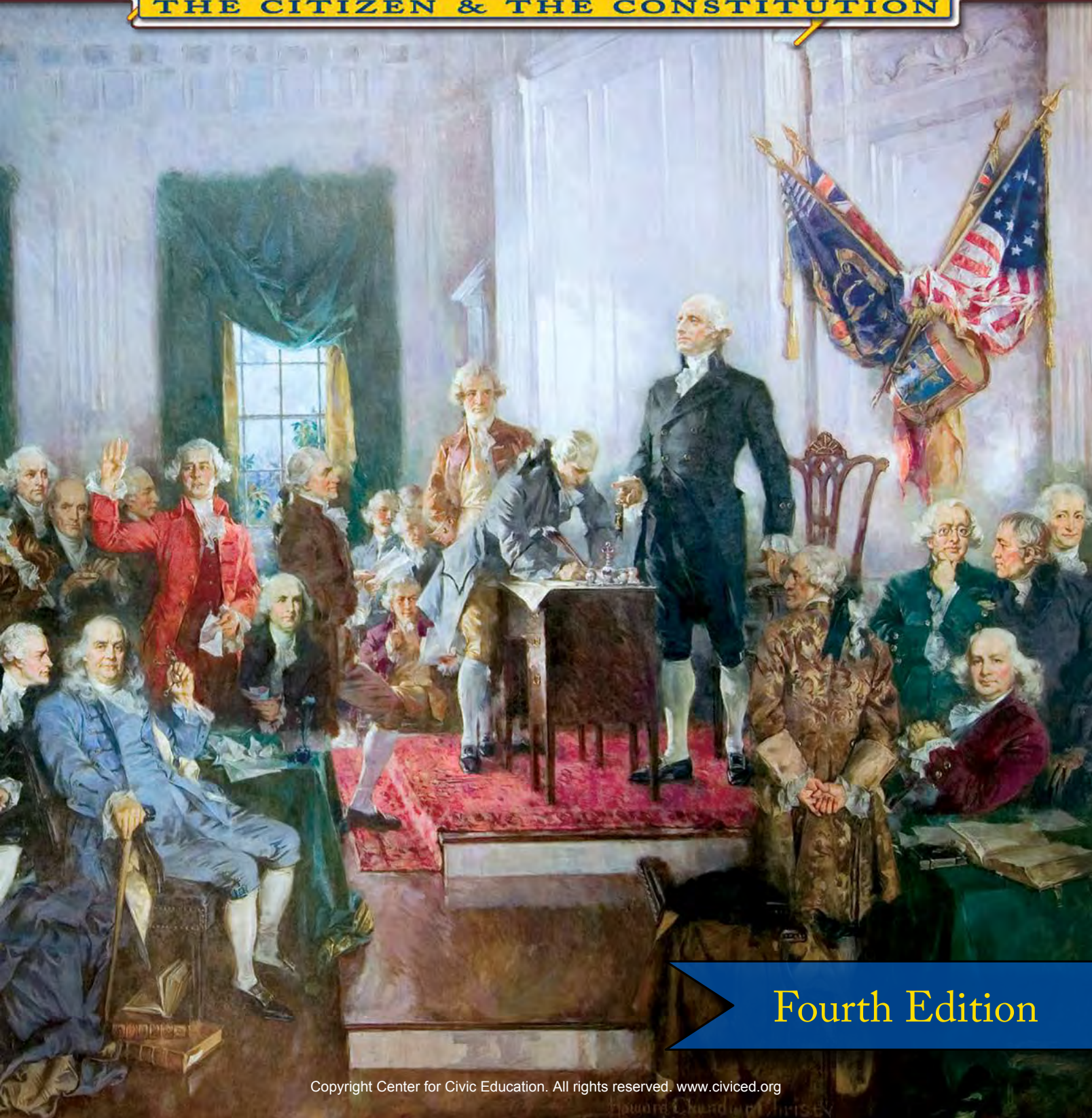


We the People

THE CITIZEN & THE CONSTITUTION



Fourth Edition

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FROM THE CENTER FOR CIVIC EDUCATION**

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excerpted from

We the People: The Citizen & the Constitution Level 3

We the People: The Citizen & the Constitution

Level 3

Directed by the Center For Civic Education

Cover: Howard Chandler Christy, *Signing of the
Constitution*, Architect of the Capitol, House
wing, east stairway

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LESSON 39



What Does Returning to Fundamental Principles Mean?

LESSON PURPOSE

One of the Founders, George Mason from Virginia, said, “No free government, or the blessings of liberty can be preserved to any people, but by frequent recurrence to fundamental principles.” In this concluding lesson, you have the opportunity of relating some fundamental principles and ideas of our government to contemporary issues.

The format of this concluding lesson differs from the others. Critical Thinking Exercises similar to others throughout this text present a series of quotations that represent great ideas and principles that have shaped our constitutional heritage. Some of these ideas contradict each other. However, American constitutional history has witnessed many conflicts between competing principles of equal merit. Examples include the conflict between majority rule and minority rights, between sovereign power and fundamental rights, between liberty and order, and between unity and diversity.

Examples of conflicts appear in the following exercises. In each case you will be asked to apply the principles and ideas suggested in the quotations to a contemporary issue, to work through the issue on your own or in small groups, and to reach your own conclusions.

In so doing you will use the skills of citizenship—observation, analysis, debate, and careful selection of value judgments—to reach, express, and defend an opinion. These exercises provide practice for the responsibilities you will encounter in the years ahead.



WHY ARE FUNDAMENTAL PRINCIPLES IMPORTANT?

This book began with the observation that the American experiment in self-government was an adventure in ideas. The individuals who founded America's governments cherished and respected ideas. They were excited about them. The United States was created by ideas. It is not the product of a homogeneous common culture or centuries of tradition. The United States began as a test to see if certain ideas about government—many never before tried on such a scale or in such a way—would work.

The British economist John Maynard Keynes (1883–1946) once remarked that “in the long run it is ideas and not men who rule the world.” Ideas have consequences, sometimes for good, sometimes for evil. Everyone likes to believe that in the end good ideas will prevail over bad, although there is nothing automatic or inevitable about this. Good ideas do matter. One of the twentieth century's most compelling images comes from the Chinese student democracy movement of 1989. It is a photograph of a young man, armed only with the moral authority of his cause, confronting a column of armored tanks. This image has moved and inspired the world.

Joseph Stalin, the Soviet dictator from 1929 to 1953, once disparaged the influence of religion by asking, “How many divisions does the Pope have?” One of the great ironies of the twentieth century was that the most influential movement to set in motion the fall of the Soviet empire began in Poland. It was impossible for Poland's communist regime to gain acceptance by a population that retained

its deep Catholic faith and where the Catholic Church remained staunchly independent of the communist state.

It was in these circumstances that the independent Polish trade union Solidarity was founded in 1980. This movement was secular, that is, not specifically related to religion or a religious group, although allied with the Catholic Church and strongly aided by the moral influence of the papacy. Eventually Solidarity was able to form a free, non-communist government in 1989. The victory of Solidarity over Polish communism inspired similar victories, known as the Revolutions of 1989, in neighboring Soviet satellites in Central and Eastern Europe.

These revolutions inaugurated democracy throughout much of the region and helped to weaken the Soviet state, which hastened the dissolution of the Soviet Union at the end of 1991. “An invasion of armies can be resisted,” the eighteenth-century French novelist Victor Hugo once wrote, “but not an idea whose time has come.”

WHAT DID THE FOUNDERS MEAN BY RETURNING TO FIRST PRINCIPLES?

When George Mason spoke of the importance of a “frequent recurrence to fundamental principles,” he was invoking an old idea associated with republican government. The ancient Greeks and Romans believed that a government established with the purpose of serving the public good and involving the participation of all citizens could not survive unless each generation was reminded of that government's reason for being and the principles by which it operated.

Another of the Founders, probably Melancton Smith or Richard Henry Lee, writing in 1788 as the Anti-Federalist Federal Farmer (see Lesson 13), said,

If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book. What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people and has their assent?

It is doubtful that these Founders had in mind an uncritical acceptance of the “wisdom of the past.” In revisiting these principles each generation must examine and evaluate them anew. The Founders probably would be somewhat surprised at the reverence in which they and their writings have been held by subsequent generations of Americans.

The Founders themselves were vigorous critics of the wisdom that they had inherited and the principles in which they believed. They were articulate, opinionated individuals who loved to examine ideas—to analyze, argue, and debate them. They expected no less of future generations. They would expect no less of us. To go back in thought or



Do you agree with George Mason's claim that “No free government...can be preserved to any people, but by frequent recurrence to fundamental principles”?

discussion to first principles requires us to make principled arguments and to ground our opinions in ideas of enduring value. It is what citizenship in a free society is all about.

CRITICAL THINKING EXERCISE 1

Liberty versus Order

One of the most enduring and important challenges in our constitutional system of government is how to balance order with liberty. In this exercise the issue of crime demonstrates the challenge. Violent crime is widespread in the nation's inner cities, but few areas of our society feel safe. Violence even has become a problem in our schools.

In response to the crime problem in a housing project of one of the nation's largest cities, officials in that city proposed large-scale police "sweeps" of apartments to search for illegal weapons. These searches would not require search warrants or evidence of probable cause. After a judge struck down the proposal as an unconstitutional violation of the Fourth Amendment, the city proposed a new policy requiring prospective tenants in public housing projects to waive their Fourth Amendment rights as a condition of their leases.

1. How do the following statements apply to the issue of sweeps for illegal weapons? What principles and ideals are implied in each statement? How, if at all, do these principles conflict with each other?

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.

—Fourth Amendment

The good of the people is the highest law.

—Cicero

Authority without wisdom is like a heavy axe without an edge, fitter to bruise than polish.

—Anne Bradstreet

For a man's house is his castle.

—Edward Coke

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

—Benjamin Franklin

Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people, by gradual and silent encroachments of those in power, than by violent and sudden usurpations.

—James Madison

Every successful revolution puts on in time the robe of the tyrant it has deposed.

—Barbara Tuchman

Liberty, too, must be limited in order to be possessed.

—Edmund Burke

The great and chief end, therefore, of men's uniting into Commonwealths, and putting themselves under Government, is the preservation of property [life, liberty, and estate].

—John Locke

2. Which, if any, of these statements do you find most persuasive? Why?
3. What is your position on this issue? Explain the reasons for your position in terms of the situation and the principles involved.

CRITICAL THINKING EXERCISE 2

Unity versus Diversity

Is a common language essential to the survival of American democracy? One of the most controversial aspects of diversity in America has to do with language.

Throughout American history English has been the principal language of the country. For millions of immigrants learning English has been an important first step to becoming a U.S. citizen.

Schools must teach immigrant children who speak languages other than English. Educators differ about how best to accomplish their tasks. A large percentage of recent immigrants speak Spanish as their first language. In certain areas of the country

Spanish is as commonly spoken as English. Some believe that we are becoming a bilingual nation.

1. How do the following statements apply to this situation? What principles and ideals are implied in each statement? How, if at all, do these principles conflict with each other?

America is God's crucible, the great melting pot where all the races of Europe are melting and re-forming!

—Israel Zangwill

[Immigrants are] not the refuse but the sinew and bone of all the nations.... [Education is] the essence of American opportunity, the treasure that no thief could touch, not even misfortune or poverty.

—Mary Antin

Our political harmony is therefore concerned in a uniformity of language.

—Noah Webster

We have room for but one language here, and that is the English language, and we intend to see that the crucible turns our people out as Americans, and not as dwellers of a polyglot boarding-house.

—Theodore Roosevelt

In world history, those who have helped to build the same culture are not necessarily of one race, and those of the same race have not all participated in one culture.

—Ruth Fulton Benedict

America is not a melting pot. It is a sizzling cauldron.

—Barbara Mikulski

We have become not a melting pot but a beautiful mosaic. Different people, different beliefs, different yearnings, different hopes, different dreams.

—Jimmy Carter

Here in America we are descended in blood and in spirit from revolutionaries and rebels—men and women who dared to dissent from accepted doctrines. As their heirs may we

never confuse honest dissent with disloyal subversion.

—Dwight D. Eisenhower

I believe respect for diversity and encouragement of a plurality of communities have been among the glories of the best elements of the American political system.... But, like all other values, diversity has its problems and costs as well as its advantages and benefits. The problem is often simply referred to as the tension between unity and diversity, or order and liberty, or the public and the private.

—R. Freeman Butts

2. Which, if any, of these statements do you find most persuasive? Why?
3. Is a common language necessary to American citizenship? Explain your position in terms of the principles involved.



★ **AMERICANS ALL** ★
LET'S FIGHT FOR VICTORY

In order to become citizens, should people be required to be fluent in English?

CRITICAL THINKING EXERCISE 3

Majority Rule versus Minority Rights

The rights and wrongs of majority rule have been the subject of debate for centuries. One scholar recently compared Americans' concern about the problem of majority tyranny to "a nagging tooth."

The term *majority* is derived from the Latin *major pars*, or the "weightier part." In medieval Europe the term referred to powerful nobles who were considered "weightier" than the common people. Today, in a democratic society that adheres to a principle of political equality—"each is to count for one and no more than one"—numbers rather than social position determine the meaning of majority.

The term *minority* may refer to those on the losing side of a vote of any kind. It also refers to a part of a population differing from others in some characteristic such as ethnicity, language, religion, or political party.

Majority rule is an essential concept of democratic government because there needs to be a way to settle disputes and decide issues. If unanimous agreement were necessary before a law could be enacted, a policy put in place, or an official elected, then nothing would get done.

However, majority rule is not an absolute principle. If it were, then the majority of voters or legislators could ignore the wishes of minorities and deprive them of their rights.

Today, most Americans believe themselves to be members, at least part of the time, of one or more minorities. Their views could be ignored and their goals threatened if the will of majorities were legally unlimited. How to achieve the proper balance between majority rule and minority rights therefore remains a continuing challenge.

1. How do the following statements address the problem of reconciling majority rule with minority rights? What principles and ideals are implied in each statement? How, if at all, do these principles conflict with each other?

The first principle of republicanism is, that the *lex-majoris partis* is the fundamental law of every society of individuals with equal rights; to consider the will of society enounced by the majority of a single vote, as sacred as if unanimous, is the first of all lessons in importance.

—Thomas Jefferson



How, if at all, does the Constitution preserve majority rule while protecting against majority tyranny?

Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy, or despotism, in some form is all that is left.

—Abraham Lincoln

No democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities.

—Franklin D. Roosevelt

When great changes occur in history, when great principles are involved, as a rule the majority are wrong. The minority are right.

—Eugene Debs

A nation is judged by how it treats its minorities.

—René Lévesque

All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression.

—Thomas Jefferson

I admit the tyranny of majorities may be as bad as the tyranny of kings...and I do not think any rational or sober man will say that what is justifiable against a tyrannical king may not under certain circumstances be justifiable against a tyrannical majority.

—Arthur James Balfour

My definition of a free society is a society where it is safe to be unpopular.

—Adlai Stevenson

Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious...or national...or racial minorities...whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for correspondingly more searching judicial inquiry.

—Harlan F. Stone,
United States v. Carolene Products,
304 U.S. 144 (1938)

2. Which, if any, of these statements do you find most persuasive? Why?



Has the United States succeeded in achieving Thomas Jefferson's goal of protecting the equal rights of minorities with equal laws? Why or why not?





Is health care a fundamental right? Why or why not?

CRITICAL THINKING EXERCISE 4

Public versus Private Responsibilities

The health care system of the United States remained unique among the health care systems of developed countries until 2010. The passage that year of the Affordable Care Act (ACA) changed the landscape from reliance on job-based health insurance to the requirement that all individuals who could afford it must obtain basic health coverage. President Barack Obama considered the ACA to be the signature success of his domestic agenda. It was to extend medical insurance to more than 30 million previously excluded people.

As soon as the law was signed lawsuits were filed to challenge its constitutionality. Some groups claimed that the ACA's requirement that people had to buy health insurance or pay a penalty violated the Constitution. The Court ruled in a 5-to-4 decision in *National Federation of Independent Business v. Sebelius* (2012) that the ACA's requirement was not unconstitutional.

A second challenge to the ACA came in June 2014 in two cases where companies said the law's requirement that they had to provide health care that covered all forms of contraception was a violation of their First Amendment right to religious freedom. Both were family-run companies that said they operated according to "Christian principles." The ruling came in the cases of *Burwell v. Hobby Lobby Stores* and *Conestoga Wood Specialties Corp. v. Burwell*. The Court ruled in another 5-to-4 decision that some closely held corporations could claim exemption from the law based on their owners' religious beliefs.

Is health care a fundamental right? Do governments have a compelling interest in the health and well-being of their citizens?

1. What arguments can you give for and against the Supreme Court's ruling in each of the above cases?
2. How do the following statements apply to this situation? What principles and ideals are implied in each statement? How, if at all, do these principles conflict with each other?

[To] promote the general Welfare.

—Preamble to the Constitution

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.

—Constitution, Article I, Section 8

If, my countrymen, you wait for a Constitution which absolutely bars a power of doing evil, you must wait long, and when obtained it will have no power of doing good.

—Oliver Ellsworth

A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution

of the trusts for which it is responsible, free from every other control, but a regard to the public good and to the sense of the people.

—Alexander Hamilton

I own I am not a friend to a very energetic government. It is always oppressive.

—Thomas Jefferson

3. Should health care be considered a private or a public matter? Why?
4. Should states have a greater responsibility than the national government for assuring adequate health care? Why?
5. What is your position on this issue in terms of the current situation and the principles involved?



POSTSCRIPT

Our Constitution is a covenant running from the first generation of Americans to us and then to future generations. It is a coherent succession. Each generation must learn anew that the Constitution's written terms embody ideas and aspirations that must survive more ages than one.

U.S. Supreme Court Justices Sandra Day O'Connor, Anthony Kennedy, and David Hackett Souter, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (plurality opinion)

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