and Congressmen?
- Should members of Congress be free from arrests for minor crimes while Congress is in session? Explain your answer.
- Should a Congressman be able to yell fire in a crowded theatre?
- Some governments (i.e. the People's Republic of China) have attempted to curb the population growth by limiting the number of children their citizens may have. If population continues to grow, should Congress be able to prohibit how many kids American citizens may have?
- Can Congress grant additional rights?
- Most of the checks in the body of the Constitution and in the Bill of Rights are directed at controlling congress. Why do you think that is the case?
- What issues within the first congress occupied their time?

See also *Senate, Checks and Balances/Separation of Powers, Bicameralism/Unicameralism*

### **Bicameralism/Unicameralism**

- Why is bicameralism important to American Constitutionalism?
- Was there much debate over the use of a unicameral and a bicameral legislature?
- Why did the founders feel the need for bicameral legislature?
- Do we need a bicameral legislature with the practice of judicial review established?
- Was bicameralism the result of political theory or of practical compromise?

- Is bicameralism inefficient?
- Is bicameralism a recipe for gridlock?
- Are there any states that use, have used, or considered using a unicameral legislature? How has that worked or what arguments are there for a unicameral legislature?
- What are the advantages and disadvantages of unicameralism?

## **Senate**

- Is the assumption of the Framers that the Senate would be wiser and more stable still valid?
- Is the Senate an aristocratic institution?
- Is the Senate undemocratic?
- Do you think that the Senate is obsolete now?
- Should we abolish the Senate?
- The Senate essentially violates “one man, one vote” principles. Is there any justification for the Senate to continue representing territory more than people?
- How can the Senate impact the court?
- Has the Senate functioned well in its role as a treaty ratifier?
- Can the President leave a treaty without consent of the Senate?
- What is a filibuster? Why is it important?
- Is a filibuster justifiable in a constitutional democracy?
- Is the filibuster democratic?
- Do you think that the direct election of the Senators changed how the Compromise set up the legislature? If so, was it good, or bad?
- How has the 17<sup>th</sup> Amendment affected representation in the Senate?
- Did the 17th amendment make the Senate better?
- Did the change to the direct election of Senators improve Congress?
- Why was the Senate changed to direct elections?
- Should we return to the original method of electing senators?
- Should senators be chosen by the House? The State legislatures? The



State governors?

- Is the Senate a violation of the representative principle at the Philadelphia Convention?
- Should the senate representation be changed to a proportional system?
- In 1963, the Supreme Court (in *Baker v. Carr*) said that we need equalized representation at the state level- why don't we have it at the national level (Senate)?
- Should we change the number of representatives in the House or the Senate?

### **Presidency/Executive Branch**

- What in colonial history made the framers fearful of creating a stronger executive branch? Do you think those fears were founded?
- Mass media, such as the news, focus on the person of the President rather than the Congress. Do you think this has thrown off the balance of power?
  - Has this media focus on the president diminished the power of the legislature?
- Framers initially considered a 7-year term without re-election. Do you think this would have been a wiser idea?
- Now they have term limits. Do you think this should be changed?
  - (So you would be in favor of repealing the 22<sup>nd</sup> amendment?)
- Is the presidency too big for one person?
- Explain why some delegates wanted a plural executive.
- Would you be in favor of a plural executive?
- The dual executive - do you think that this is something that should be used today?
- Should we have modified the New Jersey Plans' multiple person presidency?
- Bosnia has a three-person presidency. Why?

- Is there any power the Executive has that is ultimately not checked? What about pardons?
- How about pardons? Would you be in favor of repealing this presidential power?
- What powers does the executive have that are not enumerated powers? Are they implied powers?
- Should the president act in an energetic way?
- Many would argue that our most popular and successful presidents have been energetic ones. Would you agree or disagree, and why?
- What is Locke's Prerogative power?
- Should the president be able to disregard the Constitution in an emergency?
- Does the president have the duty to disregard the Constitution in an emergency to do what is best for the people?
- Is it ever necessary for the government or a leader to violate the constitution in order to preserve it?
- Isn't added power to the executive in times of emergency a time when individual liberty is often trampled?
- Should the President be treated any differently under the law so that he can perform his duties without distraction or hindrance?
- Could a person sue the President for an act that he did as part of his duties as President?
- Is the 22<sup>nd</sup> amendment a good check on the president?
- How could the 25<sup>th</sup> amendment be a check on the executive?
- Have some fears of the Philadelphia delegates been proven true in our history of the presidency?
- Should we drop the "American born" requirement for presidential candidates?
- Was the king or parliament more oppressive?
  - How would that have factored into the framers concerns?

- Why might the Congress not cooperate w/ an executive of the same party? (Truman, Carter, Clinton)
- Should the president be able to keep things from Congress? How has his ability to do so changed?
- Can the President leave a treaty without consent of the Senate?
- Has the executive branch taken too much power?
- Who were our most powerful presidents?
- Name some controversial executive orders.
- In your view, are executive orders constitutional or not?
- What would the framers think of executive orders?
- Are executive orders consistent with American constitutionalism?
- How has war altered the nature of the presidency?
- Is a presidential scandal more detrimental to our system than a congressional scandal? Judicial scandal?
- Should we amend the Constitution to have the President selected by the membership of the House?
- Does the president make the times, or do the times make the presidency?
- Do you think the president's power has expanded in the 21st Century?
- When it comes to international crisis, what protections would non-Americans in other countries have against our president?
- Who creates executive departments?
- When was the last time we declared war?
- Explain the War Powers Act.
- Where do you think the president has gained the most power?
- Do you think television has had an impact on the ability of the president to gain power?
- What do you think the greatest check on the presidency is?
- What powers does the executive have that are not enumerated powers? Are they implied powers?
- Is the two-term limit for presidents still needed?

- Which amendments relate to the presidency?
- Is the State of the Union speech still relevant?
- Should we amend the Constitution to have the executive picked from Congress?
- Has TV enhanced the power of the executive over the legislature?
- Should we judge historical figures by eternal standards, contemporary standards, or at the time standards? Explain.
- What's the case for making the President immune from suits for damages while in office?
- What is the best argument for recognizing constitutional protection for claims of executive privilege?
- What would happen if the President were to ignore a direct order from the Supreme Court to respond to a legislative or judicial branch request for information? President Nixon promised to obey "a definitive opinion of the Supreme Court." What do you think he meant by "definitive opinion"? Should the doctrine of executive privilege apply differently in impeachment proceedings?

*See also Presidents, Impeachment, Electoral College, Checks and Balances/Separation of Powers*

## **Presidents**

- Was Nixon justified in refusing to turn the tapes over to Congress?
- Was Reagan's policy in regards to the Contras justified?
- Was Truman justified in sending American troops to Korea?
- Was Bush justified in sending American troops to Kuwait?
- Was Reagan justified in sending American troops to Grenada?
- Was Kennedy justified in sending American troops to Cuba?
- Did the use of the articles of impeachment during the Clinton presidency tip the balance of power in one direction or another?
- Why did Truman not get a pass on the Steel Seizure case, but FDR did in relocation?

- Do you think Lincoln abused his power by pardoning the south?
- Did George Washington set too high of a standard for the presidency?
- George Washington and Abraham Lincoln are considered by many to be the two greatest American Presidents. Who in your opinion was the greatest president?
- What do you think George Washington's greatest accomplishment was?
- Which of George Washington's attributes do you consider to be his most important?
- Can you think of any other revolutionaries that were as successful as George Washington?
- How is what George Washington did different from what many other revolutionaries did?
- Do you think that we should look upon George Washington with any less respect or admiration because he owned slaves?
- What qualities of Washington generated such great affection? Why is it so hard today to live up to Washington's standard?
- Are modern presidents at a disadvantage because of Washington's example?
- Why didn't Washington speak out against slavery and more about the evils of slavery?
- In your mind, is Washington's image tarnished because of the fact that he held slaves?
- As an African American, can I look respectfully at Washington although he held slaves?

### **Impeachment**

- Why have we never removed a Supreme Court justice through impeachment?
- What is your opinion on the impeachment of President Clinton?
- Do think that impeachment should be considered a check on the judicial branch?

- Should due process matter in an impeachment?
- Why have we used impeachment so sparingly?
- In what cases should impeachment be used?
- What constitutes “high crimes and misdemeanors?”
- Did the use of the articles of impeachment during the Clinton presidency tip the balance of power in one direction or another (Congress or the Executive Branch)?
- Is the impeachment trial of Bill Clinton what the Framers had in mind or not? Explain.
- If you were a U.S. Senator, would you have voted to remove President Clinton from office? Why or why not?
- How does censure differ from removal from office? Would this be a good compromise from either a constitutional or a pragmatic point of view?
- There has been much debate over the alternative of censure. Do you think that censure is an acceptable alternative to impeachment? Do you think that it is constitutional?
- Compare Johnson’s and Clinton’s impeachments.
- Should the Impeachment proceedings in the House differ from the trial proceedings in the Senate? Why or why not?
- How should impeachment be used? Should it be used as a statement similar to censure?
- Do you think that Andrew Johnson’s impeachment was justified?
- Have both of the presidential impeachment’s so far been primarily political?
  - What does this say about impeachment?

## **Electoral College**

- Isn’t it time to reform the electoral college?
- Would Locke be satisfied with what happened in the 2000 election? Would he be in favor of the Electoral College?

- At what point should we as a people revolt if the Electoral College isn't responding to our consent?
- Do you feel the framers were correct to create the Electoral College?
- What alternative models are there to the Electoral College?
- From your perspective, in this day and age, what is wrong, if anything, with the popular vote determining the president?
- Who would the founders have declared the winner of the 2000 presidential election and why?
- What, in your opinion, are the best arguments for keeping the Electoral College?
- What, in your opinion, are the best arguments for replacing the Electoral College?
- How are electors chosen in the states?
- What effect does the Electoral College have on our two party system?
- Why is the Electoral College a unique American Institution?
- How are the executives chosen in other countries?
- Have there been problems that have arisen in our history with the Electoral College?
- How has the Electoral College been modified since its creation?
- Should the rural votes have more power in deciding elections?
- According to the constitution, how many electoral votes does a state get?
- Given that recent presidents rely heavily on opinion polls in public policy decisions, do you think that the will/whim of the people is going to come about whether the Electoral College is there or not? Does that make the Electoral College ineffective?
- What other methods of electing the executive were considered at Philadelphia?
- Do you think the Electoral College affects voter turnout?
- Could we learn from other nations' methods of electing their chief executive?

- Are factions are neutralized by having an Electoral College?
  - If so, what factions are neutralized by having an Electoral College?
- Why not have the Senate settle disputed elections?
- If you were Al Gore, would you have pushed so hard for the recounts in Florida?
- Why don't we simply abolish the Electoral College? Haven't three disputed elections proven its fundamental weakness?
- Should elections be federalized?
- Why did the framers not trust the popular vote?
- In light of the recent problems with the 2000 Presidential election, do we need an amendment getting rid of the Electoral College, or altering it in some fashion?
- How is the Electoral College related to republican theory?
- What arguments did the Anti-Federalists make against the Electoral College?
- Does the Electoral College eliminate the ill effects of factions?
- Does the Electoral College reflect the principles of federalism?
- How were the following elections resolved: 1824, 1876, and 2000?
- Why didn't the framer choose to use the Virginia plan's mode of electing the president?
- Why did many of the framers fear the direct election of the president?
- Given the way that the Electoral College has evolved, does the College still serve the purpose that was envisioned for it by the founding fathers?
- What states are winners and what states are losers under the Electoral College system?
- Is the Electoral College likely to produce more--or fewer--recount disputes such as that witnessed in the 2000 election?
- If a dispute concerning the validity of a particular slate of electors were to reach the U. S. Supreme Court, how would the Court likely handle the issue? Why?



- Do you think that the Electoral College discourages third parties? If so, is this good?
- Does one or the other of our two major parties benefit more from the Electoral College? If so, which party and why?
- Is there any reason to think that the Electoral College produces better (or worse) presidents than would be produced by direct election?
- Is there even a snowball's chance in hell that the Electoral College system will be replaced by direct election of the president? Why is a constitutional amendment changing our system of electing presidents so unlikely?
- Do you favor replacing the Electoral College with direct popular election of the president? Why or why not?

### **Power – Abuse of, Misuse of, Lust for**

- What is the difference between power and authority?
- In your opinion, what are two or three examples since 1789 of the misuse of power by government in this country? How was our constitutional system responded?
- What are some examples of governmental powers that are most likely to be abused? What can be done to prevent the abuse or rectify it after it has taken place?
- What power given to Government is most dangerous?
- What reasons did the founders have for not trusting absolute power within the hands of the people?
- Who was tyrannical in the 1780's?
- Do you think that the provisions set up to control man's natural lust for power were successful?
- What provisions have been added to the Constitution since the Bill of Rights to curb the human lust for power?
- Which level of government is more likely to abuse people's rights?
- How does "due process" help to ensure that public officials will not abuse their power?

- Is it always appropriate to fear executive power in a time of war? If so, does it explain the Second Continental Congress' actions?
- Do you think that the power of states to violate rights is sufficiently checked today?
- What historical experiences show the abuse of power?
- What modern experiences show the abuse of power?
- Was Lord Acton correct in his assertion that, "Power tends to corrupt, and absolute power corrupts absolutely"?

### **The Three Branches**

- Which branch is most representative?
- Which branch of the government best represents the will of the people?
- Do you think that there is one inherently stronger branch of the federal government?
- Which of the three branches of Government do you feel has the most power and authority in the US? Is this what the Framers envisioned?
- In your opinion, which branch of the government should have the most power? Why?
- Which branch of government is most deliberative?
- Which branch of government has best protected rights?
- Which branch of government has least protected rights?
- Which branch, in your opinion, has proven to be the biggest threat to individual liberty?
- Which branch, in your opinion, has proven to be the biggest defender of individual liberty?
- Which branch of government is the most prone to abuse rights?
- Which branch is most prone to violate the Constitution?
- Which branch of government is the most reasonable? Least reasonable?
- Did the use of the articles of impeachment during the Clinton presidency tip the balance of power in one direction or another (Congress or the Executive Branch)

- Mass media, such as the news, focus on the person of the President rather than the Congress. Do you think this has thrown off the balance of power?
  - Has this media focus on the president diminished the power of the legislature?

*See also Checks and Balances/Separation of Powers*

### **Checks and Balances/Separation of Powers**

- What are checks and balances?
  - Why do we have checks and balances?
    - Is this because we don't trust in the principles of civic virtue?
- What are separation of powers?
  - Why do we have separation of powers?
    - Is this because we don't trust in the principles of civic virtue?
- What were the historical and philosophical foundations for the system of checks and balances and separation of powers?
- Analyze a current event that illustrates the importance of the principle of separation of powers.
- What blending of powers did the framers create? Would you alter any of them?
- Is sharing of powers in fact a check on power?
- Can a government be a constitutional government and not have separation of powers or checks and balances?
- Which do you think is a more important check on government? Federalism or Separation of powers?
- Are separation of powers and federalism good devices or are they hindrances?
- Is separation of powers or federalism necessary devices, or are they optional in a constitutional government?
- Is it appropriate or not to view separation of powers as a compromise?

- How would you respond to critics who say that the American system of separating and sharing of powers is inefficient and undemocratic?
- The Anti-Federalists attacked the Constitution by saying that the separated powers were not separated, but shared. Are they are shared? So were their criticisms valid?
- Give an example of checks and balances within each branch- not branch to branch.
- Do you think the Constitution's system of shared powers is a better protection of individual rights than if the powers of each branch were completely separated?
- What was the line item veto? Why was it considered to be unconstitutional?
- How do checks and balances promote civic virtue?
- Do you think the system of checks and balances unduly restricts the ability of the government to address pressing national concerns?
- Do you agree with Madison that a system of checks and balances is more effective than a bill of rights in preventing abuse of power?
- Have there been times when the judicial branch has failed to effectively check the power of the other branches?
- Have there been times when the judicial branch has gone too far in checking the power of the other branches?
- Do you believe that the system of checks and balances makes the government inefficient? If so, do you consider this inefficiency a reason to change the system of checks and balances?
- Why is bicameralism important to American Constitutionalism?
- Would a presidential line-item veto lead to a better system of checks and balances?
- Evaluate the statement that our system of government is no longer working effectively because Congress is consistently controlled by one political party and the White House by another.
- What legislative powers does the executive have?

- What judicial powers does the executive have?
- What executive powers does the legislature have?
- What judicial powers does the legislature have?
- What is the legislative veto and why is it unconstitutional?
- Should the Senate be stripped of its approval power of presidential appointments?
- Could you tell us more about the relationship between judicial review and checks and balances?
- Are there checks on the judiciary?
- What are some of the weapons each branch is given by the Constitution to fend off encroachment by other branches?
- Which view of presidential power under the Constitution makes the most sense to you--the "strong" view or the "weak" view? Why? Which view has the Court come closer to adopting?
- How should a history of congressional inaction in response to an assertion of presidential power be interpreted?
- Did the Constitution empower President Lincoln to issue his famous Emancipation Proclamation?
- It is not obvious that the Court has the power to review presidential assertions of power. What do you think about the suggestion that the Court should refrain from reviewing these exercises of power under "the political question" doctrine?
- Why do you think Congress came to rely so heavily on "legislative veto" provisions? What are the alternatives?
- Among the many ways of evaluating justices, one is to measure their willingness to accept as constitutional "pragmatic" solutions to the problems of modern governance. On such a scale, with respect to recent justices, might Justice White be called the "most pragmatic" and Justice Scalia the "least pragmatic" justice?
- The Court seems to view the power of removal as key to placing an official in one or another branch of government. Why is the power of removal so important?

- Have special prosecutors made a positive or a negative contribution to public life?
- Do you accept Justice Rehnquist's argument that the Court should be concerned when one branch seems intent on increasing its power at the expense of other branches, but much less so when that is not the intent of an alleged separation of powers violation?
- Is Justice Scalia right in suggesting, after *Morrison*, we now have a "standardless judicial allocation of powers"?
- What do you think about the guidelines of the U. S. Sentencing Commission? Have they served to provide more uniform sentencing? Have they taken too much sentencing discretion away from trial judges and juries?
- Could it be argued that the Federal Rules of Civil Procedure violate constitutional separation of powers principles?
- Could Congress delegate all of its law-making power to a super agency and take a long vacation? Why would such a broad delegation violate the Constitution? How far can Congress go in delegating its law-making powers? When are standards for the exercise of administrative discretion sufficient for constitutional purposes?
- What is the best argument for recognizing constitutional protection for claims of executive privilege?
- What would happen if the President were to ignore a direct order from the Supreme Court to respond to a legislative or judicial branch request for information? President Nixon promised to obey "a definitive opinion of the Supreme Court." What do you think he meant by "definitive opinion"? Should the doctrine of executive privilege apply differently in impeachment proceedings?
- What's the case for making the President immune from suits for damages while in office?

## Bill of Rights

- Why do we have a Bill of Rights?
  - Is this because we don't trust in the principles of civic virtue?
- How effective was the Bill of Rights in the first century of our nation?
- Have Hamilton's arguments against a bill of rights been proven right or wrong?
- Were there any rights left out of the Bill of Rights?
- Is the body of the Constitution more important than the Bill of Rights?
- How did the traditional rights of Englishmen influence the development of state constitutions, the US Constitution, and the Bill of Rights?
- Should our Bill of Rights be expanded to include socio-economic rights?
- What are the main differences between our Bill of Rights, and the Universal Declaration of Human Rights?
- Why should Madison be considered the father of the Bill of Rights?
- What provisions have been added to the Constitution since the Bill of Rights to curb the human lust for power?
- Why were the rights in the body of the Constitution considered incomplete?
- Which do you think is a more important source of rights: the bill of rights or the 14th amendment?
- How is the 9<sup>th</sup> amendment related to the natural rights theory? The 10<sup>th</sup>?
- What suggestions did Madison ignore when compiling the Bill of Rights? Why?
- Which right of the Bill of Rights is the most important?
- Which right of the Bill of Rights is least important?
- Has history shown us that the Federalists or Anti-Federalists were correct in their arguments concerning the Bill of Rights?
- Some people argue that the Bill of Rights is really the first 8 amendments to the Constitution and the 14<sup>th</sup> amendment. Do you agree or disagree? Why?

- How did the incorporation doctrine impact the Bill of Rights?
- Why is *Barron v. Baltimore* important in discussing the Bill of Rights?
- Was the Anti-Federalist desire for a Bill of Rights sincere?
- In your opinion, what were Madison's motivations in constructing a bill of rights?
- Was Madison sincere in his conversion to a Bill of Rights?
- Why did Madison oppose certain Anti-Federalists suggestions when constructing the Bill of Rights?
- Why did the first two amendments sent out to the states fail in the ratification process?
- Why wasn't the "partial" listing of rights within the body of the constitution enough to satisfy the critics?
- In your view, should Madison have included more rights?
- In your view, should Madison have excluded some rights?
- Why were the Federalists opposed to a Bill of Rights?
- Why did the Anti-Federalists feel so strongly that a Bill of Rights needed to be added to the Constitution?
- In your opinion, was congress the correct body to construct a Bill of Rights?
- How do you account for the bill of rights issue coming up so late at the convention?
- Why did the Bill of Rights play such a small role in protecting individual rights before the Civil War?
- Summarize Federalist # 84—do you agree with the argument?
- What did Madison fear more, a Bill of Rights or a second convention?
- Why do you think the Constitutional Convention was apathetic on a Bill of Rights?
- Why do you think voting was excluded from the Bill of Rights?
- Do you think that Madison accurately edited the suggested amendments?



- To what extent did Jefferson influence Madison to work for a Bill of Rights?
- Is Madison's resistance to a Bill of Rights an admission that the Philadelphia convention's legitimacy was debatable?
- Why do you think a Bill of Rights didn't consume the debates of the delegates at the Philadelphia Convention?
- Which right(s) in the Bill of Rights do you feel are most important?
- Which right(s) in the Bill of Rights do you feel have given us the most problems in our history?
- Some people have argued that in a nation with popular sovereignty a bill of rights is unnecessary. Explain your agreement or disagreement with this position.
- Would you propose any changes in the Constitution to better protect rights?
- The Bill of Rights was not used for many years. Why do you think that is?
- Are any of the rights guaranteed in the Bill of Rights outdated?
  - Should any be done away with?
- Was the Bill of Rights effective in protecting the rights of the people in the early nation's history?
- Do you think the Bill of Rights would be effective without judicial review?
- Why did it take until 1791 to ratify the Bill of Rights?
- The English Bill of Rights has been successful without judicial review. How?
- How do you think that the framers intended the ninth amendment to be interpreted?
  - Was it to include specific rights?

***See also Federalists, Anti-Federalists, Federalists vs. Anti-Federalists, Second Amendment, Incorporation, Freedom of Religion, Establishment Clause, Freedom of Speech, Freedom of Press, Search and Seizure, Death Penalty and the 8<sup>th</sup> Amendment, Due Process, Amendments***

## **Second Amendment**

- What does the second amendment say?
- Does the second amendment grant a right to individuals or to militias?
- Why is the second amendment the only one with a preamble of sorts?
- What have the courts said about the second amendment?
- Is the second amendment related to liberty?
- Why did the First Congress include the second amendment in the Bill of Rights?
- What arguments did eighteenth-century Americans make in favor of the Second Amendment and are those arguments justifiable today?
- Should we do away with the second amendment?
- How should the second amendment be interpreted?
- How did British history impact the second amendment?
- Do other nations give their citizens the right to bear arms?
- How is the second amendment related to the concept of liberty in the 14<sup>th</sup> amendment?
- Has the second amendment been incorporated?
  - Should it be?
- What restrictions, if any, does the second amendment place on local and state government?
  - What restrictions should it place on local and state government, in your opinion?
- Does the second amendment have any impact on gun control?
  - Should it have any impact on gun control?

## **Factions**

- Define faction.
- What is a faction? What are some examples?
- What is a faction? Do they threaten the common good?
- What was Madison's definition of a faction?
  - Do you agree with his definition?

- What are groups today that fit his definition of a faction?
- According to Madison, what causes factions?
- Are factions a result of a lack of virtue? (Fed 10)
- Are factions a problem today?
- Are there too many factions today?
- Are there any benefits to factions?
- Are today's major political parties "factions" in Madison's sense of faction? Why or why not?
- Do the major political parties have factions?
- Some have said that there is a relatively low turn out because of a basic level of satisfaction; people feel everything is going okay. How do you feel about this idea?
- Are factions always antithetical to civic virtue?
- Does the Electoral College eliminate the ill effects of factions?
- Are extremist political parties the sort of factions the founders feared? If so, what, if anything, should be done about them?
- What factions are neutralized by having an Electoral College?
- Are all factions equal today?

See also *Political Parties*

## **Judiciary**

- How important is an independent judiciary for the preservation of constitutional government? How would you respond to critics who point out that members of the U.S. Supreme Court are not elected and therefore not responsible to the electorate?
- Are there checks on the judiciary?
- What checks are there on the judiciary?
- Site three instances where the court failed to protect minority rights.
- What are cases and controversies?
- Should we elect justices? Why or why not?
- What is the role of dissenting opinions?

- What is stare decisis?
- What are some of the self imposed checks on the courts?
- What are the different courts set up by Congress?
  - Describe the appeals process within those systems.
- Some have said that the confirmation process is the “election” process for judges. Do you agree or disagree?
- Should the number of Supreme Court justices be altered?
- Should the number of terms for Supreme Court justices be altered?
- Should the appointment process for justices be altered?
- Are Americans are the most litigious people on the earth because they are so willing to go to court. Is this a detriment to America?
- Other than relying on the law, in what other ways can Americans fix problems that they may face?
- When did the court take upon itself the role of protecting minority rights?
- How has the court protected minority rights?
- How do civil rights relate to the judicial protection of minorities?
- What is court packing?
- Is the Supreme Court immune from popular pressures?
- Some people argue that the Supreme Court wields more power than Congress or the President. Do you think that this is the case?
- Has there been any times where the Supreme Court’s power has been lessened?
- Do you agree with Andrew Jackson’s idea that each branch should be responsible for determining the constitutionality of their own actions?
- Robert Bork has suggested that the Supreme Court be controlled by a super majority vote in the legislature. Would you agree or disagree with such a proposal?
  - Do you think that there is a difference between having people vote on constitutional or legislative issues?

- Why have we never removed a Supreme Court justice through impeachment?
- When does the U.S. Supreme Court have original jurisdiction?
- How can coordinate branches limit the power of the Supreme Court?
- How does the Supreme Court itself limit its powers?
- Should we increase the size of the Supreme Court? Decrease?
- Should the Supreme Court decisions be unanimous?
- Should dissents be used for further decisions?
- What is the difference between original and appellate jurisdiction?
- What is Justiciability? Is it a control on the court?
- Does a 9-0 decision carry more weight than a 5-4 decision?
- What is precedent? Should it be binding?
- Why do minorities prefer the courts to remedy problems?
- Should minorities seek help from the legislature rather than the courts since it better represents the people?
- Does our current court represent America?
- How can the Senate impact the court?
- What is the court's best decision in your view?
- What is the court's worst decision in your view?
- Do you think that there is one inherently stronger branch of the federal government?
- What checks on the judiciary does congress have?
- The Articles of Confederation failed to provide for national judicial branch. What are the strengths and weaknesses of the judiciary we have today?

*See also Checks and Balances/Separation of Powers, Judicial Review, Justiciability*

## **Judicial Review**

- What is judicial review?
- Why do we have judicial review?
  - Is this because we don't trust in the principles of civic virtue?

- Where in the Constitution is the power of judicial review found?
  - If it is not in the Constitution, then where does it come from?
  - What parts of the Constitution did John Marshall point to when articulating the power of judicial review?
- Could you tell us more about the relationship between judicial review and checks and balances?
- What recourse do people have if they don't like a decision of the court?
- Do you believe that judicial review is essential to constitutional government?
- Would electing judges make judicial review less controversial?
- Is judicial review democracy checked by democracy?
- If the Supreme Court didn't have the power of judicial review who should determine the constitutionality of laws?
- In your reading of the constitution, is judicial review implied? Explain.
- How has judicial review been used to develop public policy? Do you think it is the position of the courts to develop public policy?
- What is the strongest argument against judicial review?
- Give a historical example of a case that shows the necessity of judicial review and a case that shows the abuse of judicial review.
- Is judicial review synonymous with judicial activism?
- What role does judicial review play in today's government? What role do you think judicial review should play in today's government?
- Do you think judicial review protects against tyranny of the majority and protects the minority?
- Are there any cases where judicial review has been abused?
- Summarize Federalist # 78. Brutus # 15. Which one do you most agree with and why?
- Some have said that the Supreme Court is an "ongoing constitutional convention". Do you agree or disagree with that assessment?

- Was there debate at the Constitutional Convention over whether to give the courts power of judicial review?
- Does judicial review violate the principle of rule of law?
- What were the Anti-Federalist arguments against judicial review?
- What were the Federalist arguments for judicial review?
- Is judicial review just a nice way of saying legislating from the bench?
- Is the power of judicial review a controversial issue today?
- What is original intent and how is it connected with the issue of judicial review?
- How is Judicial Review compatible with the republican principle?
- Is history a good thing to use as the basis of court decisions?
- Do you think that Judicial Review has been abused at any point in its history?
- There are people that think Judicial Review makes the Supreme Court the strongest of the three branches. Do you think that this is the case?
- How has the power of Judicial Review been expanded though out our history?
- How does judicial review reflect the framers' view that constitutional government is a limited government?
- What were the founders' arguments for and against judicial review?
- Is judicial review consistent with a democratic system of government?
- Is judicial review consistent with our representative form of democracy?
- Do you agree with Hamilton's view that judicial review is needed, or are you more an Anti-Federalist and agree with Jefferson that it is very dangerous?
- Can you have a constitutional government without judicial review?
- Do you think the Bill of Rights would be affective without judicial review?
- What was the 1796 case of *Hylton v. U.S.*? Was it judicial review?
- How does Judicial Review reflect the framers' view that constitutional government is limited government?

- The English Bill of Rights has been successful without judicial review. How?
- What checks on the judiciary does congress have?
- Does *Marbury* mean that legislators or members of the executive branch have no responsibility to judge the constitutionality of their own actions?
- *Marbury v. Madison* is the first report of judicial review. When was the next time it was used on a law passed by Congress?
- When was the first time judicial review was used on a state action?
- Although judicial review is one means of protecting the rights of individuals and minorities, sometimes the courts have failed. Can you cite examples in which this happened?
- Is the practice of judicial review something that Madison would like?
- What were the constitutional and political strengths and weaknesses of Chief Justice Marshall's arguments for judicial review?
- Is judicial review necessary for a limited government? Beneficial?
- Describe 3 European nations judicial review procedures.
- Compare our version of judicial review with other nations.
- Why is there no or little Judicial Review in England?
- As our current government is structured, is Judicial Review necessary today?
- How did *Ex Parte Endo* affect the *Korematsu* decision?
- In your reading of the constitution, is judicial review implied? Explain.
- Give a historical example of a case that shows the necessity of judicial review and a case that shows the abuse of judicial review.
- What role does judicial review play in today's government? What role do you think judicial review should play in today's government?
- Is the power of the Supreme Court to overrule the will of a congressional majority consistent with the principle of representative government? Why or why not?



- People in democracies that do not have judicial review have sometimes argued that they do not want to entrust their rights to a handful of individuals sitting on a Supreme Court. They say that they prefer to put their rights in the hands of elected representatives deliberating in public. How would you respond to them?
- Is judicial review a good idea? Should nine unelected judges be able to tell our elected representatives what they can and cannot do?
- Are courts more likely to block an enlightened consensus with their adherence to outdated principles or to protect the politically weak from oppressive majorities?
- Are judges, protected with lifetime tenure and drawn generally from the educated class, more likely to be reflective and above the passing enthusiasms that drive legislative action?
- Does *Marbury* mean that legislators or members of the executive branch have no responsibility to judge the constitutionality of their own actions?
- Could we have a workable system of government without judicial review?
- The more aggressive use of judicial review has usually been for purposes of social reform in cases where there is still no consensus that policies should be changed. Do you think that this is an unacceptable use of the powers put at the discretion of judges or not?

See also *Judiciary, Judicial Activism and Restraint, Justiciability, Constitutional Interpretation*

### **Judicial Activism and Restraint**

- What is the difference between Judicial Activism and Judicial Restraint?
- What is judicial activism? How might it be considered legislating from the bench?
- What have been some activist courts in our history?
- What are examples of activist cases, and why are they activist cases?
- What are examples of judicial restraint?
- What justices embody the ideas of judicial activism or judicial restraint?
- Why has the Warren Court (1953-1968) been called the most activist court

in American History?

- Is judicial review just a nice way of saying legislating from the bench?
- Is judicial review synonymous with judicial activism?
- Should have said that the recent court has been activist in a conservative manner. Do you agree or disagree?

See also *Judicial Review, Constitutional Interpretation*

## **Justiciability**

- What is a political question?
- Were the following cases political questions: *Marbury*, *Baker v. Carr*, *Nixon v. U.S.*, *Steel Seizure Case*, and *Bush v. Gore*?
- What are cases and controversies?
- It is not obvious that the Court has the power to review presidential assertions of power. What do you think about the suggestion that the Court should refrain from reviewing these exercises of power under "the political question" doctrine?
- Is the policy against issuing advisory opinions supported by the fact that a proposal to expressly give the Supreme Court the power to render advisory opinions was defeated in the Constitutional Convention of 1787?
- Is a "controversy" different than a "case"--or just a type of case (i.e., criminal "cases" and civil "controversies")?
- If a party is willing to spend the time and money necessary to litigate, why can't we assume that they must be--in some way they find significant--injured by the law or action that they challenge?
- If you were charged with drafting a **state** constitution, would you limit the state judicial power in the same ways that Article III has been interpreted to limit federal judicial power?
- Do you agree that the evidence shows that the Court has frequently manipulated standing doctrine to serve other objectives?
- Why would you expect "conservative" judges to generally favor stricter standing rules than those supported by "liberal" judges?

- Do you agree that as a general rule taxpayers should not have standing to challenge what they contend is an illegal expenditure of their federal tax dollars?
  - Is the general rule against taxpayer standing based on Article III considerations or prudential considerations (or both)?
  - If a shareholder of even one share of a corporation has standing to challenge actions of a corporation's board, why shouldn't taxpayers (as "shareholders of the government") have standing?
  - Should *Flast* have overruled *Frothingham*?
  - Why did attorneys for the Sierra Club fail to allege a more specific injury to their members, rather than just the organizational concern about the proposed development in Mineral King Valley? Did the attorney's decision jeopardize the Sierra Club's case? What should the Sierra Club allege in an amended complaint?
  - Overall, is *Sierra Club v Morton* a good or a bad decision from the standpoint of environmentalists? Why?
  - What do you think of Justice Douglas's proposal in *Sierra Club* to give standing to trees, waterfalls, and other inanimate objects?
  - Which is more remote and speculative, the injury found sufficient to establish standing in *SCRAP* or the injury found insufficient to establish standing in *Lujan*?
  - If Defender of Wildlife members had actually purchased airline tickets to travel to areas threatened by proposed AID projects, would the Court have found standing in *Lujan*? Would the tickets have to be non-refundable?
- If the plaintiffs in *Valley Forge* would have standing under *Flast* to challenge a federal grant of \$577,000 in cash to a private religious college, does it make sense that they lack standing to challenge the federal government's donation of a \$577,000 piece of property to a religious college? Could anything of constitutional significance turn on this distinction?
- Given the Court's analysis in *Warth v Seldin*, what plaintiff would have standing to challenge the constitutionality of exclusionary zoning practices? Do you agree that low and moderate income people who want to live in Penfield but can't find affordable housing would seem to be the most appropriate parties to bring such a suit? Do you agree with Justice Brennan's description of the Court's requirement

that plaintiffs be able to point to a specific project that would have met their needs but for the ordinances is "a Catch-22"?

- After reading these standing cases, do you feel you could identify which standing requirements have a constitutional basis and which are prudential requirements that Congress is free to change?
- The four dissenting justices in *Lyons v Los Angeles* contended: "Under the view expressed by the majority today, if the police adopt a policy of "shoot to kill," or a policy of shooting 1 out of 10 suspects, the federal courts will be powerless to enjoin its continuation." Are they right? Would anyone have standing to challenge such a policy?
- Who has the better argument on the question of when a Court should find a decision below is supported by "independent and adequate state grounds"--Justice O'Connor in her opinion for the Court in *Michigan v Long*, or Justice Stevens in his dissent? Why?
- A generous view of what constitutes an independent and adequate state ground would have the effect of turning more power back to states. Why, then, do the conservatives on the Court support the narrow view and the liberals on the Court the more generous view as to what is an independent and adequate state ground?
- Justice Powell (in a speech) argued that it was a good thing for the country to postpone a decision on the constitutionality of affirmative action programs. Could that belief, more than the doctrine of mootness, explain the Court's decision in *DeFunis v Odegaard*?
- The question of ripeness and adversity presented in a case such as *Poe v Ullman* is especially difficult. Does the Court make sufficiently clear exactly what is required before a case seeking to enjoin enforcement of a statute in advance of enforcement will be heard? Is it clear whether the basis for the decision in *Poe* is Article III or the Court's own gatekeeping rules?
- If the challenge to the Arkansas anti-evolution law (*Epperson v Arkansas*) had been brought by a professor at the University of Arkansas instead of by a high school biology professor, would the case then suffer from the "double contingency" identified as the problem in *Poe*?

- Which of the following reasons seem to justify dismissal of a case as "a political question": (1) textual commitment of a decision to another branch, (2) presentation of an issue so momentous that to decide it threatens the Court as an institution, (3) presentation of an issue that cannot be decided by "judicial reasoning," (4) the unavailability of effective judicial means of redressing a legal violation if one is found, (5) the case raises serious issues of national security, (6) decision in the case would likely embarrass another branch of government, and (7) presentation of an issue that the court "can't get a handle on"? Which of the above are the *strongest* reasons for dismissing a case?
- Have Justice Frankfurter's concerns about the courts involving themselves in matters of legislative reapportionment proven well-founded?
- How would our state politics be different today if *Baker v Carr* had come out the other way? Would, for example, the Tennessee legislature *still* be badly apportioned if the courts had not intervened?
- If the Senate were to convict a federal judge (or the President) after a "trial" in which the impeached official was denied any opportunity to present evidence, would the Court still refuse to review the action on the ground that it was a political question?

## **Constitutional Interpretation**

- What do you think is the proper way to interpret the Constitution?
- What are the methods of constitutional interpretation?
- What view of constitutional interpretation do you like?
- How do the various methods of interpretation relate to higher law?
- What was Thomas Jefferson's view of constitutional interpretation, and who could do it?
- What was Andrew Jackson's view of constitutional interpretation, and who could do it?
- What factors in the late 19<sup>th</sup> and early 20<sup>th</sup> century help explain the shift from property rights to personal rights as the Court interpreted the 14<sup>th</sup> amendment?
- How has incorporation been important to interpreting the 14<sup>th</sup>

amendment?

- How do you think that the framers intended the ninth amendment to be interpreted?
  - Was it to include specific rights?
- Do you think that the use of the 14th amendment was a perversion of its original intent? Should the 14<sup>th</sup> amendment have only been applied to the blacks or was the use of it correct?
- What is original intent and how is it connected with the issue of judicial review?
- Are there different interpretations of the Constitution today based on self-interest? If so, explain.
- The "new federalism" cases from *National League of Cities* to the present time find little textual support in the Constitution and are based on a controversial reading of history. This is a criticism often made by conservatives of the Court's substantive due process jurisprudence. Does this suggest that a judge's political philosophy or values will generally trump any theory of constitutional interpretation?

### **Political Parties**

- What provisions in the U.S. Constitution, such as the First Amendment, encourage the formation of political parties and other associations? Do you think competing political parties are important to the maintenance of a free society?
- Many of the Founders considered political parties undesirable. But today many political scientists argue that the decline of loyalty to parties is a sign of serious problems in our political system. What are your views on this issue?
- Are political parties factions?
- Are today's major political parties "factions" in Madison's sense of faction? Why or why not?
- Are extremist political parties the sort of factions the founders feared? If so, what, if anything, should be done about them?

- Do you believe that it is desirable for members of Congress and state legislatures to vote their conscience rather than to vote according to the wishes of their party? Why or why not?
- Why might the Congress not cooperate with an executive of the same party? (Truman, Carter, Clinton)
- Do political parties embody de Toqueville's vision of enlightened self-interest?
- What effect does the Electoral College have on our two party system?
- Are the modern political parties similar to the Federalists' and Anti-Federalists'?
- How are the parties split up now? Geographically? Economically?
- If the founders were to come back today, would they be pleased with, or shocked at our two party system? Explain.
- What historical events lead the founders to their views on parties?
- Can minorities be adequately represented in a major party?
- What people were important in the formation of our early party system?
- Does our government today perpetuate a two party system?
- What was the revolution of 1800 and why was it important?
- What effects does separation of powers have on political parties? On the responsibility of parties?
- What is the tyranny of the majority? How did the founders deal with this idea?
- John Dickinson said at the First Continental Congress, "Let experience be our guide, for reason may mislead us." In dealing with political parties, what was the founders' experience with them and what has ours been? Whose should we rely upon?
- Is divided government bad?
- Is there a major difference between unified and divided government?
- Were the Federalists and Anti-Federalists political parties?
- Were the Tories and patriots political parties?

- What is mixed government? (see John Adams)
- Is party government the same as coalition government?
- What are the factions within the Democratic Party?
- What are the factions within the Republican Party?
- What causes the collapse of parties? (Federalists and Whigs)
- What happened in the 1790's that led Jefferson and Madison to create an opposition party?
- Should judges declare their political affiliations?
- What roll, if any, do parties have in the relationship to voter apathy?
- Are parties self interested or altruistic?
- What are political action committees?
- Should our current parties divide into smaller ones?
- Are there parties of the rich, or of the poor?
- Are democrats becoming more conservative?
- Are Republicans becoming more liberal?
- What was the Gingrich revolution?
- Would it be good for a nation to have just one political party?
- Does the fact that the framers designed a federal system indicate their foresight on the inevitability of parties?
- Is it possible to have too many parties?
- Why did George Washington warn against political parties in his farewell address?
  - Were his concerns proven accurate by history?
- Does the election of 2000 prove that both Washington and Madison were correct in their concern over political parties?
- Historically, how did political parties come into existence?
- Are our parties coalitions or factions?
- Are American parties too big?
- Were our founders naïve about parties?
- Are two parties good for stability?



- How would you explain the difference between Democrats and Republicans?
- Describe some factions within the two major political parties.
- Who is to credit or blame for political parties?
- How are committees in Congress related to parties?
- What role did the ratification debates play in forming our political parties?
- Would Jefferson recognize the Democratic Party today?
- Would campaign finance reform affect our political parties for the better?
- Are Americans alienated from the two parties?
- Should we limit spending on campaigns?
- Does having a president of one party and a congress of another bring about gridlock?
- President Clinton was impeached in the house by a close vote. Do you think that he would have been impeached if the party makeup of the house had been different?
- What role do political parties play in preserving civil rights?
- What role do political action committees play in preserving civil rights?
- Are political parties actually factions that George Washington warned us about in his Farewell Address?
- Do you believe that our two party system serves the voters well?
- Do you think that the Framers envisioned or planned our two-party system?
- Explain the importance of limiting the rule of majority. Give a couple of historical and/or contemporary examples where the rights of the minority have been trampled.
- How did our government develop into a two party system?
- Why did our government develop into a two party system?
- Could our government be run without political parties?
- Why did Washington fear political parties?
- Why was the revolution of 1800 so important?

- Has there been any time in our history under the constitution when we did not have a two party system?
- Do you like the winner take all system?
- Should the federal government ensure that all political parties get funding?

See also *Factions, Third Parties and Multi-Party Systems, Campaign Finance Reform, Elections*

### **Third Parties and Multi-Party Systems**

- What are the advantages of a multi-party system?
- Could the U.S. develop a multi-party system? Why or why not?
- What could America do to encourage a greater third party involvement?
- To what extent have third parties been successful in our history?
- You seem to support the ideas that third parties would be a benefit to our political process. What Constitutional provisions seem to promote a two-party system?
  - Would you recommend the Electoral College be revised or eliminated?
- What are the disadvantages of a multi-party system?
- Have there been any successful third parties in our nation's history? Are there any ones that have had a decent run? Why have those third parties that failed fail?
- What are some advantages to a multi-party system that our system does not have?
- What are the advantages or purposes of third parties in our system?
- What systems do multiparty governments use? Do they use our system or another type?
- Should we encourage third parties?
- Do you think that it is fair that the government gives federal funds to some parties and not others?
- What types of third parties are there in America?
- Why have third parties failed in our history?

- How are third parties locked out of our current system? Would campaign finance reform help?
- Should the federal government ensure that all political parties get funding?
- Would America be better off with a multi-party system like they have in Britain or Israel?
- Should Ralph Nader and Pat Buchanan have been invited to the 2000 Presidential debates? Why or why not?
- Why do you think that third parties have failed in our system?
- Will our two party system evolve into a multi-party system?
- Would Madison consider our parties factions? Would Madison consider the parties in a multi-party system factions? Which would he prefer?
- In your view, should the US remain a two party system or is a multiparty system needed to allow far more views to be debated on various issues?
- Does a third party candidate ever have a chance of winning the presidency in your mind? Explain.
- How does our system and a multiparty system differ from a one party system? What are the advantages and disadvantages of a one party system?
- Which type of government do you consider more stable: a multi-party parliamentary system such as Germany's, or our two-party system?
- Do you think that a multi-party system encourages moderation or extremism?
- Do you think that the Electoral College discourages third parties? If so, is this good?

## **Federalism**

- What is federalism?
- How is federalism defined?
- How would the Anti-Federalists define federalism?
- Does Federalism help or hurt in the gauging of consent?
- Does the Electoral College reflect the principles of federalism?

- Does local self-government in American Federalism promote enlightened self-interest?
- Which level of government is most representative?
- What federalism issue was raised in the 2000 election?
- Should elections be federalized?
- Are separation of powers and federalism good devices or are they hindrances?
- Is separation of powers or federalism necessary devices, or are they optional in a constitutional government?
- Why did the framers think Federalism was an adequate protection of individual rights?
- What was the difference between the Federalists' and the Anti-Federalists' on federalism?
- How did federalism change after the Civil War?
- Is the federalism of 1787 the same federalism of today?
- Is today's federalism the same federalism Madison wrote about in Federalist #45?
- What do you think was Madison's idea of federalism? Do you think we have the same view of federalism? As evidenced by what?
- Which do you think is a more important check on government, federalism or separation of powers?
- What power given to the federal government has proven to be the most controversial in regards to state powers?
- What power given to the federal government has proven to be the most profitable in regards to state powers?
- Which level of government most affects you?
- Was Madison correct to fear the state governments more than the federal government?
- What is the "full faith and credit" clause?
- What does the full faith and credit clause mean for state powers?

- How has war affected the powers of the federal government?
- Describe how the shift of power between national and state has occurred in our history.
- Some have said that the Philadelphia Convention was just a summer long debate over federalism. Do you agree or disagree and why?
- In your view, does the Senate represent the states or the nation's interests?
- How does the preamble relate to the idea of American federalism?
- How does the concept of delegated powers relate to American federalism?
- What federal power has proven to be the most significant in our history?
- How has the commerce clause affected our federal system?
- What are the police powers? How do they relate to Federalism?
- Is the national government, in your view, too powerful today? Too weak today? Why or why not?
- What have been the worldwide trends of federalism?
- How has the federal government increased its power over our history?
- Why has the federal government increased its power over our history? What in our history lead to such increases?
- Some say that federalism is like a pendulum, at sometimes giving more power to the states and at other times more power to the federal government. Have we seen this in our history, and if so, when have we seen some of the swings?
- What are the most important costs and benefits of a federal system in your opinion? Do the benefits outweigh the costs?
- According to the Constitution, the states are sovereign in some matters and share sovereignty with the federal government in others. Has state sovereignty tended to become overshadowed by the federal government in today's political system? Is this a good thing?

- Are “states rights” a thing of the past, or should the states be given a greater place in our federal system, allowing them more independence from the federal government?
- Has conflicting loyalties been eliminated since the Civil War?
- Does the federal government have more power now than before? How did they get more power? Is it increasing the federal government’s power or weakening the state’s power?
- You meet a political scientist from different planet who says he’s been studying our system of government and come across the word “federalism” but does not know what it means. How do you explain it to him so that he understands?
- Some say that the federal and state governments cover two different spheres. Who decides/where is the balance between the two spheres?
- Discuss *Alden v. Maine*, *Printz*, and *Lopez*?
- Why are the following cases important: *NY v. U.S.* and *Seminal Tribe v. Florida*?
- Why was *Barron v. Baltimore* important in the history of American federalism?
- Has our federal design helped or hindered protection of civil rights?
- Some have said that making 50 state bureaucracies is redundant. Do you agree or disagree?
- What are the prospects of success for the European Union?
- What are implied powers? Delegated powers? Concurrent powers?
- What one power should the federal government have that it currently does not?
- What role does crisis play in our history of federalism?
- How was the federal system different from any system that was around in 1787?
- Why is *McCulloch v. Maryland* important?
- What is the supremacy clause?

- What abuses did the framers attempt to solve with the federal system?
- Is taxing a power that all levels of government should still have?
- What obligations does the national government have towards the states?
- What obligations do the states have to each other?
- Do you feel that our federalist system has worked out as the Founders had intended it to? Why or why not?
- Give some examples as to how the Supreme Court has ruled in matters of federalism.
- What are some current tensions between the federal and state levels of government?
- How is federalism a check and balance principle?
- Have states been a good protector of rights?
- What matters are best left to the national government to handle?
- Should states be able to control more the flow of commerce?
- What is divided sovereignty? Why was it controversial when Madison and the framers created it?
- Which level of government is more likely to abuse people's rights?
- How has the commerce clause been used to expand federal power?
- Do you feel that our federalist system has worked out as the Founders had intended it to? Why or why not?
- Give some examples as to how the Supreme Court has ruled in matters of federalism.
- What are some current tensions between the federal and state levels of government?
- How have recent Supreme Court decisions impacted American Federalism?
- Some have said that states are laboratories of experimentation in our federal system? Do you agree or disagree?
- Why do compact theorists hate the doctrine of implied powers?
- Should the national government be involved in education?

- How has the commerce clause been used in changing the nature of American federalism?
- How has the 10<sup>th</sup> Amendment been used in changing the nature of American federalism?
- How has the 11<sup>th</sup> Amendment been used in changing the nature of American federalism?
- Canada's reserved powers are reserved to the national government. Is this better than our 10<sup>th</sup> amendment?
- Why did Madison insert the 10<sup>th</sup> amendment?
- How has the 10<sup>th</sup> amendment been used by the states?
- How has the 11<sup>th</sup> amendment been used by the states?
- What role does the 10<sup>th</sup> amendment play in our history of federalism?
- What role does the 11<sup>th</sup> amendment play in our history of federalism?
- How is the 11<sup>th</sup> amendment being used to limit federal powers?
- Why is *Alden v. Maine* important?
- Do you think that the effect the 14<sup>th</sup> has had on our federal system has been positive?
- In your view, does the 14<sup>th</sup> amendment infringe upon the rights of the states?
- How did the 14<sup>th</sup> amendment affect the balance of federalism in America?
- How does section 5 of the 14<sup>th</sup> relate to federalism?
- How have the ratification and incorporation of the 14<sup>th</sup> changed the idea of Federalism in the U.S.? Be specific through the use of Court cases.
- Is American Federalism similar or different than the English system?
- Is health care a federal or state issue? Explain.
- Is education a federal or state issue? Explain
- What are the state police powers? How do they relate to Federalism?
- How did the Articles of Confederation play into the debate over federalism and how did they set the stage for it?
- What is sovereign immunity? How does it relate to federalism?



- Has the growth of the federal government eliminated opportunity for citizen involvement?
- Does the Court's decision in *Seminole Tribe of Florida v Florida* mean that states are free to ignore federal bankruptcy law, federal copyright law, or federal anti-trust law? Could a state, for example, be sued for republishing without authorization a copyrighted textbook and then distributing it to public schools throughout the state?
- The "new federalism" cases from *National League of Cities* to the present time find little textual support in the Constitution and are based on a controversial reading of history. This is a criticism often made by conservatives of the Court's substantive due process jurisprudence. Does this suggest that a judge's political philosophy or values will generally trump any theory of constitutional interpretation?
- Similarly, the judges who urged respect for the doctrine of *stare decisis* in *Garcia v San Antonio Metro Transit Authority* were, for the most part, those judges who ridiculed reliance on *stare decisis* (with respect to *Roe v Wade*) in the abortion case of *Casey v Planned Parenthood*. Does this suggest that judges should be more open about the real reason for their decisions, which often seem to be a concern about consequences?
- What is the basis for the Court's holdings in *New York v United States* and *Printz v United States*? Is it that Congress acted outside of its Commerce Clause power, that the laws in question violated the Tenth Amendment, or that the laws in question are inconsistent with the federal system implicitly envisioned in the Constitution?
- Do you agree with the majority in *Garcia* that the *National League of Cities* rule had shown itself to be "unworkable"?
- If a law really does violate the Constitution, is it reason enough to allow the law to be enforced because the Court cannot imagine a "workable" rule that could be applied to decide the constitutionality of other laws raising similar issues?

- Is Justice Blackmun right in *Garcia* in his suggestion that states are adequately protected by the Constitution's structural provisions and need no additional protection from the judiciary?
- Is there any other area of constitutional law that so clearly splits the Court along ideological lines than these cases raising "states' rights" issues?
- Apart from issues of constitutional law, how should power be divided between the national and state governments? The federal government is often criticized, but it was the federal government that ended slavery, brought the country out of the great Depression, ended the reign of the Third Reich, and ended racial segregation. What great things have been accomplished through state governments? What areas of regulation (education, pollution control, law enforcement, etc.) have been better administered at the state level than at the federal level?
- The states are often seen as "laboratories" for social experiments. What are some examples of successful experiments that have been carried from one state to the several states? What are some examples of experiments that are now ongoing in a single state or small number of states?

See also **Unitary and Confederal Systems, Commerce Clause, Sovereignty, Compact Theory, Civil War/Sectional Rivalries/Secession**

### **Unitary and Confederal Systems (and compared to Federalism)**

- Is a federal system inefficient compared to a unitary system? Why or why not? Should efficiency be a primary concern in choosing a system of government?
- Should the U.S. move more towards a unitary system? Have we been?
- What are examples of other countries that use unitary, confederate and federal systems today? Which types are common, and which are uncommon?
- How did living under a unitary and later a confederate system shape the Founders' views?

- It has been said that unitary systems are more efficient- would you agree or disagree?
- How are we a like a unitary system?
- How are we a like a confederation?
- Give some current examples of both unitary and confederate systems of government.
- Are there any good points to either a confederacy or unitary system of government, that you feel the U.S. should adopt?
- In your opinion, which is more advantageous: a federal, unitary, or confederate system?
- What are some examples of advantages or disadvantages of each system?
- Is a unitary system preferable since it is more efficient?
- Why do you think that we opted for Federalism and not a unitary system in the 1780s?
- How does a unitary system of Government reflect that nation's notions of civic virtue?
- What advice would you give the European Union based on our experience as a confederacy?
- Is the compact theory synonymous with confederacy?
- What confederal principles do we have within our current constitutional system? Should we still have them?
- Are there any countries based on a confederate form of government today?
- How do you account for the success of Switzerland?
- The Confederate States of America (the south during the civil war) was a league of sovereign states. How would you explain what it means to be sovereign?
- Why do you think the South formed a Confederacy after they saw we failed with the original Confederation?

## Commerce Clause

- Is the commerce clause relevant to the federal principle?
- How has the commerce clause affected our federal system?
- How has the commerce clause been used with the Necessary & Proper clause?
- How has the commerce clause been used to expand federal power?
- How has the commerce clause been used in changing the nature of American federalism?
- What have been some positive and negative uses of the commerce clause, in your opinion?
- Should states be able to control more the flow of commerce?
- How was the commerce clause used to expand civil rights? [Article I, Section 8, Clause 3: (Congress shall have power... to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.)]
- What is "commerce"? Is it just the buying and selling of goods, or should it be interpreted to include, as Chief Justice Marshall says in *Gibbons*, all the branches of commercial intercourse, including the manufacture and transportation of goods?
- The Constitution gives Congress the power to regulate commerce "among" the several states. Does that mean "between" the states, or could it also mean "among the people"--that is, even *within* a state?
- What would have been the economic future of the United States if *Gibbons* had gone the other way?
- Which of the two basic approaches to Commerce Clause analysis is better, the "empirical test" (e.g., "substantial effects") or the categorical approach that seeks to label effects as "direct" or "indirect" or activities as "local" or "national." What are the advantages and disadvantages of each approach?
- Does the power to "regulate" commerce include the power to ban outright certain articles of commerce--such as lottery tickets, firecrackers, hand grenades, or

marijuana? 12. Is taking a woman across state lines for immoral purposes "commerce"? (The Court thought so in a decision upholding the constitutionality of the Mann Act.)

- Should the Court examine the motive of Congress in enacting legislation under its commerce power, or just analyze the connection of the regulation to interstate effects? In *Hammer v. Dagenhart*, the Court was influenced by its conclusion that Congress really legislated because it disapproved of child labor, rather than out of any genuine concern for how child labor was affecting the national economy or the dangers posed by articles produced by child labor. Should the motive of Congress been a factor?
- *N.L.R.B. vs. Jones*, along with *U. S. v. Lopez* years later, is generally considered one of the two key turning points in Commerce Clause jurisprudence. What makes it so?
- Does the "cumulative effects" approach of *Wickard* represent a major expansion of the "substantial effects" test as employed previously?
- After *McClung* and *Heart of Atlanta Motel*, could you imagine **any** eating establishment or motel that would be outside the reach of Congress's power under the Commerce Clause to enact civil rights laws prohibiting discrimination against patrons or guests?
- *Lopez* and *Morrison* raise serious questions about the ability of Congress to enact laws providing federal punishment or federal remedies for conduct traditionally regulated under state criminal codes. Which of the following are likely to be upheld?: (1) a law making "carjacking" a federal crime? (2) a law making "drive-by shootings" a federal crime? (3) a law making it a federal crime to carry out any action designed to terrorize? (4) a law making child molestation a federal crime? (5) a law making child pornography a federal crime?
- How does Congress distinguish, as *Morrison* requires it to do, between "what is truly national and what is truly local."?

## **Sovereignty and Sovereign Immunity**

- In the American system, who is sovereign?

- The Confederate States of America (the south during the civil war) was a league of sovereign states. How would you explain what it means to be sovereign?
- What is the meaning of sovereignty within Article 2 of the Articles of Confederation?
- How was sovereignty different in the Constitution and the Articles of Confederation?
- According to the Constitution, the states are sovereign in some matters and share sovereignty with the federal government in others. Has state sovereignty tended to become overshadowed by the federal government in today's political system? Is this a good thing?
- Are the people sovereign in Constitutional Government system?
- Early state constitutions reflected the idea of popular sovereignty. What is this idea? Is it a good idea? What dangers might there be in the idea of popular sovereignty?
- Some people have argued that in a nation with popular sovereignty a bill of rights is unnecessary. Explain your agreement or disagreement with this position.
- What is divided sovereignty? Why was it controversial when Madison and the framers created it?
- What is sovereignty immunity? How did we get it?
- Why is *Alden v. Maine* important?
- How would you describe the differences between powers and sovereignty?
- Should the 11th Amendment be read as placing any limitation on the ability of citizens to bring suit against their own state?
- The Court has said that any abrogation of state immunity by Congress under its 14th Amendment powers must be crystal clear. Why? If Congress in fact has the power to abrogate, doesn't the Constitution demand that the Court try to determine as best it can whether Congress has exercised that power?

- Should the 11th Amendment be read as a limitation only on the power of the judiciary, or is it a limitation on the power of other branches as well?
- Why should Congress have a power to abrogate state sovereign immunity under its 14th Amendment power, but not under other powers?
- Which side has the better argument as to whether the Constitution creates a broad right of state sovereign immunity?

### **Compact Theory with Interposition and Nullification**

- What is compact theory?
- What is the compact theory? Where did it come from?
- Why do compact theorists hate the doctrine of implied powers?
- How did compact theory modify natural rights?
- Is the compact theory synonymous with confederacy?
- What issues today might be issues that lead some to advocate the compact theory?
- How did the Kentucky and Virginia resolutions relate to the compact theory?
- How are enumerated powers related to the compact theory?
- What are the doctrines of nullification and interposition?

*See also **Federalism, Civil War/Sectional Rivalries/Secession***

### **Civil War/Sectional Rivalries/Secession**

- How did southerners argue that the U.S. had ceased being a constitutional government?
- The south thought they had the Constitution on their side in the 1860's and the 1950's. Is there any merit to their claim?
- How do the following relate to pre-civil war sectional rivalry: tariffs, compromise of 1820 and 1850, and Kansas-Nebraska Act?
- How did the election of Lincoln relate to prewar sectional rivalries? Was the election of 2000 a sectional election?
- Would we have had the civil war without slavery in the U.S.?

- What was the Hartford Convention?
- Can the natural rights philosophy be used to justify secession? If so, how?
- Was the American Revolution a secession?
- Has conflicting loyalties been eliminated since the Civil War?
- How did the Dred Scott decision impact sectional rivalries?
- Was the election of 1860 a constitutional problem?
- If the Founders intended the government of the United States to be a "perpetual union," are we today bound by this intention? Can one generation bind all those who come after it?
- Suppose today a state wished to secede from the union. For example, suppose the vast majority of the people of Maine wished to join Canada. Should it be allowed to secede?
- If the first three words of the Constitution had been "We the States...", would the south have had a stronger argument?
- What did the Civil War solve?
- What was the purpose of the Civil War?
- How did implied powers enter into debate between the North and the South?
- How did Lincoln justify treating succession as rebellion?
- What were the requirements for states to get back into the Union?
  - What does it say about the status of states?
- Should principles from the Declaration of Independence have been an issue in the North South debates?
- What sectional differences do we see in our nation today?
- If we were to have a second civil war, upon what lines do you think that it would be fought?
- Did the South give their consent to the government? If so, do they not also to then follow the laws of the government?



- Did the *Dred Scott* decision lead to the Civil War? How did it given that it was a decision in favor of the South?
- Was it the Civil War or the War of Northern Aggression?
- Who was right, the North or South?
- Would John Locke have agreed with the North or the South in the debate over
- secession?
- Is secession consistent with the natural rights philosophy?
- Do you think Lincoln abused his power by pardoning the south?
- Was it the people on an individual level that broke free from Britain in the revolutionary war?
- In your opinion, when did the Union begin?
- How did tariffs impact sectional rivalries?

See also ***Right of Revolution, Federalism, Compact Theory, Slavery***

## **Slavery**

- What basic rights were in conflict in the *Dred Scott* case?
- Why were the principles of the Declaration of Independence used to fight against slavery?
- Was slavery a policy problem or a constitutional problem?
- Was slavery a necessary evil?
- What was the substantive rights aspect of *Dred Scott*?
- What was *Prigg v. Pennsylvania*?
- What was *Ableman v. Booth*?
- What problems conditionally were created by the fugitive slave clause in the constitution?
- What part of the *Dred Scott* decision is not controversial?
- How is the Northwest Ordinance related to slavery?
- What role did the 1808 clause play in the evolution of slavery?
- Can slavery be considered constitutionally possible?
- Would you have been an advocate of the 3/5 clause?

- What were the founder's views on slavery?
- Do you feel that we hold some of the Founders in too high of esteem, knowing their views on slavery? Why or why not?
- Explain why slavery was a political hot potato during the days of the Constitutional Convention.
- How do you explain Madison's practice of having slaves?
- Do you think that we should look upon George Washington with any less respect or admiration because he owned slaves?
- Should we judge historical figures by eternal standards, contemporary standards, or at the time standards? Explain.
- How do you explain Jefferson's claims, and his practice of slavery?
- Why didn't Washington speak out against slavery and more about the evils of slavery?
- In your mind, is Washington's image tarnished because of the fact that he held slaves?
- As an African American, can I look respectfully at Washington although he held slaves?
- Do you think that slavery would eventually have been outlawed by social reform stimulated through judicial review, or was it necessary that a war be fought to bring this about?

### **Civil War Amendments**

- Which civil war amendment is most significant?
- In your opinion, was the failure of the Civil War amendments due to the elected officials or private citizens?
- Are the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments a "refounding" period?
- Do you think that the civil war amendments were proactive or reactive?
- Which of the civil war amendments had the least impact on individual rights?
- Which non-Bill of Rights and non-civil war amendment had the greatest effect on individual rights?

- How has the 13<sup>th</sup> amendment been used in our history?
- Is the 14<sup>th</sup> Amendment more important than the 15<sup>th</sup>?
- Were the civil war amendments and the ideas they rested upon a second American Revolution?
- What “standards of personal liberty and civil rights” were these amendments [13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup>] intended to secure?
  - How effective were they when they were first adopted?
  - How effective are they today?

*See also 14<sup>th</sup> Amendment*

### **14<sup>th</sup> amendment**

- How has the Due Process clause of the 14<sup>th</sup> been used to expand the protection of individual rights?
- We talk a lot about equal protection and due process, what is the current status of the privileges and immunities clause in the 14<sup>th</sup> amendment?
- How has the Privileges and Immunities clause of the 14<sup>th</sup> been used to expand the protection of individual rights?
- Other than the 3 most talked about, what are the other clauses of 14<sup>th</sup> amendment?
- How did the fourteenth amendment change our concept of rights?
- Why does the 14th award those rights to persons, not citizens?
- Some people argue that the Bill of Rights is really the first 8 amendments to the Constitution and the 14<sup>th</sup> amendment. Do you agree or disagree? Why?
- Some have said we have had two constitutions, one before the 14<sup>th</sup> amendment and one after. Do you agree or disagree?
- In your opinion, did the 14<sup>th</sup> amendment change the Bill of Rights?
- How did the 14<sup>th</sup> amendment affect the balance of federalism in America?
- What would Jefferson (or Locke) have thought of unalienable rights and the 14<sup>th</sup> amendment where rights can be taken away with Due Process?

- Why was the treatment of African Americans important in determining the content of the Fourteenth amendment?
- Has the 14<sup>th</sup> amendment been abused to include other groups under its protections?
- What are the basic purposes of the 14th Section 1?
- What are the basic purposes of the 14th Section 2?
- What are the basic purposes of the 14th Section 3?
- What are the basic purposes of the 14th Section 4?
- What are the basic purposes of the 14th Section 5?
- How does section 5 of the 14<sup>th</sup> relate to federalism?
- How did the *Slaughterhouse* case hurt the protection of individual rights?
- What would the framers think of the 14<sup>th</sup> amendment?
- What are privileges and immunities? How are they related to Substantive Due Process?
- What is your school doing to meet the goals of the 14<sup>th</sup> amendment?
- Which do you think is a more important source of rights: the bill of rights or the 14th amendment?
- Do you think that the affect the 14th has had on our federal system has been positive?
- What 14<sup>th</sup> amendment issues would be raised by Internet voting?
- Do you think that the use of the 14th was a perversion of its original intent? Should the 14<sup>th</sup> amendment have only been applied to the blacks or was the use of it correct?
- What is the future of the 14th amendment?
- Is section 5 of the 14<sup>th</sup> an unlimited grant of power to congress?
- Is section 5 of the 14th amendment consistent with constitutional government?
- In your view does health care fall under the 14th amendment?
- Why is *Alden v. Maine* important in interpreting the 14<sup>th</sup> amendment?
- Does Section 5 of the 14<sup>th</sup> eliminate the Checks and Balance system?

- What factors in the late 19<sup>th</sup> and early 20<sup>th</sup> century help explain the shift from property rights to personal rights as the Court interpreted the 14<sup>th</sup>?
- Has the 14<sup>th</sup> benefited only certain groups?
- Why have we not used the Privileges & Immunities Clause of the 14<sup>th</sup>?
- How has the Citizenship clause of the 14<sup>th</sup> affected our Constitutional history?
- How has incorporation been important to interpreting the 14<sup>th</sup>?
- Would the Anti-Federalists' be in favor of the 14<sup>th</sup> amendment?
- How has the Due Process clause of the 14<sup>th</sup> been used to expand the protection of individual rights?
- How has the Privileges and Immunities clause of the 14<sup>th</sup> been used to expand the protection of individual rights?
- How did the civil rights movement use the 14<sup>th</sup> amendment?
- Do you think that the Congress that wrote the 14<sup>th</sup> Amendment would recognize it today? Is it over applied today?
- How does the 14<sup>th</sup> Amendment apply to native Americans living on reservations?

*See also Civil War Amendments, Incorporation, Equal Protection, Civil Rights, Affirmative Action, Due Process*

## **Incorporation**

- How did the incorporation doctrine develop?
- What of the Bill of Rights has not been incorporated?
- Why didn't we incorporate all the rights in the Bill of Rights immediately?
- How is incorporation related to Equal Protection?
- Explain the history of incorporation.
- Why was the incorporation process so late?
- What procedural rights have been incorporated? Which have not?
- How has incorporation been important to interpreting the 14<sup>th</sup>?

- Do you feel that incorporating the Bill of Rights through the 14<sup>th</sup> amendment is a legitimate constitutional principle or an abuse of the 14<sup>th</sup> Amendment? Explain.
- How has the Supreme Court's treatment of the Bill of Rights and incorporation evolved?
- What is selective incorporation?
- What is total incorporation?
- What have been the advantages and the disadvantages of the Supreme Court's approach to the incorporation of the Bill of Rights?
- Most of the due process rights have been incorporated. Are there some that have not been? What are these?
- Why was incorporation so slow?
- Has incorporation undermined anti-federalist desires to protect state sovereignty?
- Why is *Barren v. Baltimore* important to any discussion of the 14<sup>th</sup> Amendment?
- Summarize the incorporation debate between Justice Black and Justice Frankfurter in *Adamson v. California*. Whose view do you agree with?
- What guidelines should be used to determine incorporation of a right?
- Which theory relating to the incorporation is best supported by the history of the Fourteenth Amendment?
- What are the pragmatic reasons for favoring one or another theory relating to incorporation?
- Even assuming that a specific provision of the Bill of Rights is "fundamental to the American scheme of justice," should we apply every decision marking the outer limits of the federal right to the states?
- What evidence should we look to in determining whether a right is fundamental to the American scheme of justice?
- Whether history shows the right has always been respected? Whether history shows the right has been respected in recent times? Whether or not the vast majority of states have respected the right in question? What the framers and

ratifiers of the Bill of Rights thought about the right? Whether or not we can imagine a fair system of justice without the right in question?

- If the Fourteenth Amendment was intended to make the provisions of the Bill of Rights applicable to the states, it was the P & I Clause, not the Due Process Clause, that was meant to accomplish that. Is it too late for the Supreme Court to correct its error?

*See also Federalism, 14<sup>th</sup> Amendment, Due Process, Juries, Search and Seizure, Exclusionary Rule, Self-incrimination, Freedom of Speech and Expression, Freedom of Press, Freedom of Assembly, Petition, and Association, Freedom of Religion, Establishment of Religion*

## **Equal Protection**

- Is equal protection a right?
- Is equal protection the same as equality of condition? Explain.
- How is equal protection related to rule of law and due process?
- In our country's history detrimental discrimination has taken place. What steps, if any, should be taken to attempt to rectify that?
- The equal protection clause of the 14<sup>th</sup> applies only to the states. Is there a similar restriction on the federal government?
- Is profiling a legitimate form of discrimination?
- What equal protection issue was raised in the 2000 election?
- Is there an equal protection problem if most death row inmates are minorities?
- Explain how the Americans with Disabilities Act relates to the equal protection clause of the 14<sup>th</sup> amendment.
- Has equal protection lost its original meaning, with so many groups jumping under its umbrella?
- If some states do not have the death penalty, is it a violation of the equal protection clause?
- What evidence is there to show that America is returning to the middle aged idea of group rights? In your view, is this a good trend or not?

- Is race based districting a violation of the Equal Protection Clause?
- Is the Equal Protection clause rooted in the Magna Carta?
- On what basis may the government discriminate?
- Do you think that the equal protection clause should be interpreted to mean each school district spends on the same amount on students?
- Is health care an equal protection issue?
- Do you think that in a court of law a poor person of “the most despised race” with a public defender has the same protection as that of a wealthy person with a good lawyer?
- How does the equal protection clause express basic American political principles?
- What was the impact of *Brown II*?
- What was the importance of *Bolling v. Sharpe* (1954)?
- How are due process and equal protection related?
- What, if any, responsibilities are at the root of the equal protection clause?
- What is the difference between equality of condition and equality of opportunity?
- Why is *Caroline Products* footnote #4 so significant in the equal protection history?
- Is it reasonable to treat men and women differently when it comes to combat?
- What American values are expressed in the equal protection clause?
- Do you think inequality of condition is a serious problem in the U.S. today? If so, how could the problem be addressed?
- What role should schools have in promoting the value of equality?
- How is equal protection related to limited government?
- Explain how the due process revolution of the 1960s ensured the equal protection rights of the accused.
- Some have said the Civil Rights movement was simply the equal protection movement. Do you agree or disagree?



- Is equal protection consistent with the principles of limited government?
- Do we need an equal rights amendment for women?
- What are the roles for the 3 branches in ensuring Equal Protection issues?
- How does equal protection limit government actions?
- Is punishing religious organizations for advocating specific political candidates a violation of Equal Protection?
- How does the Equal Protection clause relate to the rights of the accused?
- Do indigents get the same treatment under the law as wealthy individuals?
- Does inequality of condition give some people a greater opportunity to enjoy their rights than others?
- Has the goal of integration ensured Equal Protection?
- How has the non-establishment clause of the first amendment been related to the Equal Protection clause?
- Is affirmative action a violation of the equal protection clause?
- Does the equal protection clause exclude any discrimination from taking place?
- Should school districts equalize their funding?
- Is Title IX constitutional?
- Are differences in health care an equal protection issue?
- What have been some recent attempts to end discrimination?
- Is the equal protection clause more important than the voting amendments?
- Is the Senate a violation of the equal protection clause?
- In *Plyler v. Doe*, the state of Texas argued that children of illegal aliens can be discriminated against. How do you feel toward this?
- Based on the 14<sup>th</sup> Amendment, what's your opinion of illegal aliens receiving the same rights as citizens? Why?

See also **14<sup>th</sup> Amendment, Scrutiny, Civil Rights, Affirmative Action**

#### **Scrutiny and Footnote #4**

- Explain the levels of scrutiny.

- What are "preferred freedoms"?
- Where did we get the concept of preferred freedoms?
- Why is Caroline products footnote #4 important?
- Why is Caroline Product footnote #4 so significant in the equal protection history?
- What are examples of groups that fall under each level of scrutiny?
- Why are women's claims of discrimination treated with mid-level scrutiny? Should they be first tier?
- Describe the levels of scrutiny used to evaluate discrimination cases. Do you agree with the standard?
- What are suspect classes of legal scrutiny?
- How do illegitimate children fit into the levels of scrutiny?
- What are the guidelines of scrutiny?
- What about the intermediate level?
- What about strict level?
- Do fundamental rights fit into scrutiny?
- Why does voting get strict scrutiny?
- Where do gays fit into the tiers of scrutiny?
- Which type of classifications are more likely to present a serious equal protection issue: overinclusive classifications or underinclusive classifications? Why?
- Identify as many legitimate reasons as you can for the classification involved in *Railway Express*.
- In identifying a justification for a challenged classification, should the Court consider (1) actual purposes for the classification, (2) all justifications now proffered by the state, or (3) all justifications proffered by the state plus those that the Court can dream up on its own?
- What level of scrutiny do you believe would be appropriate in the *Kotch* case? Could you argue that the classification burdened a fundamental right to pursue one's chosen profession? Does the fact that one's ability to become a Louisiana

riverboat captain turns on blood connections justify more than rational basis scrutiny?

- *Korematsu* is the only Supreme Court decision purporting to apply strict scrutiny that results in a challenged classification disadvantaging a racial minority being upheld. How do you account for the outcome of this case?
- Is *Skinner* better analyzed as an equal protection case or a substantive due process case? What about *Loving*?
- Can you hypothesize a situation today in which a classification disadvantaging a racial minority might be upheld?

See also *Equal Protection*

## **Civil Rights**

- What is a civil right?
- What were the goals of the civil rights acts passed following the Civil War?
- What is the emphasis of the Civil Rights Act of 1958?
- What is the emphasis of the Civil Rights Act of 1964?
- What is the emphasis of the Civil Rights Act of 1965?
- What is the emphasis of the Civil Rights Act of 1991?
- What was the Civil Rights Act of 1964?
- What was the Civil Rights Act of 1964? How has it been important in protecting rights?
- Was the Civil Rights Act of 1964 “appropriate legislation”?
- What court cases have been generated by Congress’s actions in passing civil rights legislation?
- What is the difference between a constitutional right and a civil right?
- Are civil rights more important than political rights?
- What are some laws passed by Congress to end discrimination?
- As a student, should your civil rights be as protected as an adult’s should?
- What civil rights or political rights do you exercise most often?
- In your view, which is the most important civil or political right guaranteed in the Constitution?

- What are civil rights and what are civil liberties?
- What is the difference between civil rights and civil liberties?
- How was the commerce clause used to expand civil rights? [Article I, Section 8, Clause 3: (Congress shall have power... to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.)]
- What is the difference between natural rights, civil rights and political rights?
- What have been some recent attempts to end discrimination?
- Should discrimination on the basis of sexual preference be deemed unconstitutional?
- Should a person look to the federal or state government for protection of civil rights?
- Has our federal design helped or hindered protection of civil rights?
- What role do political parties play in preserving civil rights?
- What role do political action committees play in preserving civil rights?
- Is discrimination always a violation of civil rights?

See also *Civil Rights Movement, Political Rights, Civil Liberties, and Connections to Civil Rights*

### **Affirmative Action**

- What is affirmative action?
- What is your view on affirmative action, and has it been successful?
- Are affirmative action policies more Lockean or Classical Republican?
- Was *Bakke* a good or a bad decision?
- Why do we still debate affirmative action since *Bakke* was so long ago?
- What is meant by reverse discrimination?
- Is affirmative action a violation of the equal protection clause?
- How did affirmative action programs begin?
- What forms of affirmative action are acceptable?
- What forms of affirmative action are unacceptable?

- Has affirmative action hurt whites?
- What have been some recent attempts to end discrimination?
- Would Martin Luther King be an advocate of affirmative action?
- In your opinion, is affirmative action a constitutional principle?
- Name three government contract cases. What does each of them say about affirmative action problems?
- What do you think of the *Gratz* and *Grutter* cases?
- How do you think *Gratz* and *Grutter* will impact affirmative action in the future?
- In what venues do you think affirmative action is most appropriate?
- How should we evaluate discrimination between racial minorities? For example, what if an affirmative action program for school admissions were to extend preferences to blacks and Hispanics, but not Native Americans?
- How should a court evaluate a claim of discrimination by someone complaining of exclusion from a protected class? For example, if a school admission program classified someone with two black grandparents as "black," but someone with one black grandparent as "white," could the student classified as white support a claim of unconstitutional discrimination? What standard of review should apply to such state line-drawing?
- Which of the various state interests alleged by California in the *Bakke* case seem the most compelling to you: (1) remedying past societal discrimination, (2) increasing the number of minorities in the legal profession, (3) increasing legal services for underserved populations, or (4) increasing diversity in the classroom? Do you agree with Justice Powell's analysis with respect to whether UC-Davis's classification was a narrowly tailored means of serving the various interests alleged?
- Is Justice Powell's opinion in *Bakke* "the law"? Why or why not?
- Should "benign" racial classifications be subject to strict scrutiny or, as the four dissenters in *Bakke* argued, intermediate scrutiny?
- Does the *Bakke* court hold that more qualified applicants have a right to admission ahead of less qualified applicants?

- Is it the job of a lower court to predict how the Supreme Court might decide a case today, or should it apply existing Supreme Court case law even when it thinks the current Court would reject it?
- Is your view of the correctness of the Court's result in *Croson* at all affected by the fact that five of the eight city council members voting on the Richmond set-aside program were black--including five of the six "yes" votes?

See also **14<sup>th</sup> Amendment, Equal Protection, Scrutiny and Footnote #4**

## **Civil Rights Movement**

- How did the civil rights movement use the media to its advantage in order to achieve its goals?
- How did Southern leaders restrain leaders of the Civil Rights Movement from exercising their first amendment freedoms?
- How did the civil rights movement use the church to its advantage in order to achieve its goals?
- Who were the leaders of the civil rights movement?
  - Where did they come from?
- What competing philosophies and tactics were there in the civil rights movement?
- Which tactics or methods used in the civil rights movement do you think were the most effective?
- Why do you think that many civil rights leaders focused on schools in their struggle for Equal Protection?
- What were some factors that led to the civil rights movement of the 50's and 60's?
- Which has been more important to the expansion of rights; the Supreme Court, the actions of individuals, or legislation?
- On what basis was *Plessy v. Ferguson* decided? How did they justify their decision? What effect did that have on the civil rights movement?
- Which was most important to the Civil Rights Movement: class, Judeo-Christian tradition, or natural rights theory?

- Some have said the Civil Rights movement was simply the equal protection movement. Do you agree or disagree?
- The south thought they had the Constitution on their side in the 1860's and the 1950's. Is there any merit to their claim?
- How did the civil rights movement use the 14<sup>th</sup> amendment?
- How did the civil rights movement use the 15<sup>th</sup> amendment?
- What ideas do you think most influenced the Southern Christian Leadership Conference (SCLC) in the struggle to eliminate racial discrimination? How did nonviolent direct action help achieve the goals of the civil rights movement?
- How would you compare the importance of the federal government with citizen groups in achieving the goals of the civil rights movement?
- Do you believe that the rights of some American citizens are not sufficiently protected today? If so, how should citizens respond?

*See also **Civil Disobedience**, **Civil Rights***

## **Civil Disobedience**

- What is civil disobedience?
- Can government ever exercise civil disobedience?
- Is running a stop light an example of civil disobedience?
- Constitutionally, when does civil disobedience end and violent revolution begin?
- Should there be limits to civil disobedience? If so, what?
- What limits, if any, should be placed on protests that use civil disobedience?
- Does the right to revolution fall under civil disobedience?
- Do you think that Malcolm X's tactics were as successful as Martin Luther King Jr.'s or less so? Why?
- Why is Henry David Thoreau important when discussing civil disobedience?
- Why is Gandhi important when discussing civil disobedience?

- Why is Rev. Dr. Martin Luther King Jr. important when discussing civil disobedience?
- Is civil disobedience ever enlightened self-interest?
- Is civil disobedience consistent in representative government?
- Is the voiding of the right to vote a form of civil disobedience?
- Does civil disobedience lead people to think themselves above the law?
- How has civil disobedience been used to ensure the rights of individuals?
- Do you think that there are any laws today that are unjust?
- Do you think that civil disobedience is effective? Give examples.
- Is the murder of an abortion doctor civil disobedience? Why or why not?
- Were the Seattle protests outside the WTO meeting legitimate?
- What are been some recent examples of the proper use, in your opinion, of civil disobedience?
- Do you agree with Martin Luther King's theory of civil disobedience?
- How have minorities used civil disobedience?
- Cite examples of civil disobedience in the 1950s.
- Cite examples of civil disobedience in the 1960s.
- Cite examples of civil disobedience in the 1970s.
- Cite examples of civil disobedience in the 1980s.
- Cite examples of civil disobedience in the 1990s.
- What role has civil disobedience played in our periods of war?
- How does civil disobedience apply to established law and/or natural rights?
- What is the relationship between the doctrine of civil disobedience to the natural rights philosophy?
- What is the relationship between the doctrine of civil disobedience to the natural law philosophy?
- How does one determine if a law violates the higher law?
- What is the difference between direct and indirect civil disobedience?
  - Please give an example of each.



- Is one more legitimate than the other?
- What current dissenters will we admire in years from now?
- Is civil disobedience possible in a nation committed to love of the law?
- What role does the media play in civil disobedience?
- Civil disobedience was part of the strategy of those seeking woman suffrage and civil rights and is still used by certain groups. Should there be limits on civil disobedience? If so, what should they be?
- Can violence legitimately be part of civil disobedience? Why or why not? What might be the consequences for society if violent civil disobedience is considered legitimate?

### **Political Rights, Civil Liberties, and Connections to Civil Rights**

- What civil rights or political rights do you exercise most often?
- In your view, which is the most important civil or political right guaranteed in the Constitution?
- Are civil rights more important than political rights?
- What is the difference between natural rights, civil rights and political rights?
- What are civil rights and what are civil liberties?
  - What is the difference between the two?
  - Is there overlap between them?
- How has congress used section 5 of the 14<sup>th</sup> to protect civil rights? Political rights?
- Is congress more effective than the court in protecting civil or political rights?
- Should felons have some political rights?
- Should legal aliens have some political rights?
- Are civil rights more important than political rights?
- Could women have claimed to be guaranteed civil rights without political rights?

- How do civil and political rights differ for resident aliens?
- Can civil and political rights be limited?
- Would you be in favor of extending political rights to children? If so, which ones?
- How do you exercise your political rights in everyday life?
- In your opinion, should political rights be expanded further?
- Does equally protecting a political make it a civil right?

## **Education**

- Is education a right today in America?
  - If yes, then where do we get that right?
  - If no, then should it be?
- What roles should schools play in teaching democracy?
- How is the Northwest Ordinance related to education?
- How can schools promote the spirit of the law? Has the spirit of the law been promoted through your school?
- Should morals be taught in schools?
- Are service projects in school curriculums teaching morals?
- With the trend in Public Education towards moral education, what role does it play in the common good and civic virtue?
- Is education a public or private concern?
- Can we teach civic virtue in our schools today? Was it different during the time of the Founders?
- What is your opinion of school vouchers? (Both for public as well as private schools)
- Where in the U.S. has the voucher system been attempted, and how is it working out?
- What would Thomas Jefferson say about the importance between education and political participation in a democracy?

- In your opinion, should education be addressed at the federal, state, or local level? In other words, who should have the most say in a student's education?
- Is education a public or private interest?
- Is education a property related right?
- Is education an Equal Protection issue?
- Should there be a uniform national curriculum?
- Is there such a thing as common virtues that all schools should teach?
- Should schools have mandatory community service as a part of the curriculum?
- Are children wards of the state, or wards of their parents?
- What is the difference between a right and entitlement?
- Would making students do community work increase political participation?
- What do you think are the causes of political apathy?
- Are schools the right place to teach political participation?
- Is education related to the general welfare clause?
- Should the right to education be discovered in the 9<sup>th</sup> amendment?
- Do you consider education a negative right or a positive right?
- Should providing education for people fall under a protection clause?
- The issue of education is largely a state issue. Do you think that it should stay that way, or should the federal government take control of it?
- How do you decide where the money for school districts should be divided up? Should the money raised in one district go to that district, or should it be divided another way? Why?
- Is there a difference how a classical republican and a natural rights philosopher would respond to the idea of a constitutional right to an education?

- Today in Missouri there is a debate over whether we should bus students in from the city. Do you think that we should continue this desegregation program?
- Classical republicans maintain that moral education is necessary. Why did they take this position? Would you agree or disagree with this?
- Where is moral education to take place?
- So is moral education the province of our public school system? Or should it extend out into other aspects?
- How can schools help in citizenship?

## **Voting**

- Is the amount of voters more important than the equality of votes?
- Should voting be mandatory?
- Would mandatory voting violate any rights?
- Would mandatory voting encourage ignorant or random voting?
- Voting is compulsory in many democratic countries. What do you think of this? Would you favor compulsory voting? Why or why not?
- Should we fine citizens who don't vote?
- Are compulsory voting laws consistent with Lockean principles?
- What is the danger in not having stupid voters going to the polling places?
- Should there be an intelligence test for voting? Would that be constitutional? Legal?
- Should we have a literary test for voting, and in what language?
- How has registration impacted the vote?
- In your mind, is voting a right or a responsibility? How would Jefferson have viewed it?
- Should the voting age be lowered, or raised or held the same?
- Should the vote be given to resident aliens?
- Should we prohibit felons from voting?
- Should the federal government meddle in voting procedures of state and local governments?

- In what ways can non-voting members of society be protected in their rights?
- Some have said that in the ballot booth the rich and poor are equal. Do you agree or disagree?
- Are voting and Civic Virtue related?
- Do you think the Electoral College affects voter turnout?
- Some states have tried voting by mail to increase participation? Does this increase participation? Would you favor or disfavor voting by mail?
- How wide spread is mail in voting?
- Is it our duty as a citizen to vote? Would the Internet facilitate that?
- Is it our duty as a citizen to be an informed voter? Would the Internet facilitate that?
- What would be the benefits of people being able to vote over the Internet?
- What would be the potential problems of allowing people to vote over the Internet?
- Is the voiding of the right to vote a form of civil disobedience?
- Is voting a right, a responsibility, or a privilege?
- Would you be in favor of a tax break given to those that vote? Why or why not?
- Is it bad that so few vote? Is it to our advantage to have only those who care enough about the country or the issues to take the time to go out and vote? How does this affect special interest legislation?
- Is it the government's duty to encourage voting?
- What are some factors that have caused voting expansion?
- What are some factors that have caused voting contraction?
- In your opinion which is more effective, voting or speech?
- Voting age in the U.S. is not necessarily the same as it is throughout the world (ages range from 15 - 21). Would you favor or oppose changing the voting age, or would you favor some other means of determining when people should begin voting?

- Why do you think the 18-24 year old group votes so little?
- If voting is so important, why do 18-24 year olds, not vote much?
- What would you do to increase the turnout rates of 18-24 year olds?
- Describe the media's role in our system of voting?
- What groups of people today are not allowed to vote? Do you think that this is fair?
- Do you think America is "Virtual Representation" free?
- What are the statutory protections on the right of suffrage?
- What are some factors affecting voter turnout?
- What do you think of on-line voting?
- Is voting related to consent? To what degree?
- Should long time legal aliens be disenfranchised?
- Is campaign finance reform a good way to democratize our voting?
- How is registration a factor in voting trends?
- Some would say that the 1<sup>st</sup> amendment is more important to protect liberties than the vote. Would you agree?
- Why is voting down so much in the younger generation?
- After elections, do you have any responsibilities to watchdog your representatives?
- What responsibilities do you have to inform yourself as a voter?
- Are there good sources and bad sources to use to inform yourself?

*See also **Voting Rights, Redistricting, Elections***

## **Voting Rights**

- Does everyone have the right to vote? Who does not?
- Where is the right to vote in the Constitution?
- Is voting a fundamental right?
- Why is voting considered a fundamental right if it is denied to aliens? How do you reconcile this?
- Why do you think that voting was not seen as a fundamental right at the birth of our nation?

- Other than voting, what would you consider a fundamental right?
- Do Americans have the right not to vote? Is the right not to vote inherent in the social contract?
- Where did we get the concept of one man, one vote?
- Would you rather have the right to vote or good representation?
- Should 16 year olds be given the right to vote?
- Why does voting get strict scrutiny?
- How have voting rights been expanded in our history?
- Why was the struggle for women's suffrage so difficult?
- Are there limits on federal statutory protections of voting rights?
- What roles do wars play in voting rights?
  - Revolutionary War?
  - Civil War?
  - WW II?
  - Vietnam?
- What were the constitutional issues in *Bush v. Gore*?
- Will the *Bush v. Gore* decision cause vast changes in elections?
- How did *Baker v. Carr* alter the question of voting?
- How did *Reynolds v. Sims* alter the question of voting?
- Explain why the *Happersett* decision is important to voting.
- How did the *Bush v. Gore* decision have a possibly large impact on the issue of voting?
- Which voting amendment is the most important?
- Why do we have the 26<sup>th</sup> amendment?
- Does the 24<sup>th</sup> amendment affect voting?
- What 14<sup>th</sup> amendment issues would be raised by Internet voting?

*See also Voting, Redistricting, Elections*

## **Redistricting**

- How does districting affect voter power?
- How has districting been done to minimize the impact of certain voters?

- What is cracking and what is packing?
- In the 1990s there were some race-based districts created in Georgia. Is this policy a good way to get voters to the polls?
- Is creative race based districts a proper way to ensure the voice of minorities in government?
- Should states have to submit districting plans to the Federal Government for approval?
- Why is *Gomillion v. Lightfoot* important in the history of districting?
- Is race based districting a violation of the Equal Protection Clause?

See also ***Voting, Voting Rights, Elections***

## **Rights**

- What is a right?
- What are positive and negative rights?
- Did the Magna Carta change our view on the philosophy of rights?
- Other than voting, what would you consider a fundamental right?
- Are there any rights off-limits to government action?
- What were the differences between rights of Englishmen and Natural Rights?
- What rights were most important to the Founders?
- Was the Declaration of Independence a document based in natural rights, or English Rights theory?
- Should corporations have rights like people?
- How does the natural rights view on rights differ from the classical republican's view on rights?
- What are socio-economic rights?
- Why does the U.S. not recognize socio-economic rights?
- Should our Bill of Rights be expanded to include socio-economic rights?
- Were there any rights left out of the Bill of Rights?
- What is the difference between rights and entitlements?



- What is the difference between natural and constitutional rights?
- What is the difference between positive and negative liberty?
  - How does that idea influence a nation's attitudes about rights?
- Is negative liberty still relevant?
- Is negative liberty an outdated idea?
- Could women have claimed to be guaranteed civil rights without political rights?
- Is revolution a right?
- Do we have more or less rights than we did at the founding of the nation?
- Are rights absolute?
- Explain how at certain times in our history, specific rights have been emphasized over others.
- Is education a right today in America?
  - If no, then should it be?
- What is the difference between natural rights, civil rights and political rights?
- Are human rights the same things as natural rights?
- Has our evolving concept of rights been a good or a bad thing?
- Is our rights evolution similar or dissimilar to the English evolution of their constitution?
- Should education be considered a right in America? Why or why not?
- Should health care be considered a right in America? Why or why not?
- In your opinion, is it a violation of people's rights to outlaw smoking in bars and restaurants in the state of California? Why or why not?
- Should we have a bill of responsibilities?
- Do we emphasize rights too much?
- Should rights be evaluated in relationship to the standards of the community?
- Is there a right to be left alone?
- Are group rights a threat to our traditions?

- Did FDR's Four Freedom's speech clarify or confuse our ideas of rights? Did it modify it?
- Should we further explore the meaning of the 9<sup>th</sup> amendment?
- How would you explain the fact that most constitutions and Bills of Rights written today are based in the positive theory of rights?
- Do all Americans have a right to decent housing?
- Do all Americans have a right to a decent wage? Education?
- Do all Americans have a right to decent health care?
- Which of the changes taking place in modern America present the greatest challenge to our constitutional rights?
- I am Zorg, an alien overlord that has taken control of the Earth. You may keep one right. What right do you wish to keep?

### **Freedom of Religion**

- What are the philosophical bases of the 1<sup>st</sup> amendment?
- Why did the Bill of Rights stress freedom of religion and forbid the establishment of religion? How is freedom of religion protected today?
- Why was freedom of religion included in the Bill of Rights? Do you think that this was necessary? Explain.
- What, if any, limitations should be placed on the freedom of religion?
- Is there any down side to having religious organizations involved in politics?
- Are you limiting free exercise if you restrict religious groups from participating in the political process? Is this right or not?
- The U.S. Supreme Court has ruled that although adults can refuse certain medical care for religious reasons, they may not keep their children from receiving medical care when the child's life or health is at stake. Do you agree with the Court's ruling? Why or why not?
- In what situations may someone's free exercise of religion be limited? On what basis would that be decided?

- What societal interests does the court have to balance with the right to free exercise?
- Are there limits to the practice of the extreme practices of religion?
- Some people believe that the first amendment should be read as freedom from religion rather than freedom of religion. Do you agree or disagree with this and why?
- In what issue areas have freedom of religion cases come up most often in the last half century?
- Should prisoners be allowed to freely exercise with minimal interference by the state?
- Should radical Muslims be afforded the same freedoms? Other religions?
- Can I pass out religious literature in a mall?
- How might state action impose limits on my right to freely exercise? (*Bob Jones v. U.S.*)
- What is a purpose and effect test? Should both be looked at in any free exercise test?
- Are the constitutional restrictions on religious practices approved by the Supreme Court too restrictive or not restrictive enough?
- Sherbert is a very liberal test, Smith a very conservative test. Where do you think the test should be, and what should it be like?
- Does the "compelling state interest" standard shift over time?
- What interests of society are an issue in the following instances: a) forced vaccinations, b) mandating education laws, c) drug testing, d) zoning, e) taxation, f) not allowing religion in schools, and g) limiting religious rallies... Why might these be violations of someone's Free Exercise Rights?
- What are the differences between the freedom to believe and the freedom to practice?
- Should students be allowed to freely exercise their religious convictions at school? What if it's hate speech?
- Would *Reynolds v. U.S.* be decided differently today?

- Why is *Cantwell v. Conn.* so important in free exercise history?
- Why is *Smith v. Oregon* so important in free exercise history?
- What was the Religious Freedom Restoration Act?
- Explain the strict scrutiny rule as it applies to religious exercise.
- Could a Christian fundamentalist claim to have a constitutional right to freely exercise by not being forced to be in biology class in a public school?
  - How about exemptions out of a literature class?
- Does *Santa Fe v. Doe* violate your free exercise?
- Should students exercising their religious convictions be tested under speech principles? Press principles?
- How has diversity complicated our understanding of the free exercise clause?
- Does the freedom of religion mean freedom from religion?
- Cite the cases that relate to the health of the community when it conflicts with religious exercise?
- Cite the cases that relate to the safety of the community when it conflicts with religious exercise.
- Should students be required to pay student fees if those fees are used in violation of their conscience? (On the university level)
- Do parents have the right to deny medical treatment of their children on religious grounds?
- Do parents have the right to not send their children to school on religious grounds?
- Do you agree that the text of the Free Exercise Clause suggests that it protects religiously-motivated conduct as well as beliefs?
- Is the Court's conclusion in *Smith* that the law imposes no limitations on government's ability to enforce criminal laws of general applicability consistent with the framers' original understanding? Why did the Court in *Smith* pay so little attention to the historical record on this matter?

- *Yoder* holds that the Amish are exempt from state compulsory education laws because public education beyond a certain age threatens the religious values of the Amish. Does this case suggest that Christian Fundamentalists have a free exercise right to be exempted from, say, biology classes in which evolution is taught or requirements in a literature course that they read religiously-objectionable works?
- After *Smith*, it would be possible for a state to prosecute a priest or minister who offers communion wine for distributing alcohol to a minor. Is such a prosecution likely to occur? Why not? Does this suggest that the real losers in *Smith* are religions that have relatively few adherents, and especially those that are unpopular?
- What in the Constitution supports applying a different and more deferential standard when it is a military regulation, rather than a civilian regulation, that is alleged to impinge upon constitutional liberties (as the Court suggested in *Goldman*)? Would it be better to apply the same standard, recognizing (of course) that national security is an interest of the highest order?
- *Lukumi Bababu Aye* holds that government may not target a religious practice for prosecution. Suppose a state were concerned about a religious sect that practiced the handling of poisonous snakes in its worship services. How might the state draft a law that would avoid the constitutional problems that Hialeah encountered with its law attempting to deal with animal sacrifice?
- What do you think about the argument of Justice Stevens in the *Boerne* case: that to grant the Catholic Church an exemption from zoning laws that would not be given to a non-religious institution violates the Establishment Clause? How would you resolve the tension between the Free Exercise Clause and Establishment Clause?
- Justice Scalia argues in *Smith* that an honest application of the compelling state interest test in free exercise cases involving neutral laws would lead to anarchy and chaos, with religions of all sorts getting exemptions from a wide variety of laws and programs. Is he right? Has the Court been using a "watered down" compelling state interest test in free exercise cases?

- If the compelling state interest test were to be applied in *Smith*, would Oregon have been able to satisfy it? How strong is the state's interest in prohibiting the use of peyote in the religious ceremonies of Native Americans?
- The Religious Freedom and Restoration Act of 1993 passed in the Senate on a vote of 96 to 3. Does that vote suggest that support for the weakened free exercise test of *Smith* is diffuse at best?
- Could you suggest a way in which Hialeah could redraft its ordinances to effectively prohibit animal sacrifice *without* violating the Free Exercise Clause or criminalizing widely accepted forms of animal killing?

See also *Establishment of Religion, Free Exercise and Establishment Conflict or Religion in General*

## **Establishment of Religion**

- Why did the founders believe in the Separation of church and state?
- In what ways was the requirement of a religious test for office-holding related to the ideas of both the classical republicans and the natural rights philosophers?
- What are the philosophical bases of the 1<sup>st</sup> amendment?
- Should public money be used for religious schools?
- What does the “wall of separation” metaphor mean?
- Do national religions serve as instructors of civic virtues?
- How can we have civic virtue with a separation of church and state?
- Where does the idea of separation of church and state come from?
- What are three views of establishment? Cite a case that correlates with each view.
- Is it constitutional for a township to put religious symbols on public display?
  - What about public officials?
- What issues regarding free exercise and the establishment of religion have involved schools? How would you decide these issues?
- Nations such as Britain and Sweden have established churches, yet they

maintain freedom of religion. In light of this fact, is the provision of the first amendment against an establishment of religion important? Why or why not?

- Explain what the Lemon test is. Do you think that this should be the standard when dealing with 1<sup>st</sup> amendment religious issues?
- What is your opinion of the Court's decision in *Santa Fe v. Doe* making it illegal to hold a public pray before sporting events at public schools?
- Should voluntary prayer in public schools be constitutional? Why or why not?
- Where do you draw the line in aid to parochial schools?
- What alternatives for establishment tests have been suggested?
- Could a local school board require a teacher to teach creationism as an alternative to evolution?
- Do you agree with Jefferson's wall of separation?
- Is it permissible for a group of players to get together before a game and pray?
- Is it permissible for a group of people from the crowd to get together and pray before a game?
- What arguments, in addition to the constitutional argument, can you make for the separation of church and state?
- Should government aid be given to schools that discriminate against individuals?
- Should university funds be given to Christian campus groups?
- Why is it that prayer is unconstitutional in public schools, but allowed in the legislatures?
- Should prayer in schools be allowed? What guidelines should be used?
- In what issue areas have establishment of religion cases come up most often in the last half century?
- Why did the Founders fear government and church interaction? Historical reasons?

- What has the court ruled about Nativity Scenes and other such displays on public grounds?
- Do you think that a program of school vouchers, that could give money to religious schools, would be constitutional?
- Share a city or two that is currently using school vouchers and explain whether the system is working or not.
- If you were to create a constitutional test for deciding free exercise cases, what would it be?
- What are the different views of the establishment clause? How are those views related to government assistance to schools?
- How has our immigration history impacted our view of the establishment clause?
- Does passing laws that encode a certain religion's morality into law violate the establishment clause?
- The Northwest Ordinance declares, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Does this conflict with the ideas set forth in the 1<sup>st</sup> amendment?
  - (Recall that the Northwest Ordinance preceded the 1<sup>st</sup> amendment, and was readopted by the same Congress that passed the 1<sup>st</sup> amendment.)
- Social critic Charles Krauthamer suggests that American Civil Religion consists of three major tenets: (1) belief in a Just Providence (whether "God" or not), (2) the sanctity of the social contract (our rights and obligations as citizens), and (3) tolerance of dissent. In his view, any practice that promotes any of these three tenets (including, for example, school time for silent meditation) should be constitutional. Do you agree?
- If it were to be satisfactorily demonstrated that a majority of those voting to propose and ratify the First Amendment had a narrow view of the application of the Establishment Clause, should the Court reverse course and overrule many of its established precedents in this area?



- What do you think about the suggestion made by Professor Laurence Tribe and others that "religion" should be given two interpretations--a narrow one for Establishment Clause purposes and a broad one for Free Exercise Clause purposes?
- Is it consistent with the intentions of the framers to call every law that has the primary purpose of advancing religious beliefs a violation of the Establishment Clause?
- Is it a violation of the Establishment Clause for a biology teacher to discuss with her students the reasons that she believes in "intelligent design theory" (the theory that holds the universe was the product of the conscious design of a Creator)?
- Is it a violation of the Establishment Clause for a biology teacher to tell his students "the story of creation in Genesis is hogwash and here's why"?
- If a State Education Board decides to drop evolution from the list of courses it requires to be taught in public schools, does that decision violate the Establishment Clause?
- May a biology teacher be fired, on competence grounds, either for teaching creation science or for not teaching evolution?
- Is the desire of state or school board officials to avoid entanglement in a primarily religious controversy a "secular purpose"?
- May a school system allow Fundamentalists to opt out of classes in which evolution is discussed? Would that be a good solution to the controversy?
- Would a voucher program be constitutional in a district where there were **no** private, non-religious schools? What if 49 of the private schools in the jurisdiction were religious, and only one was not?
- Would a voucher program be constitutional if lawmakers supporting the program argued, "This is a good way of getting more kids into schools with religious training, and that's a good thing"?
- Would direct government aid to all private schools, as opposed to a voucher program, be likely to be upheld after *Zelman*? Why or why not?

- Would a voucher program for private **colleges** be constitutional? Are there reasons for possibly treating a program that aids private college students differently than one that aids private elementary or secondary school students?
- Should it be constitutional to exempt church property from the payment of real estate taxes, a common practice? Such exemptions were upheld by the Court in *Walz v Tax Commission of New York* (1970). Sunday closing laws have an especially severe impact on persons (such as orthodox Jews or Seventh Day Adventists) who, for religious reasons, feel compelled to close their retail establishments on Saturdays. How should that fact be evaluated in *McGowan*?
- If Seventh Day Adventists controlled a state legislature and repealed Sunday closing laws and enacted Saturday closing laws in their place, would we have a constitutional violation?
- In evaluating a law for evidence of a secular purpose, should we focus on the original purposes of the law, or all purposes that now support the law? Purdy's no-dancing rule (involved in *Clayton*) was maintained because of pressure from conservative local ministers and religious groups. Should that fact be sufficient to establish an establishment clause violation, or should the students and parents challenging the rule also have to establish that there are no significant secular justifications for the dancing ban? Doesn't the Eighth Circuit's decision in *Clayton* only make sense if it *rejects* the district court's finding that the Board's non-religious justifications (economic, educational, and moral) for the rule were "not credible"?
- If the Court in *Marsh* applied the Lemon test, would the practice of beginning legislative days with prayers be constitutional? Do prayers serve the secular purpose of solemnizing legislators and making them think about ethical and public policy considerations that ought to guide their deliberations?
- What response is their to Justice Rehnquist's point in his dissent in *Larkin* that if churches use the Massachusetts zoning law to favor liquor licenses for members of their own congregations, the Court could step in at that time to find a violations of either the Equal Protection or Establishment Clause--but until that happens their is no justification for disturbing the law?

- Do *all* delegations of legislative power to private entities pose serious constitutional questions?
- *Lynch* and *Allegheny County* are both 5 to 4 decisions, but come out differently on whether government placement of a crèche in a public space constitutes an establishment. The only justice to be in the majority in both cases was Justice O'Connor. What seems to be the key difference between the two displays for Justice O'Connor?
- Why do Allegheny's poinsettias not save its crèche the way the talking wishing well and plastic reindeer did for Pawtucket? How does a judge decide what "adds to" and what "detracts from" a possible message of endorsement?
- If Allegheny County's menorah stood next to an 8-foot Christmas tree would it have withstood constitutional challenge? Does the display suggest to you a "salute to religious liberty"? Would the salute be clearer if Allegheny County added a giant Buddha such as the Taliban blew up in Afghanistan?
- Taken together, *Lynch* and *Allegheny County* suggest a Court obsessed with trivial matters such as the presence or absence of plastic animals, but can you suggest a better line to draw?
- Should *Allegheny County* come out differently if the county put a large sign next to the crèche: "The County does not intend by this display to suggest any endorsement of Christianity"?
- Is a December music program in a public school constitutional if all the songs are religious and pertain to Christmas? Is the program saved by adding "Frosty the Snowman"?
- What message was the KKK trying to send by displaying its cross in *Capitol Square*? Do you see the case as raising Establishment Clause issues?
- Analyze the constitutionality of the Republic, Missouri seal and the Ten Commandments plaque on the County Courthouse in Pittsburgh.
- Do you agree with the Court's view in *Widmar* that religious worship should be treated as a form of "speech" for purposes of First Amendment analysis?

- Could a university choose to prohibit all student groups from using university facilities? Could it limit use to groups with missions directly relating to the university's curricular goals (e.g., math clubs, Spanish clubs, etc.)?
- Do you see a sound basis for distinguishing the direct state funding for the student Christian magazine, involved in Rosenberger, from the provision of student meeting space for a Christian student organization involved in Widmar? Does it matter that the magazine has, as one of its goals, recruiting of new student members?
- How important is the history of the policy involved in the Santa Fe case-- especially the fact that the initial policy specifically referred to "prayer" before the football games?
- Is it a violation of the Establishment Clause for a football coach at a public university to lead a voluntary prayer for players before the game?
- Is it permissible for a group of players, on their own, to gather in a locker-room before the game and pray?
- Is it permissible for members of the crowd at a football game to plan to sing hymns and recite prayers before a football game? Does it become a constitutional violation if a school official, using the PA system, decides on his own to join the crowd in their hymn-singing and prayer?

*See also **Freedom of Religion, Free Exercise and Establishment Conflict or Religion in General***

## **Free Exercise and Establishment Conflict or Religion in General**

- What is a religion?
- Why does the first amendment distinguish between free exercise of religion and the establishment of religion?
- What is the protection afforded to a person who does not believe at all in the first amendment? Are they protected from the use of the word God?
- What methods should we use to clear up the problem between the 1<sup>st</sup> Amendment and the free exercise of religion?

- Why did the Bill of Rights stress freedom of religion and forbid the establishment of religion? How is freedom of religion protected today?
- Why was freedom of religion and a ban on establishment of religion important to the founders?
  - What experiences with the British brought that on?
  - What experiences in the colonial era brought that on?
  - What experiences under state governments brought that on?
  - What was the philosophical basis for these two clauses?
- What is your response to those that maintained that America was a “Christian nation”?
- Discuss some modern day conflicts between the establishment and the free exercise clauses of the first amendment.
  - How does the court resolve such conflicts?
- Should a Congressman be allowed to speak in religious terms on the floor of the House?
- Does the tax code favor or burden religion?
- How are the religious clauses connected to the right of assembly and speech?
- In your view, was it appropriate for the Black Panthers to push for constitutional rights in the context of their church?
- Should restrictions be placed on religious organizations from telling voters how to vote? Should their tax exemption be revoked if they do?
- Should churches be required to conform to zoning laws?
- Is the anti-abortion movement religious or political?
- Which type of morality (public/private) do you feel is most important to America today?
- How do you feel about politicians invoking God in their speeches?
- Are the constitutional restrictions on religious practices approved by the U.S. Supreme Court too restrictive, not restrictive enough, or about right? Explain your position.

- What were the founder's attitudes towards establishment and free exercise?
- In what issue areas have religion cases come up most often in the last half century?
- What issues regarding free exercise and the establishment of religion have involved schools? How would you decide these issues?
- Does the religious test clause in the constitution relate to one or both of the 1<sup>st</sup> amendment religious clauses?
- Explain the Equal Access Act of the 1980's. Is it an attempt to balance the two religious clauses?
- Explain the disestablishment controversy in Virginia in the 1780's.

### **Freedom of Speech and Expression**

- What are the philosophical bases of the 1<sup>st</sup> amendment?
- Some would say that the 1<sup>st</sup> amendment is more important to protect liberties than the vote. Would you agree?
- Are there any limits on expression?
- When are time, place manner restrictions appropriate?
- In your mind, what is the most important freedom of expression case that the court has ruled on to date, and why?
- List the most important landmark freedom of expression cases relating to high school students, in your opinion.
- The rights of students in high schools are different because it is the school's job to promote an effective environment for learning. Does or should this apply to colleges as well?
- Oliver Wendell Holmes said, "The right to swing my fist ends where the other man's nose begins." How does that idea apply to freedom of speech debates?
- In your opinion with regards to the first amendment, should free speech have no limits? Why or why not?
- You said the goal of the framers was to protect political speech. Should

other forms of speech gain the same protection as political speech?

- Some critics argue that only political speech is protected by the First Amendment and that greater restrictions can be placed on other forms of expression. Do you agree?
- What is strict scrutiny and how does it relate the freedom of speech?
- Should Victoria Secret's ads be banned on regular broadcast television?
- Why the distinction between commercial and regular speech? Is it valid?
- Is the internet a press or speech issue?
- Is commercial speech a threat to the common good?
- Is talk radio speech or press?
- What standard for speech on the Internet did *Reno v. ACLU* set?
- How are the religious clauses connected to the right of assembly and speech?
- If a referendum were held today on whether to adopt the First Amendment, do you think it would pass?
- Polls show that most Americans support free speech in theory, but when they're asked more specific questions such as "Should Americans be free to advocate communism?" Most Americans are far less willing to support free speech values. How to you explain this?
- Which of the three general approaches to First Amendment analysis is best? Why? What are the advantages and disadvantages of each approach?
- Which of the values served by the Free Speech Clause to you consider to be the most important? Why?
- What are some of the *costs* of protecting free speech? Which are the most significant costs in your opinion?
- Is a "disturbing the peace" law a neutral time, place, and manner regulation? On its face, it seems to be: it is directed at preventing public disturbances regardless of whether the disturbing activity is expressive or non-expressive--or what the content of an expressive activity might be. But does the *Feiner* case suggest that such laws are much more likely to result in the suppression of unpopular viewpoints than popular viewpoints?

- Do you agree with Justice Black in *Feiner* that the police should arrest those that threaten a speaker espousing an unpopular viewpoint, not the speaker--even when he rejects requests to end his speech?
- *Feiner* has never been overruled, but is the case likely to be followed today if police responded in a similar fashion to a speaker espousing an unpopular viewpoint on a street corner?
- What, if anything, does *Feiner* suggest about how audience heckling of a speaker should be handled? Is heckling, at least in a traditional public forum, a First Amendment right? Does it depend upon the nature of the heckling?
- Would you classify the permit ordinance involved in *Forsyth County* as a content-neutral law? Why or why not?
- Why shouldn't the government be able to recoup the costs of providing security for an event that is likely to bring out counter-demonstrators and raises the possibility of violence?
- Would the four dissenters in *Forsyth County* uphold any fee (say, \$100,000), so long as it was calculated to reflect real costs of providing security?
- If aesthetics provides a sufficient justification (see *Taxpayers for Vincent*) for banning all signs on public utility poles, would it also provide a sufficient justification for banning all news racks? All outdoor advertising?
- Why does aesthetics not provide a sufficient justification for the ban on yard signs struck down in *City of Ladue*?
- Does a homeowner have a First Amendment right to put a sign advertising Budweiser in his front yard? How about a large flashing neon sign?
- The disagreement on the Court in *Ward* is over whether the government, in attempting to justify a content-neutral law restricting speech, must show it used the least restrictive means or merely used not unreasonably restrictive means. Which view do you favor?
- Do the speech rights of students increase as they get older? Do high school students have the right to speak in ways that elementary school students do not? To university and graduate school students have the right to speak in ways that might be punished if they were students in a high school?



- Would Mary Beth Tinker have a First Amendment right to wear a bright pink armband, just because she thought it was fashionable--or could school administrators in that case enforce a "no armbands" policy? What does a bright pink armband say?
- Would Tinker have a right to wear a black armband in protest of the Viet Nam War even if no one understood the message she was attempting to communicate?
- Would *Tinker* have come out differently if school administrators could have demonstrated that the armband caused loud debates to break out in class? Fights to break out in the hall?
- Does a student in a predominately Jewish school have the right to wear a swastika to class to demonstrate his support for Nazi ideology? Does the First Amendment protect symbolic student speech only so long as it is not TOO controversial?
- Would *Papish* have come out differently if she had attacked named teachers and school administrators in her leaflet? If she had passed in out in class rather than outside on the university campus?
- Did *Bethel* adequately distinguish *Tinker*? Is the expression of sexual ideas more disruptive of school missions than the expression of political ideas? If administrators in Hazelwood had told student paper editors "you have complete editorial discretion," would they have then created a public forum that would have prevented them from later deciding to censor controversial articles?
- Does a school always have the right to prohibit speech that might expose it to liability, such as potentially defamatory speech?

***See also Unprotected Speech, Freedom of the Press, Freedom of Assembly, Petition, and Association, Campaign Finance Reform, Hate Crimes and Hate Speech***

## **Unprotected Speech**

- What are some forms of speech not constitutionally protected?
- What are unprotected forms of speech?
- Who should really make the call on rude and obscene speech?
- What is slander?
- What is libel?

- What are "fighting words"?
- What is obscenity?
- What is the Roth/Memoirs Test?
- What is the Miller Test?
- Do you agree with Judge Posner's conclusion that the interactivity of video games provides no justification for greater content regulation? Do you find his distinctions between regulation of obscenity and regulation of graphically violent material convincing?
- If it were inexpensive and practicable to keep minors away from indecent and obscene material on the Internet, would *Reno v ACLU* have been decided differently?
- Is the Court correct in *Hustler* in suggesting that no principled line could be drawn between the sleazy satire in *Hustler* and hard-hitting political cartoons and jokes?
- Are you surprised that the Court in *Hustler* is unanimous, and that the opinion is authored by Chief Justice Rehnquist?
- The Indianapolis anti-pornography ordinance involved in *American Booksellers* was supported by an odd coalition of Fundamentalists and feminists. How does the ordinance differ from the typical anti-pornography law?
- Under the Indianapolis ordinance, is there a variety of "good"--although sexually explicit--pornography that might be legally displayed and distributed?
- Would the sale of *Sports Illustrated's* annual "swimsuit issue" (featuring many pages of women in skimpy swimsuits) be a violation of the Indianapolis ordinance?
- Why should we (or shouldn't we) protect expression of the idea that women should be treated as sexual objects?

See also *Freedom of Speech, Libel*

## **Freedom of the Press**

- Which right do you feel is more important, privacy or freedom of the press? What have the courts said?

- What recourse does an individual have if the press prints something about them?
- What is the right to reply?
- Do you agree with the literal interpretation of the absolutists that congress shall make NO law respecting freedom of the press?
- Do agree with Jefferson's idea that he would rather have a free press and no government than to have government and no free press?
- Is voting as powerful of a check as the press?
- How does public's right to know affect freedom of the press?
- What limits should there be on the press? When does the press go too far as to invasion into someone's life?
  - How should such a limit be imposed? Should a limit be imposed?
- Name three examples of how the press functioned to expose public mismanagement at the following levels:
  - National
  - State
  - County
  - City
- What is the difference between reporting on a scandal and mismanagement?
- Does thrusting yourself into a spot light give up some of your privacy rights?
- Do the different mediums of the press have different levels of restrictions?
- Should rape victim's names be reported in crime stories and court proceedings?
- How would you describe the distinctions between the legitimate press and the tabloids?
- Do tabloids serve any public interest?
- Does playboy serve any public interest?
- Do you think that tabloids and/or pornographic publications should be protected by the freedom of the press, and more broadly free speech?

- How might morality be related to considerations of the common good as it relates to the press?
- Scenario- you are on trial for murder- Do you believe in freedom of the press?
- Should public officials' children be fair game for press coverage? (Billy Carter, Roger Clinton, Chelsea Clinton, Bush daughters, Jack Ford, John-John and Caroline Kennedy...)
- Should school newspapers be allowed to publish information about the private lives of teachers? Students? Athletes?
- Should the private life of candidates' matter to the public?
- Should the private life of elected officials matter to the public?
- Do you think that the printed media should be treated in the same way as broadcasting companies when it comes to publishing info about public officials?
- What is the Federal Communications Commission? How might they regulate communications adverse to public officials?
- Why is *Near vs. Minnesota* important?
- What is news worthy? What is not news worthy?
- Should late night comedians be allowed to joke about public officials?
- What could the media do to limit its liability?
- Are movie stars public figures?
- Should candidates be forced to disclose their campaign donors? Their health records? Tax returns?
- Should the public know of an official's problems with alcohol?
- Should a candidate's "youth" be fair game for the media?
- To what extent, if any, should the restriction of press and speech be enhanced with the threat of terrorism?
- Today's TV and Internet are considered part of the media. Should there be any regulations on these media? Why or why not?

- What about considerations about timing issues? Newspapers take longer than the Internet. Should there be limitations on TV and Internet, as in election outcomes, since they can get out the information? Does it affect voter turn out?
- How strong is the justification for extending a lesser degree of First Amendment protection to broadcasters than to newspapers? How does the fact it is far easier (and cheaper) to own a broadcast station than to own a metropolitan newspaper weigh in the analysis?
- Is there something to be said for having two very different First Amendment approaches to print and broadcast media--one given essentially free reign and one regulated more closely to provide a diversity of viewpoints? Do *Red Lion* and *Tornillo* give us "the best of both worlds"?
- Can one argue from *Red Lion* that the FCC's Personal Attack Rule is not only constitutionally permissible, but constitutionally *required*?
- If it were inexpensive and practicable to keep minors away from indecent and obscene material on the Internet, would *Reno v ACLU* have been decided differently?
- From reading his opinion in *Reno v ACLU*, do you get the impression that Justice Stevens enjoys surfing the Net?

See also *Freedom of Speech, Libel, Prior Restraint, Free Press v. Sixth Amendment, Freedom of Assembly, Petition, and Association*

## Libel

- What is libel?
- Why is *Time vs. Hill* important?
- Why is *Gertz vs. Welch* important?
- What is the "actual malice" test? Do you agree with it?
- Should the "actual malice" test apply to both public and private citizens?
- How would you define the difference between negligence and actual malice?
- What case created the "intentional infliction of distress" theory?

- What is the public official v. the public figure distinction?
- Who is a public figure?
- Is a private individual ever a public figure?
- Should libel laws be strengthened?
- Should the private lives of public figures be reported?

See also *Unprotected Speech, Freedom of the Press*

## **Prior Restraint**

- What is prior restraint?
- Do we still have prior restraint mechanisms?
- Explain the history of the idea of prior restraint.
- Why is *Near vs. Minnesota* important?
- Is the FCC and licensing policies a form of prior restraint?
- Do you agree that after-the-fact punishment should be preferred to prior restraints? Injunctions don't land anyone in jail (unless they are violated)--is that a point in their favor?
- What burden should the government have to meet to sustain a prior restraint?
- Should prior restraints be sustained against speech that threatens specific individuals such as a story headlined, "Witnesses in the Federal Witness Protection Program--Where Are They Now?"?
- One seemingly innocuous statement in published reports about the Pentagon Papers was attributed to Soviet leader Leonid Brezhnev. The Soviets knew that the quoted statement was made inside a Soviet limousine--a limousine that the CIA had succeeded in bugging. As a result, the bug was removed by the Soviets. Does this incident suggest that courts should defer to Administration judgments that there is a national security need to enjoin publication?
- Should it make a constitutional difference whether the government seeks an injunction based on a federal statute authorizing such injunctions or whether it relies on inherent powers of the executive branch?

- Do you find it surprising that much of the established media supported The Progressive in its litigation to lift the injunction against its publishing the how-to-build-it guide to atomic bombs?
- What, if any, public policy goals are served by publication of information concerning the building of atomic weapons?

See also *Freedom of Press*

### **Free Press v. the Sixth Amendment**

- How could the rights of the accused conflict with freedom of the press?
- How do the rights of the accused conflict with a free press?
- Are courts' gag orders constitutional?
- To what extent do right to free press and right to free trial conflict? How can these work together? What about the investigation before the trial occurs and how it affects the jury?
- What's your view on competing rights of rights of the defendant and right for America to be informed?
- Is there any reason against waiting until the end of a trial for the press to release information?
- What measures *should* a judge take in a celebrated trial to protect the Sixth Amendment rights of a criminal defendant? Will these measures always be sufficient to guard against the effects of prejudicial pretrial publicity?
- After reading *Sheppard*, could you tell a trial that was unconstitutionally tainted by the effects of publicity from one that wasn't? Does the Court set forth a clear standard for analyzing whether the right to a fair trial has been violated?
- After *Nebraska Press*, can you imagine a situation in which a restrictive order entered against the press would be found *not* to violate the First Amendment?
- Why doesn't the Court in *Nebraska Press* worry more about the rights of the criminal defendant? Does it make sense to say that defendants only have rights to fair trials, not *perfectly* fair ones?

- What test should apply to evaluating the constitutionality of gag orders entered against attorneys, parties, and witnesses? Should the standard be the same for all three groups? Should attorneys be free to talk to the press about pending cases?
- What standard should apply to a restrictive order preventing jurors from discussing the content of their deliberations with the press?

See also *Freedom of Press*

## **Freedom of Assembly, Petition, and Association**

- What are the philosophical bases of the 1<sup>st</sup> amendment?
- Some would say that the 1<sup>st</sup> amendment is more important to protect liberties than the vote. Would you agree?
- Does the right to free expression protect racially motivated expressions of hate like neo-Nazi or KKK rallies? What has the Supreme Court said about such issues?
- How has assembly been used to keep government accountable?
- How has petition been used to keep government accountable?
- How does free association promote enlightened self-interest?
- Is association related to privacy?
- Should a private club be forced to accept members they wish to exclude?
- How are the religious clauses connected to the right of assembly and speech?
- According to the Supreme Court, are there any instances when you can limit people's right of association?
- Examine closely the different approaches to defining the traditional public forum. Do you agree that all public streets, sidewalks, and parks should be considered part of the public forum, or would you favor a more particularized balancing that looks at whether the street, sidewalk or park has been dedicated to a limited, non-expressive purpose (as four justices concluded about the sidewalk leading from the parking lot to the post office in *Kokinda*)?



- Do you favor the traditional use/purpose approach to defining the traditional public forum (as in the Rehnquist opinion in *Lee*) or the functional analysis suggested in the Kennedy opinion? Why?
- In *Hague v CIO*, the Court rests its invalidation of the ordinance forbidding meetings without a permit on the privileges and immunities clause rather than the free speech clause, as incorporated through the Fourteenth Amendment's due process clause. If the *Hague* approach had been followed in subsequent cases, what would have been the major consequence? (Note that the privileges and immunities clause only protects U. S. *citizens*, not *all persons*.)
- What are the differences between the approaches taken by Justices Brennan and O'Connor in their opinions in *Roberts*? Which approach is better? Why? Would Justice O'Connor be more likely to categorize the Boy Scouts as a predominately commercial organization or as a predominately expressive organization?
- Was it really of "compelling" importance to the economic well-being of women in Minnesota that the Jaycees be opened to membership by women?
- Does *Roberts* encourage organizations restricting membership to take strong positions opposing in some way the interests of persons in the category restricted from membership?
- What are the two types of association protected by the Constitution? What are examples of entities, relationships, or organizations that might be recognized as protected under the right of intimate association?
- What should *Roberts* mean for golf clubs, fraternities, and other social organizations that exclude members based on race, religion, sex, or sexual preference?
- Would Dale have come out differently if Dale had been a fourteen-year-old scout, rather than a college-aged scoutmaster?
- How central to the Scouts' expressive purposes do whatever views it may have on homosexuality appear to be?

- Would the Scouts case have come out differently if the official view of the Scouts being challenged was an objection to inter-racial dating, and the exclusion of a scout for inter-racial dating were the issue before the Court? Why or why not?

See also *Freedom of Speech, Spirit of Association*

## **Campaign Finance Reform**

- Can a middle class American run for office anymore or is that reserved for the rich?
- Did the Founding Fathers create a system where only the privileged would run for and win political office?
- What constitutional provisions are given that could limit the amount of money special interest groups could give to candidates?
- Would reforming campaign financing improve or impair the democratic principle?
- Is campaign finance reform a good way to democratize our voting?
- Should the federal government ensure that all political parties get funding?
- Do you think that we should control how candidates get their funding?
- How do you think that campaign funding should be set up? Should the party, the government, the candidate or another party handle the money?
- Do you think that lowering the costs of running a campaign would help, and if so how?
- Should campaigns be run with more public financing? Would that help the efforts of reform?
- Explain to us the difference between hard money and soft money in this debate.
- How has soft money affected our political system?
- Would more people vote and get involved in the election process if campaign finance reform were enacted?
- Who loses in McCain-Feingold?
- Does McCain-Feingold abridge speech?

- In your view is campaign finance reform an issue of free expression or not?
- Does money equal speech?
- What has the case law been on campaign finance reform?
- Why is *Buckley v. Valeo* important in campaign finance reform?
- Why is *McConnell v. FEC* important in campaign finance reform?
- Why is *Nixon v. Shrink Missouri Government PAC* important in campaign finance reform?
- Do you agree that campaign financing laws raise serious First Amendment issues?
- How strong is the government interest in preventing very wealthy individuals or corporations from having undue influence over election outcomes?
- How strong is the government interest in preventing individuals or corporations from effectively "buying access" to candidates that they support financially?
- How would the First Amendment apply to limitations on contributions to *political parties*, as opposed to the candidates themselves?

See also *Political Parties, Freedom of Speech, Elections*

## **Hate Crimes and Hate Speech**

- Can colleges restrict hate groups from forming on campus?
  - Are there differences in what public and private universities can do in regards to this issue?
- Does the right to free expression protect racially motivated expressions of hate like neo-Nazi or KKK rallies? What has the Supreme Court said about such issues?
- Does the KKK have a right to adopt a highway in Missouri?
- Should some forms of "hate speech," such as racial epithets, be outlawed?
  - Where is the line drawn of what is allowed and what is not?
- In recent years violence against minorities has prompted some Americans to call for new laws specifically directed at hate crimes. Do you believe that such legislation is necessary? Why or why not? Is it constitutional?

- How would you prove that a crime was a hate crime? How is it proven now?
- How would you define what a hate crime is? How is it defined now?
- Do you think that hate crimes are a problem in our society today? Why or why not?
- How would you justify a stronger punishment for hate crimes? Where would you get the provision for that?
- Should "hate crimes" be punished by the death penalty?
- Should a white person who kills a black person in a racially motivated crime receive a stiffer penalty than if he or she kills another white person? What constitutional provision can you use to back up your view?
- Does additional penalties for hate crimes violate the constitution or not? Explain.
- Should *R. A. V.* have been decided on the more limited "overbreadth" ground suggested by the concurring justices?
- Some have called *R. A. V.* "the most important First Amendment decision in decades." Do you agree?
- Does Scalia's opinion in *R. A. V.* suggest that he was writing to send a message to judges and administrators who might be reviewing or considering the adoption of "politically correct" university hate speech regulations?
- After *R. A. V.*, would a hate speech statute specifically protecting children or senior citizens be constitutional?
- Why doesn't *R. A. V.* call into question Title VII actions based on, e.g., a male supervisor's relating a dirty joke or making a sexually suggestive remark to a female employee?
- After *Wisconsin v Mitchell*, how should a court evaluate the constitutionality of a statute that sentences perpetrators of race-based assaults to 3 years, perpetrators of most types of assaults to 1 year, and perpetrators of assaults based on sexual orientation to 3 weeks?

- How easy will it be to determine when a KKK cross-burning is a statement of group solidarity (protected by the First Amendment) rather than an unprotected attempt to arouse the fear of racial or religious minorities?
- Could a state, consistent with the First Amendment, ban the flying of the Confederate flag if "done with the intent to intimidate"? The showing of a swastika when done "with an intent to intimidate"? What has to be shown before a *potentially* threatening form of symbolic expression can be targeted?

## **Due Process**

- What is due process?
- Why did the founders not include due process in the body of the Constitution?
- Do you feel that the belief of "better that nine guilty men go free than to imprison one innocent man" is true?
- Share the two types of due process.
- Why not have a fixed concept of Due Process?
- What was the Magna Carta's role in the evolution of Due Process?
- Most of the cases expanding the rights of the accused have been in the 20<sup>th</sup> century, why do you think this is so?
- How is procedural due process related to the concept of "the rule of law"?
- What's the relationship between rule of law and due process?
- Where do we get the idea of rule of law? How was that idea developed?
- Who decides what processes are due?
- Is due process the same thing as common law?
- Should corporations have rights like people?
- Which natural right is related to Due Process?
- What do you think are the most important procedural due process safeguards of a free society? Explain your views.
- Do you agree with Frankfurter's evolutionary view of due process?
- Of all the due process rights, which do you feel is the most important and why?

- Some argue that search and seizure is the most important due process right. How do you enforce protection of this?
- Why are juries important to Due Process protections?
- How is the exclusionary rule related to Due Process?
- How are the 3 branches of government limited by Due Process?
- Where do we look for what due process means?
- Do you think that the opinions of what were fair procedures in the past be modified?
- Is Due Process a relative issue?
- How could the rights of the accused conflict with freedom of the press?
- How did English history affect the due process rights put into the Bill of Rights?
- In your mind, what have been the two most important procedural due process cases in the protecting of individual rights?
- What is the relationship between criminal cases and the idea of beyond a reasonable doubt?
- Name some recent executive orders that might violate the rights of due process.
- Which procedural Due Process rights are most important?
- How are due process and equal protection related?
- Should the war on terrorism be a circumstance under which due process should be reduced?
- Most of the due process rights have been incorporated. Are there some that have not been? What are these?
- Why is due process less important in terms of evidence issues in civil cases compared to criminal cases?
- How does the innocent until proven guilty thought underlie the due process rights?
- Does the U.S.A. PATRIOT Act threaten due process rights?
- In your opinion, is due process more fundamental than the 1<sup>st</sup>

amendment?

- List some of the due process rights listed in the Bill of Right.
- How is due process related to limited government?
- How does the due process clause insure public officials do not violate rights or abuse power?
- What are the ways to ensure law enforcement officers respect Due Process rights?
- Should due process matter in an impeachment?

*See also 14<sup>th</sup> Amendment, Substantive Due Process, Habeas Corpus, Search and Seizure – 4<sup>th</sup> Amendment, Exclusionary Rule, Self-Incrimination, Juries and Trials, Death Penalty and the 8<sup>th</sup> Amendment*

### **Substantive Due Process**

- What is substantive due process?
- Where have we seen substantive due process used in our history?
- What was the shift in the use of substantive due process in the 20<sup>th</sup> century?
- Give an example of a substantive due process right.
- Does the Court legislate with their use of substantive due process?
- Is Substantive Due process the same thing as natural rights?
- Which natural right is related to Substantive Due Process?
- Does the Court legislate with their use of substantive due process?
- How is the 9<sup>th</sup> amendment related to Substantive Due Process?
- What are privileges and immunities? How are they related to Substantive Due Process?
- What are examples of cases that have used substantive due process?
- In your opinion, what have been the two most important substantive due process cases in the protecting of individual rights?
- In your opinion, which case represents the biggest abuse jurisprudence wise in the area of substantive due process?

- Has the use of substantive due process been rejected by the court or society?

## **Habeas Corpus**

- What is habeas corpus?
- What were the British origins of habeas corpus?
- What are the historical roots of the writ of habeas corpus?
- Are there exceptions to habeas corpus provided in the Constitution?
  - Have they ever been used in U.S. history? When?
- When can the United States suspend the right of habeas corpus?
  - When has the United States denied the right of habeas corpus?
- Who can suspend the right to a writ of habeas corpus?
  - Who has suspended the writ in U.S. history?
- How is the Supreme Court case of *Ex Parte Milligan* important to the issue of habeas corpus?
- What do you feel are some of the most important habeas corpus cases in U.S. history?
- How are the rights of habeas corpus and trial by jury related to the concept of Rule of Law?
- How has habeas corpus been expanded by the courts in the 20<sup>th</sup> century?
  - How has habeas corpus been retracted since then?
- What role has habeas corpus come to play in terms of the death penalty?
- What is your position on the proposal that additional limits should be placed on the right of habeas corpus in order to streamline the American judicial system?

See also **Article 1 Section 9**

## **Search and Seizure – 4<sup>th</sup> Amendment**

- What is a search?
- What does the 4<sup>th</sup> amendment protect?
- Who does the 4<sup>th</sup> amendment protect?
- Why did the Founders put the 4<sup>th</sup> amendment in the Constitution?



- Why haven't review boards been widely used as a deterrent to unconstitutional searches?
- Is thermal imaging an unconstitutional search?
- Is aerial photography an unconstitutional search?
- Are random road checks an unconstitutional search?
- How does an expectation of privacy play into the 4<sup>th</sup> amendment?
- Do you have the same expectation of privacy in your car as in your home?
- Should privacy extend to the possession of illegal materials inside your home?
- Is the Internet included in the effects clause of the 4<sup>th</sup> amendment?
- How does the TLO decision impact a student's right to privacy?
- Do you have an expectation of privacy when you mail something to a friend?
- What level of privacy do you expect on your cell phone?
  - What about in school? Do you have privacy in your locker, purse, car, etc. on school property?
- Is a dorm room at a university equivalent to houses in the 4<sup>th</sup> amendment?
- What are the requirements to get a warrant?
- How does an officer get a warrant?
- What are the exceptions that permit a warrantless search?
- What is a Terry search?
- What is probable cause?
- What is reasonable suspicion?
- Are there any provisions of the Patriot Act which are, on the face, violations of the 4<sup>th</sup> amendment?
- Some argue that search and seizure is the most important due process right. How do you enforce protection of this?
- Does a person have a natural right that protects them from unreasonable search and seizure?

- If Vernonia had insisted that all students submit to drug tests, would the Court have upheld the policy?
- How relevant to the Court's analysis in *Vernonia* is the age of the students tested? Could a university insist upon drug testing athletes? An elementary school?
- How much evidence of drug use among students is necessary to establish a policy like Vernonia's?
- Is the "reasonable suspicion" test of *T.L.O.* easier for school officials to administer than a "probable cause" standard?
- Under the facts of *T. L. O.*, could a probable cause standard have been met?
  - What do you think of Justice Brennan's suggestion that the presence of rolling papers provides scant evidence of drug use?
- Did the facts that seemed so important to the Court in *Vernonia* (lack of privacy among athletes, safety concerns relating to athletes and drug use, and the degree of the drug problem among athletes) seem significant to the majority in its decision in the *Earls* case? Is this surprising?

See also ***Exclusionary Rule***

### **Exclusionary Rule**

- What is the exclusionary rule?
- Where do we get the exclusionary rule?
- How has the exclusionary rule been developed, defined, and/or expanded in our history?
- Why did the court set up the exclusionary rule?
- Which should be the main rationale for the exclusionary rule: judicial integrity or deterrence of police abuse?
- Do you think that the exclusionary rule helps to prevent corruption in the police system? If so, why?
- Do you think the exclusionary rule is effective in stopping illegal searches and seizures?
- The exclusionary rule isn't studied by many police officers. Can we realistically expect police to respect and follow the exclusionary rule?

- Police officers become aware of how to get around the exclusionary rule. At what point does inadvertence become advertence?
- Are there exceptions to the exclusionary rule?
- A variety of circumstances have pared back the exclusionary act in which all elements of the 4<sup>th</sup> amendment don't apply. Aren't there cases where it would be acceptable not to apply all parts of the 4<sup>th</sup> amendment?
- Why is the exclusionary rule controversial?
- Ultimately is the exclusionary rule good or bad for the American legal system?
- Do you favor abolishing the exclusionary rule? If so, why or why not?
- What should/could replace the exclusionary rule?
- Are there countries that do not have the exclusionary rule? What effect does that have on their law enforcement system?
- Should we be more lenient on the DEA in relation to the exclusionary rule?
- Some people believe that the exclusionary rule should not apply in our current war on terror. Do agree or disagree and why?
- Should the exclusionary rule be applied to confessions that are obtained illegally, such as violations of a person's Miranda rights?
- How is the exclusionary rule linked to the right to privacy?
- Should the exclusionary rule apply to civil cases as well as criminal cases?
- How does the exclusionary rule relate to due process?
- Should evidence seized legally but not relevant to the particular investigation be used as the basis of a new charge?
- What was the "Silver Platter" doctrine?
- Who has more common sense regarding the exclusionary rule: people, police, or the courts?
- Does the USA PATRIOT Act impact the exclusionary rule?
- Is the slippery slope a reality when considering the exclusionary rule?

See also ***Search and Seizure – 4<sup>th</sup> Amendment***

## **Self-Incrimination**

- What is the right against self-incrimination?
- Where do we get the idea of the right against self-incrimination? How did it develop?
- How did the Star Chamber play a role in the development of protections against self-incrimination?
- Should forced confessions be admissible in court?
- Should unforced confessions be admissible in court?
- What was *Miranda v. Arizona*? Why was it important?
- What are Miranda rights?
- Explain the significance of the *Dickerson* case from 2000 and its relationship to Miranda rights and due process. Are you for or against the Miranda warnings? Explain.
- How does the 5<sup>th</sup> amendment connect to the right to an attorney?
- European countries whose legal systems are based on Roman law have no Fifth Amendment privileges, yet their trials are not believed to be unfair. Is the provision against self-incrimination in public trials an important procedural safeguard?

## **Juries and Trials**

- Where do we get the right to a trial by jury?
- How did the idea of trial by jury develop?
- Why are juries important to Due Process protections?
- How are the rights of Habeas Corpus and Trial by Jury related to the concept of Rule of Law?
- How might trial by jury keep governments from abusing their powers?
- Are public trials important for restraining government power? Explain your position using historical evidence to support your argument.
- Is jury service an important way for citizens to better appreciate and fully understand the law. Do you agree or disagree?
- Should only citizens have the responsibility to serve on juries?

- Is jury service a responsibility or a right?
- If you were on trial, would you rather have a judge or a jury, and why?
- Should the American system of justice be reformed so that juries in criminal trials no longer need a unanimous vote for conviction? Why or why not? Explain
- Is a public trial protective of individuals or communities?
- Should all trials be public? With 12 jurors?
- What is meant by “peers” in the due process trial phase?
- Should lawyers be able to select jury members?
- Should we have professional jurors?
- Has the development of scientific evidence eliminated the need for jurors?
- What is jury nullification?
- Do you agree with the principle of jury nullification?
- What is a grand jury?
- How does the grand jury function in term of due process?
- Why has the grand jury provision not been incorporated to the states?
- How did the jury system develop?
- How did we end up with a jury system?
- What are the best and worst parts of the jury system?
- Should jury verdicts be unanimous?

### **Adversarial System**

- What is an adversarial system?
- What is an inquisitorial system?
- How does the adversarial system differ from an inquisitorial system?
- What nations are more likely to use an adversarial system?
- How does the adversarial system protect the rights of the accused?
- How do democracies use the inquisitorial system and not be accused of violating due process rights of the accused?
- What are the advantages and disadvantages of the adversarial system?
- Is the adversary system significantly better in protecting the rights of those

accused of crimes? Does the adversary adequately protect the rights and interests of society? Why or why not?

- 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?

## **Death Penalty and 8<sup>th</sup> Amendment**

- Are excessive fines or excessive bail a subjective criteria? How would you determine excessive?
- What were the cruel punishments envisioned by the framers?
- What were the unusual punishments envisioned by the framers?
- Do you think the framers intended for us to be bound by their views of cruel and unusual?
- Is corporal punishment in schools cruel and unusual?
- Is stripping a person of his citizenship cruel and unusual punishment?
- Are our crowded prisons cruel and unusual?
- Are "stays of execution" cruel and unusual punishment?
- In your opinion, what did the founders think about the death penalty?
- Exactly what does the 8<sup>th</sup> amendment say about the death penalty?
- Should limits on appeals be placed on death row prisoners?
- If some states do not have the death penalty, is it a violation of the equal protection clause?
- Did *Furman v. Georgia* help or hurt in clarifying the meaning of the 8<sup>th</sup> amendment?
- Is there an equal protection problem if most death row inmates are minorities?
- Does capital punishment deter crime?
- To what extent has DNA testing altered society's views on the death penalty?
- Should "hate crimes" be punished by the death penalty?
- What standards have the courts developed over time concerning who can and can't be put to death?

- Does our death penalty violate international standards of decency?
- Do you see any parallels between nations going to war and killing people versus capital punishment?
- Does John Locke's view of the death penalty match up with his natural rights philosophy? Explain.
- Many people who are pro-life are also pro-death penalty—are these two views consistent with each other or not? Explain.
- What would be the easiest, yet constitutional way in which to deal with the death penalty in America? Should it be legislated nationally, or by each state?
- Which side has the better argument based on the text of the Constitution? Does it make sense that the same proposal that made reference to "capital crimes" in the Fifth Amendment contemplated a ban on capital punishment in the Eighth Amendment?
- On the other hand, doesn't the debate suggest that the framers--who could have chosen language explicitly authorizing the death penalty or all then-existing punishments, but instead chose vague language capable of multiple interpretations-- intended that the meaning of the Eighth Amendment change over time?
- Even if the death penalty is constitutional, does it follow that all existing forms of the death penalty are constitutional. Is Florida's use of electrocution, for example, consistent with the cruel and unusual punishment clause?
- Does the evidence suggest that the death penalty deters murder any more than a sentence of life without the possibility of parole? If it doesn't, does that suggest the death penalty is an excessive punishment?
- What is the best argument for the death penalty? Is the death penalty necessary to deter life prisoners from committing murder in prisons?
- How relevant to the Court's decision in Furman was the fact that at the time of the decision over 600 persons were on death rows around the country?

- How much discretion should be given states to determine whether an individual is "mentally retarded," and therefore protected against infliction of the death penalty under *Atkins v Virginia*?

## Privacy

- Is there a right to privacy?
- Can the press invade our privacy? Does the right to privacy in any way affect the press?
- Should privacy rights be expanded?
- How is the Internet a privacy issue?
- How did privacy become a right?
- Should there be a right to die?
- Should we have been told about the goings on of President Clinton in the oval office? What if it was in the privacy of his/her home?
- Is privacy culturally defined? If so, would some cultures not have it as a feature in their society?
- Is there a hierarchy of privacy rights?
- Should a person fear government or business more when it comes to privacy?
- Do you agree with the *Griswold* decision and the discovery of privacy?
- Which right do you feel is more important, privacy or freedom of the press? What have the courts said?
- What is encryption? How is it a privacy issue?
- Should an employee be allowed to look at your e-mails at work?
- Should one's Internet habits be totally secure?
- Is the right to silence in the 5<sup>th</sup> Amendment a form of privacy?
- Should I be able to smoke pot in the privacy of my home? Is this a right protected by the Constitution?
- Should I be able to engage in Sodomy in the privacy of my own home?
- Where has privacy led from when it was set up? What other laws have come from it?



- What are some other unremunerated rights other than privacy?
- Should there be an issuing of a national registration card since 9/11?
  - Would that violate a right to privacy?
- How does the USA PATRIOT Act impact privacy?
- What is a public figure?
- Why don't public figures have much privacy?
- Are cell phone conversations private?
- Are e-mail conversations private? At work?
- Why might classical republicans not consider privacy as a legitimate concept?
- Is free exercise related to privacy?
- Should rape victims be required to testify in court?
- How would you balance the public's right to know with the interests of the individual?
- Do dress codes present a privacy dilemma?
- Should we strengthen libel laws?
- Should tinted windows be banned in cars?
- Is your locker a private area?
- Is your car trunk a private area?
- Is your back pack a private area?
- Should immigrants have any privacy rights?
- Are credit ratings a violation of privacy?
- Are health records a violation of privacy?
- Is grading quizzes in class a violation of privacy?
- Is picketing in front of a person's home an invasion of their privacy?

## **Gay Rights**

- What are the best arguments, from a Constitutional perspective, for and against a right of homosexual marriage?
- What tier of scrutiny should homosexuals fall under?
- Was the Court right in *Bowers* to view the case as one for an *as applied* review?

- Would the Court have recognized a right of a married couple to engage in sodomy?
- Given the nature of the act in question, the enforcement rate of laws prohibiting sodomy will be very low. Does that mean *Bowers* has gotten more attention than it deserves? Why or why not?
- If the Constitution does protect privacy, shouldn't it protect--if anything-- consensual sex in a private home, raising as it does both issues of decisional and spatial privacy?
- The Court in *Bowers* seemed very concerned about the slippery slope. Could the Court protect homosexual sodomy between consenting adults without also protecting polygamy, adultery, incest, or bestiality? What about sodomy in a public restroom? How might lines be drawn?
- What is the state interest in preventing sodomy? How strong do you think it is? Does concern about sexually transmitted disease have a place in the Court's analysis?
- Should homosexuals be treated as a suspect or quasi-suspect class for purposes of equal protection analysis?
- Is "Don't Ask, Don't Tell" constitutional?
- In *Romer*, is it reasonable to interpret Amendment 2 as leaving no recourse against a police department that adopted a policy of not investigating incidents of gay-bashing?
- Does the interest in protecting landlords with fundamentalist beliefs, who might find it religiously objectionable to rent to homosexuals, provide a rational basis for Amendment 2? Why or why not?
- Does *Lawrence* suggest that laws prohibiting homosexual marriage are unconstitutional? What legitimate interest does the state have, if any, in prohibiting two persons of the same sex from entering into a marriage relationship?
- Justice Scalia strongly criticized the majority's reliance, in *Lawrence*, on European decisions affording legal protection to homosexuals engaging in private

sexual conduct. Do what extend to you see decisions and trends in other parts of the world as being relevant to interpretation of our Constitution?

- Do you agree with the Vermont ruling concerning same-sex marriages? Do you think laws prohibiting same-sex marriages should be found to violate the Equal Protection Clause of the United States Constitution?
- In 2002, in *In Re Estate of Gardiner*, the Kansas Supreme Court ruled that a marriage between a man and a transsexual woman (a person born male, but operated on prior to marriage) is invalid. As a result, the transsexual woman was unable to claim her deceased spouse's \$2.5 million estate that she would have otherwise been entitled to. Do you think the Kansas law denying transsexuals the benefits of marriage offends the U. S. Constitution?

## **Citizenship**

- Define citizenship.
- Whose idea of citizenship do you most agree with? (Tocqueville, Natural Rights, Classical Republicans, Putnam, etc.)
- Compare Robert Putnam's ideas of good citizenship with those of Alexis de Tocqueville.
- What importance did the natural rights philosophers see in citizenship?
- How would Classical Republicans see how people become citizens in our country today?
- Where in the constitution is citizenship defined and how does it define it?
- What do you believe is the most important responsibility of citizenship? Why?
- In what areas are young citizens most able to contribute to civic life?
- How would you describe a good citizen?
  - What knowledge, skills, and dispositions are essential to good citizenship?
- How do people learn to become good citizens?
- Is it our duty as a citizen to vote?

- Would the Internet facilitate that?
- Is it our duty as a citizen to be an informed voter?
  - Would the Internet facilitate that?
- How does one renounce their citizenship?
- What, if any, changes would you make in citizenship policies?
- Would you shorten or lengthen the time it takes to become a citizen?
- Should English be required for citizenship?
- Are there any restrictions on naturalized citizens that are not on citizens by birth?
- What do you think of dual citizenship?
- Do citizens by birth understand responsibilities any better than resident aliens?
- Why should we make a distinction between citizens and aliens? Should we simply drop this distinction? If so, what might the consequences be?
- What are the problems of not giving citizenship to all born here?
- What obligations/abilities does citizenship entail?
  - What if they are not fulfilled?
- Does citizenship provide privileges?
- Relate implicit and explicit consent to citizenship.
- Is it a good idea that people automatically become citizens by birth, or should they have to demonstrate a desire to become American citizens by applying for citizenship?
- Should only citizens have the responsibility to serve on juries?
  - Is jury service a responsibility or a right?
- How is the distinction of being a citizen important?
- With globalization is citizenship irrelevant?
- Will technology change citizenship?
- Should it be easier for a resident alien to become a citizen? Why or why not?
- What are the different ways in which a person can become a citizen?

- How important in your opinion is the ability of citizens to freely travel abroad and return home without hindrance? Why is this right important?
- We often speak as if citizens acquire a number of civic obligations when they reach the age of 18. Is this true? What political obligations, if any, do individuals have before they are 18?
- How does a citizen's arrest work?
- How can schools help in citizenship?
- Should we ever withhold citizenship for any reason?
- Why does the 14<sup>th</sup> amendment award rights to persons, not citizens?
- Is it fair or proper to have a test for citizenship? Who should or should not take it? Why should it be required?
- Is there any way to forfeit your citizenship?
- What lessons can we learn from the way in which Native Americans were constitutionally defined?
- For citizens, what are the advantages of a democracy? A republic?
- When are citizens obligated to perform military service to protect the nation? In your opinion, should there be any exceptions to this obligation? Why or why not?

## **Volunteerism**

- What role does religion play in volunteerism?
- How is volunteerism related to implicit consent?
- How is volunteerism related to explicit consent?
- What role has immigration played in volunteerism?
- Should groups that preach hate be allowed to be involved in civic life or volunteer for community service?
- What, if any, volunteer work do you do?
- Does volunteerism rely on civic virtue?
- Do people volunteer more often if they get something in return?
- Is voluntarism on the rise or on the decline in America? State some reasons why you feel it is headed in that direction.

- Should public service be mandatory for graduation?
- Is forced volunteerism an oxymoron?

### **Tyranny of the Majority**

- What is tyranny of the majority?
- How do you go about protecting the rights of the minority from tyranny of the majority?
- How does our Constitution try to control or prevent the tyranny of the majority?
- What did Madison have to say about the tyranny of the majority?
- What did Alexis de Tocqueville have to say about the tyranny of the majority?
- Can a minority be tyrannical?
- If democracy is rule by majority, then can there be such a thing as tyranny of the majority?
- Is there a difference between the common good and what the majority wants? If so, what is it?
- We call ourselves a democracy, but the Constitution places severe limitations on majority rule. What are some features of the Constitution that seem undemocratic and do you think they are justified today?
- Explain the importance of limiting the rule of majority. Give a couple of historical and/or contemporary examples where the rights of the minority have been trampled.

### **Spirit of Association**

- How would you explain the spirit of association?
- What did Alexis de Tocqueville have to say on the matter of association and Americans?
- What is an example of what Tocqueville observed? I.e. volunteerism, public service
- Who is Robert Putman? Is his theory in *Bowling Alone* correct?
- Do you think the spirit of association is alive today?

- Does the idea of association tie in more with the natural rights or the classical republican philosophy? Explain.
- Is participating in voluntary associations a necessity of citizens?
- Does de Tocqueville's assessment of Americans and voluntary association still hold true today, or is it outdated?
- What civic activities enhance your quality of life in your community?
- What is the difference between civic action and political action? Which is most effective?

### **Self-Interest/Enlightened Self-Interest**

- In your opinion, has Tocqueville's idea of enlightened self-interest become more or less important as our society has changed since he viewed it?
- Did Locke and Tocqueville make an assumption that people would be enlightened? What should the government do when people don't do this?
- What's the prime motivator, to serve one's self interest or serve the needs of others? Can we serve one or the other?
- Are the events of 9/11 exhibiting small acts of self-denial, or great acts of self-sacrifice? Is this supporting de Tocqueville or refuting it?
- What models other than civic virtue and enlightened self-interest are there for how a person can do good for the community?
- What was the model that Rev. Dr. Martin Luther King Jr. espoused in sermon, "The Drum Major Instinct"?
- What was David Hume's view of self-interest?
- Do political parties embody de Tocqueville's vision of enlightened self-interest?
- Does local self-government in American Federalism promote enlightened self-interest?
- How does free association promote enlightened self-interest?
- Do Americans still function with enlightened self-interest in mind?
- Are we too self-interested as a society?
- How does the politician embody the concept of enlightened self-interest?

- Is civil disobedience ever enlightened self-interest?
- What is a representative to do if he thinks A is the right thing to do, but his constituents think B is correct?
  - To the above question, what is the enlightened answer and what is the self-interest answer?
- Is it enlightened self-interest to limit campaign contributions?
- “What’s good for GM is good for America”- Is a corporate agenda good for America?
- How does a person get enlightened?
- What about citizens who purchase stuff that is environmentally damaging- are they good citizens? Are they putting their self-interest first?

### **Participation, On-Line Voting**

- In what ways can we increase public participation in public affairs?
- Over the last decades there have been studies that show we aren't involved in federal government. How can we educate young people so that they realize that they can become involved in government?
- Are there reforms needed to increase public participation?
- How can we get more young people to participate in civic life?
- How can we get more young people to participate in politics and vote?
  - Should we make voter registration easier? Would that help?
- What is the difference between civic action and political action? Which is most effective?
- Has technology helped or hindered our willingness to participate in civic life?
- How can the media help in improving civic participation?
- How would you explain the spirit of association?
- In what areas are young citizens most able to contribute to civic life?
- Is it our duty as a citizen to vote? Would the Internet facilitate that?
- What would be the benefits of people being able to vote over the Internet?
- What would be the potential problems of allowing people to vote over the



Internet?

- Is it our duty as a citizen to be an informed voter? Would the Internet facilitate that?
- Are Americans are the most litigious people on the earth because they are so willing to go to court. Is this a detriment to America?
- Other than relying on the law, in what other ways can Americans fix problems that they may face?

## **Amendments**

- Are amendments “new social contracts”?
- Do we rely on judicial review so much, because the amendment process is so hard?
- How does the amendment process relate to balance of power and federalism?
- What are the ways in which the constitution can be amended?
- Which amendment is the most important? Why?
- What tests would you use to define what unenumerated rights are found in the 9<sup>th</sup> amendment?
- How can people get involved in the amendment process?
- Is it time for a new Constitutional convention in America? Why or why not?
- Should we make the Constitution easier to amend? Why or why not?
- In light of the recent problems with the 2000 Presidential election, do we need an amendment getting rid of the Electoral College, or altering it in some fashion?
- As evidenced by the Equal Rights Amendment, isn't it next to impossible to get an amendment passed in America? If so, what does that say about the current state of America and politics?
- What imperfections does the Constitution have that need amending?
- Some say that our amendments are an on-going constitutional convention? Would you agree or disagree?

- Would you support an amendment stating equal protection for homosexuals?
- What amendment would be most perplexing to the framers?
- What role has crisis played in paving the way for our amendments?
- Does the 14<sup>th</sup> amendment deserve its label as the great amendment?
- Wouldn't a balanced budget amendment be writing an economic theory into the Constitution?
- Is the 9<sup>th</sup> amendment a commitment to higher law?
- How has the 10<sup>th</sup> amendment been used by the states?
- How has the 11<sup>th</sup> amendment been used by the states?
- How has the 17<sup>th</sup> Amendment affected representation in the Senate?
- How could the 25<sup>th</sup> amendment be a check on the executive?
- Should we add an equal rights amendment to the constitution?
- Should we add a right to privacy amendment?
- Should we add a gay rights amendment?
- Should we add a marriage amendment?
- Should we add an abortion amendment?
- Should we add a right to die amendment?
- Should we add a bill of responsibilities?
- Is it a good thing that our Constitution is so difficult to amend? Why should a minority be able to frustrate a clear majority's wish to alter the Constitution?
- Don't the amendment procedures doom many potentially good changes, because one or the other political parties will see itself as adversely affected by a proposed change? For example, won't Republicans forever block Washington D.C. from gaining representation in Congress because any representative elected by D. C. citizens is likely to be a Democrat? Isn't it equally unlikely that the electoral college method of choosing a president will ever be changed?
- May a state rescind its prior ratification if an amendment has yet to be ratified by three-fourths of the states?

- Many proposed amendments, such as the Equal Rights Amendment, have limited the period for ratification to seven years? Are such limits a good idea? What if a state ratifies an amendment after the specified period? What if a proposed amendment contained no time limit and was ratified two centuries later (see the 27th Amendment)?
- The Court has recognized the constitutionality of ratification procedures as a justiciable question. Should the Court consider these issues, or should it leave them to the other branches to work out?
- Only two provisions in the Constitution have been made unamendable--and the unamendability of one of those, the provision barring restrictions on the importation of slaves, expired in 1808. The only provision now unamendable is the guarantee that each state will have equal suffrage in the Senate. Why do you suppose the framers attached such importance to that provision?
- What if--despite the provision against changing suffrage in the Senate--, we first repealed the provision prohibiting amendment and that ratified an amendment giving larger states more Senate representation? Are there other impliedly unamendable provisions? Could we abolish the Executive Branch by amendment?
- What if an amendment (say, an amendment prohibiting abortions) included language prohibiting the amendment from ever being repealed? Should the courts enforce the provision and invalidate an amendment that sought to again permit abortions?
- The Court, in *LaRue* and *44 Liquormart*, wrestled with the question of whether the Twenty-First Amendment qualified the First Amendment. What do you think is the best answer to that question?

## **Elections**

- What are free and open elections?
- Can a middle class American run for office anymore or is that reserved for the rich?
- Did the Founding Fathers create a system where only the privileged would run for and win political office?

- Why does one branch of government get to decide the 2000 election?  
What would the Founders have said? What recourse does a citizen have?
- Would Locke be satisfied with what happened in the 2000 election?  
Would he be in favor of the Electoral College?
- How has soft money affected our political system?
- Should Election Day be a holiday?
- Do you like the winner take all system?
- Was the election of 1860 a constitutional problem?

See also *Voting, Voting Rights, Redistricting*

## **Democracy**

- Define democracy.
- What is democracy?
- Is America a democracy?
  - If not, what type of government is America?
  - What would the founders think?
- We call ourselves a democracy, but the Constitution places severe limitations on majority rule. What are some features of the Constitution that seem undemocratic and do you think they are justified today?
- Why were the founders suspicious of democracy?
- What is the difference between democracy and constitutionalism?
- Is the veto democratic?
- Is the filibuster democratic?
- Were the 1780s too democratic?
- What were the historical reasons (1780s) for the Framers to distrust democracy?
- Which branch of the government best represents the will of the people?
- Would reforming campaign financing improve or impair the democratic principle?

- In your mind, were some of the founders accurate in their belief that too much democracy was a dangerous thing? Are there any current examples in the US that would bear that point out?
- What roles should schools play in teaching democracy?
- Is judicial review democracy checked by democracy?
- How is democracy defined today?
- In your view, what is the most damaging inconvenience of democracy?
- Do you think that the framers did indeed "limit the inconveniences of democracy?"
- Are we ultimately a republic or a democracy?
- For citizens, what are the advantages of a democracy? A republic?
- Would the Anti-Federalists think that we have become too democratic?
- Is judicial review consistent with a democratic system of government?
- Explain the importance of limiting the rule of majority. Give a couple of historical and/or contemporary examples where the rights of the minority have been trampled.
- Has our system of government become more or less democratic over time?
- What is teledemocracy? Is it what Madison would envision?
- Is this telecommunications revolution a threat or a benefit to democracy?
- Is computer technology potentially a threat or a benefit to democracy? Why or why not?

### **Initiative, Referendum, and Recall (and the Progressives)**

- Should initiatives and referendums be utilized more in a fast-paced technological society?
- Some have said referendums and initiatives should be utilized more widely. Do you agree or disagree?
- Some argue that initiatives and recalls make a society more democratic, while others argue that it merely allows for some rich people to influence the system more. Which do you agree with, and why?

- Which of these theories did the California recall seem to support?
- Do you think a national referendum is a good idea?
- Should there be recall on a national level? Should the people be able to recall the President?
- Do you think that there should be national referenda to really support the idea of "We the People"?
- Should we have initiative, referendum, and recall available at the federal level?
- Do you believe that a system of national plebiscites, in which the whole electorate votes for or against a proposal, should be instituted in this country? Why or why not?
- Do you think that there is a difference between having people vote on constitutional or legislative issues?
- Why didn't the progressives trust government?
- Who were the Progressives? Were they anti-Madisonian in their views of representation?

## **Aliens**

- Should resident aliens have the same rights as citizens?
- Should long time legal aliens be disenfranchised?
- Why should we make a distinction between citizens and aliens? Should we simply drop this distinction? If so, what might the consequences be?
- How might H. Kissinger and M. Albright be an example to aliens?
- How do civil and political rights differ for resident aliens?
- Do you think we should we drop the "American born" requirement for presidential candidates?
- How is the idea of citizenship important to the discussion of aliens?
- What right is most crucial to a resident alien?
- Should immigrants get the entitlements and social programs?
- Why is *Plyler v. Doe* important?
- Should we amend the 14<sup>th</sup> to say citizen instead of person?

- Name five things an alien can be deported for.
- Should a person be stripped of their citizenship in any instance?
- How does international law impact the treatment of aliens?
- Should legal aliens have some political rights?
- Should we make more use of Deportation rather than other methods?
- Should we make distinctions between illegal aliens and resident aliens?
- What problems can occur if non-citizens are given civil rights but not political rights?
- Is John Ashcroft acting constitutionally in the detention of a bunch of aliens?
- Are due process rights of aliens being violated with the post-9/11 detentions?
- Do aliens have national rights?
- How does the 14<sup>th</sup> amendment affect aliens?
- Based on the 14<sup>th</sup> Amendment, what's your opinion of illegal aliens receiving the same rights as citizens? Why?
- In *Plyler v. Doe*, the state of Texas argued that children of illegal aliens can be discriminated against. How do you feel toward this?
- Should children of illegal aliens receive a free public education?
- Is California proposition 187 unconstitutional?

### **Immigration/Diversity**

- How has diversity impacted our notions of morals?
- Is America too diverse for us to agree on civic virtue?
- Do you think America is too diverse for civic mindedness?
- Analyze the arguments for and against the position that diversity offers more benefits than costs to our society.
- Is there a common culture today in America?
- Can a nation as large as the US ever figure out what the common good is?
- As you know, the ancient republics were small and homogeneous, while

our nation is large and diverse. Is a sense of common identity and loyalty to a nation as large as ours in both population and geographical size possible for us today?

- Does the act of immigration itself express consent?
- Why not put immigration policies in the domain of the state government?
- What was the immigration policy of the 1920s (see National Origins Act)?
- Are ethnic ghettos good for America?
- Are ethnic ghettos factions like Madison envisioned?
- Should we make it easier or harder to immigrate to America?
- What are our xenophobic phases? (1790s, 1840s, 1880s, 1920s, currently)
- Should the inscription on the Statue of Liberty be changed from "Give me your tired, your poor, Your huddled masses..." to "No Vacancy?"
- Do you think that we should relax, restrict, or keep the current system of quotas per country for immigration into the U.S.?
- Do you think that we should limit the number of immigrants that come in each year?
- Do you think that we are more a melting pot or a mosaic?
- The Universal Declaration of Human Rights states that "everyone has the right to a nationality." Who would have the right to have "American" as their nationality?

### **Foreign Policy/Other Nations**

- Do we as a nation have a right or responsibility to promote democracy in other nations? Explain.
- What responsibilities, if any do Americans have in promoting representative democracy in other nations?
- Should the U.S. be more involved militarily in order to see to it that democracy is spread throughout the world? Why or why not?
- What standards should America have by which they intervene with other countries?



- Instead of intervening should America simply lead by example?
- If leading by example doesn't work, then should we use force?
- Should the U.S. get involved in countries that are struggling, or should we allow manifest destiny to occur? Explain.
- Give examples of countries that recently have looked to the U.S. for guidance and direction politically.
- Has history shown us that the US was right or wrong in being involved in Vietnam in the 60's and 70's? Explain your position.
- If natural rights are self-evident, why don't all countries recognize them?
- What non-governmental institutions have a legitimate role in promoting rights abroad?
- What nations have borrowed from our system of government? What have they borrowed?
- Besides constitutional ideals, what else has America contributed to the world in a positive manner?
- Why do most nations today choose to write their Bill of Rights in positive liberty terms?
- Should we as a nation use human rights as a principle of foreign policy?
- Should we be more aggressive with nations such as China on human rights violations?
- Should trade be a weapon to ensure human rights?
- What constitutional principles can we learn from other countries?
- Can Americans really preach rights abroad, if we violate them at home?
- Should America be an international peacekeeper?
- Has the collapse of communism made it easier or harder for America to promote human rights?
- Do you think that the U.N. has a role in promoting human rights throughout the world?
- What factors were important to the creation of the United Nations? Are they still relevant?

- What is the U.N. Security Council? Is it like our Senate?
- Should the U.S. become more involved in the United Nations? NATO? OAS?
- Should the U.S. quit the United Nations? NATO? OAS?

## **Human Rights**

- Are there universal human rights?
- Where do we derive human rights from?
- Are human rights the same things as natural rights?
- Are there human rights that are not natural rights?
- Should we as a nation use human rights as a principle of foreign policy?
- Should we be more aggressive with nations such as China on human rights violations?
- Should trade be a weapon to ensure human rights?
- Has the collapse of communism made it easier or harder for America to promote human rights?
- Which rights would you be willing to include on a list of basic human rights that are possessed by every human being, regardless of whether recognized by a particular government, and which rights would you regard as civil rights, that is, belonging only to the citizens of a given country and protected by that country's laws? On what basis do you draw the distinction?
- Are basic human rights genuinely inalienable? That is, does the possession of a human nature for as long as one lives make it impossible to have such a right removed or even willingly to surrender such a right?
- What do you think about these cases: the status of the "right to life" for a person convicted of a heinous crime or the legitimacy of selling oneself into slavery for the benefit of one's destitute family?

## **Universal Declaration of Human Rights**

- What philosophical and historical basis were the authors of the Universal Declaration of Human Rights using?
- Exactly why was the Universal Declaration of Human Rights written? In other words, put it in its historical perspective.
- How does the natural rights philosophy embodied in the Declaration of Independence differ from that in the Universal Declaration of Human Rights?
- What are the main differences between our Bill of Rights, and the Universal Declaration of Human Rights?
- The Universal Declaration of Rights uses the phrase "security of person", where the Natural rights people say property. What difference does this make and why do you think that they chose to word it this way?
- There is a Universal Declaration of Human Rights. Should there also be a Universal Declaration of Human Responsibilities?
- The Universal Declaration of Human Rights states that "everyone has the right to a nationality." Who would have the right to have "American" as their nationality?
- What are some parts of the Universal Declaration of Human Rights that are already a part of our system?
- Are there parts of the Universal Declaration of Human Rights that you do not think should be incorporated?
- Do you think that the negative rights in our Constitution are more effective than the positive rights in the Universal Declaration of Human Rights?
- Are the rights within the Universal Declaration of Human Rights based on the Lockean theory of rights?
- Are written rights and positively like the Universal Declaration of Human Rights a better way to guarantee rights as compared to listing them negatively like our Constitution?

## **Fundamental Principles**

- What are some of the fundamental principles on which our government is based?
  - Besides what you have already mentioned, were there other fundamental principles that the founders agreed upon?
- Of all our fundamental principles, which is the most important and why?
- Of all our fundamental principles, which do you feel is the most in flux, or in question today?
- Have we as a nation moved away from some of the principles on which we were founded? Give specific examples.

## **Safety Valves**

- What are examples of some safety valves to vent the overheated passions of the people that are in the Constitution?
- Are there any additional safety valves that you feel should be added to the constitution?
- Have there been any safety valves that have been added in the amendment process?
- Is the process of judicial review a safety valve?
- Have there been points in our history where the safety valves have not worked?
- Are safety valves the same as checks on power?
- Is how the Senate is set up a safety-valve on passion?
- How can overheated passions lead to trouble in government?
- Give an example of a time when a safety-valve in our Constitution vented overheated passions and possible problems were averted.
- Are rights a safety valve in our system?
- How is due process a safety valve?
- Is the 1<sup>st</sup> amendment a safety valve?
- Do political parties function as a safety valve?
- Is the 9<sup>th</sup> amendment a safety valve or an invitation to chaos?

- Is the 10<sup>th</sup> amendment a safety valve or an invitation to chaos?

### **Other**

- Do you think today?
- Should we just throw her to the wolves?
  - Yes. Well, it's more like throwing her to the goats, really. They won't hurt her. They might annoy her or try to eat her pants, but that's all.

## Bibliography

The Center for Civic Education. District, State, and National Hearing Questions, from 1996-2004 (not all of them, but some of them).

Koterski, Father Joseph. Course Guidebook from Natural Law and Human Nature. The Teaching Company, 2002.

Leming, Robert S. "Tips for preparing your students." Center for Civic Education. [http://www.civiced.org/PDFS/wtp\\_studentprep.pdf](http://www.civiced.org/PDFS/wtp_studentprep.pdf). 11 February 2004.

Linder, Doug. Exploring Constitutional Conflicts. University of Missouri - Kansas City. 26 January 2004.  
<http://www.law.umkc.edu/faculty/projects/frtrial/conlaw/home.html>

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