

Lesson 2

New Citizenship and Constitutional Issues



Key Terms

E Pluribus Unum
global village
judicial restraint
plebiscite
teledemocracy

What You Will Learn to Do

- Predict how increased diversity, technological changes, closer international relationships, and current constitutional issues are likely to affect your life as an American citizen over the next 10 years

Linked Core Objectives

- Communicate using verbal, non-verbal, visual, and written techniques
- Do your share as a good citizen in your school, community, country, and the world

Skills and Knowledge You Will Gain Along the Way

- Describe developments taking place in the world that have the potential to have an impact on the future of American citizenship
- Explain the impact of increased diversity in society on the political system
- Describe the potential impact of increasingly sophisticated technology on representative democracy
- Explain how changes in the complexity of American society create new constitutional issues
- Describe constitutional issues currently being raised in American society
- Describe unenumerated rights and the controversies raised by the Ninth Amendment
- Define key words contained in this lesson

Introduction

In this learning plan you explore three trends that may impact citizenship in the future: the increasing diversity of American society; the impact of modern technology; and America's growing interdependence with the rest of the world. In addition, you examine some constitutional issues facing the United States. Finally, you predict how these issues and trends might affect your life as an American citizen over the next 10 years.

World Developments Affecting the Future of American Citizenship

Three developments promise to shape the future of American citizenship in important ways. These developments are:

- **the increasing diversity of American society**
- **the impact of modern technology, especially the computer and electronic telecommunications**
- **America's growing interdependence with the rest of the world**

You know how Americans have adapted the idea of citizenship to a nation of immigrants, people from many lands and cultures, bound together by a commitment to a common set of political values. The American ideal of **E Pluribus Unum** has usually been able to balance the benefits of a diverse society with the unifying influence of a common civic culture. One of the major challenges you face as an American citizen is to sustain that balance in a society that is becoming far more diverse and complex.

America in the founding era was a nation of 3.5 million inhabitants—3 million free whites and half a million enslaved Africans. Most of the white population was northern European in ancestry. The young republic also was overwhelmingly Protestant. Today America is a microcosm of the world. It has become one of the most ethnically diverse countries on earth. You may see evidence of this diversity in your school (see Figure 7.2.1). More than 100 languages are spoken by students in the Los Angeles



Key Note Term

E Pluribus Unum—
Latin, meaning “out of many, one”

What strengths can immigrants bring to a society? What problems can arise as a result of large-scale immigration?

Courtesy of AP/Wide World Photos.

Figure 7.2.1: The United States' open-door policy on immigration has enabled America to become a microcosm of the world.

Courtesy of Jose Luis Pelaez, Inc./Corbis Images.



school district. The results of recent immigration to this country have been dramatic. Of the 14 million immigrants since 1965, 85 percent have come from non-European countries. During the 1980s, immigrants to the United States came from 164 different lands. By the turn of the century, one in every four Americans will be Hispanic, African American, or Asian. By the year 2030, one-half of the country's population will belong to one minority group or another. In a sense, there will no longer be a traditional majority group. In 1995 only 15 percent of Americans identify themselves as descendants of British immigrants, who once comprised a large majority of the population. The faces of "We the People" have changed considerably in the course of 200 years and will continue to change during your lifetime.

How Diversity Changes U.S. Society

Americans today disagree about how diversity changes our society. To some the diversity brought about by recent immigration is no different from what has happened throughout American history. The mix of people has strengthened American society and reaffirmed our commitment to ideals that are the property of all humanity, not a particular ethnic group. As with their predecessors, most recent immigrants have adapted to American society, enriching the nation's economic life, culture, and educational institutions.

Others worry that there are limits to how much diversity the country can absorb without losing the common bonds that unite us. They fear that in an increasingly diverse society, self-interests may prevail over the common good. A challenge for your generation as for all previous generations is balancing the unum with the pluribus in America.

Points to Ponder

1. What advantages does our political system gain from diversity of people and ideas? What might be some disadvantages?
2. When does diversity become an issue in a free society? Is there such a thing as too much diversity? What effects—good or bad—do you think groups and “cliques” have on the life of your school community?
3. Do you agree with Woodrow Wilson that “a man who thinks of himself as belonging to a particular group in America has not yet become an American?” Why or why not?
4. What obligations, if any, do you think you should have as a citizen toward people who hold social, religious, or political beliefs with which you strongly disagree? Explain your position.

How Citizenship Is Changed by Technology

Modern technology has expanded the possibilities for participatory citizenship. Audio and video teleconferencing has become a familiar way for citizens to discuss issues of common concern. So has talk radio. Some state legislatures have begun to use such telecommunications on a regular basis as a way of staying in touch with their constituents. Advocacy groups of all kinds use the internet, databases, and electronic mail to inform and organize their members.

Some futurists—theorists who consider possibilities for the future based on current information and trends—see revolutionary implications in this technology. They envision the possibility of a **teledemocracy** in the years ahead. This term means a new version of direct democracy, where citizens can participate to a much greater extent in the affairs of government with less reliance on their elected representatives.

National **plebiscites** also have become a practical option. By use of online computerized voting, each citizen could register his or her views on particular issues, with the results instantly tabulated. “Going to the polls,” as seen in Figure 7.2.2, could become an out-moded custom. Citizens could exercise their political rights from a computer work station at home or in public facilities like libraries or the post office.

The Framers believed that classical republicanism in its purest form was impractical in a country as large and diverse as the American republic. Some people believe that teledemocracy overcomes many of these

**Key Note Term**

teledemocracy—the futurist view of a direct democracy using telecommunications to provide greater opportunities for participation in government

plebiscite—an expression of the people's will by direct vote

Does modern technology help or hinder American citizenship?

Courtesy of H. Armstrong Roberts.

Figure 7.2.2: In the near future, American voters might not have to leave their homes or offices to cast their votes.

*Courtesy of Rick Wilking/
Reuters/Corbis Images.*



impracticalities. The computer makes possible an electronic city-state in which citizens scattered across the country can join together to participate more effectively in public affairs.

Whatever its potential implications, the computer is forcing us to reexamine the most basic principles and institutions in our constitutional democracy.

Role Playing James Madison in the Third Century of Government under the Constitution

Imagine, for a moment, that you are James Madison, brought back to life in the year 2000. What would be your assessment of teledemocracy and the electronic city-state? To help develop your position, answer the following questions.

1. What are the dangers of direct democracy? Why did the Framers of the Constitution distrust it? Why did they prefer representative democracy instead?
2. To what extent is “public opinion” synonymous with the “will of the people”?
3. What should be the role of political leadership in a democracy? To what extent should leaders influence and to what extent should they be influenced by popular opinion? Can government in a democracy be too much in touch with the sentiments of the people?
4. In what ways is computer technology a threat to individual liberty as well as a tool on its behalf?
5. What expectations does teledemocracy place on citizens? To what extent are those expectations realistic?
6. The advancements of technology show us what we have the capability of doing, not what we necessarily have to do or should do. What other considerations about citizenship and civic culture might argue against the creation of teledemocracy?



In what ways does the internationalization of business affect tradition and culture?

Courtesy of Reuters/Bettmann.

How Internationalism Affects American Citizenship

One important consequence of the communications revolution has been America's increased interaction and interdependence with the rest of the world. Issues of national importance in the United States have an impact beyond our borders. Conversely, events and developments elsewhere in the world are becoming more significant in the lives of American citizens.

The achievements of modern technology are turning the world into a **global village**, with shared cultural, economic, and environmental concerns. National corporations have become international. Economic decisions made in Tokyo or London affect the things Americans buy and the jobs they seek. Environmental concerns also transcend national boundaries. Entertainment—music, sports, and film—command worldwide markets. The culture that we live in is becoming cosmopolitan, that is, belonging to the whole world.

The movement of people, as well as information, has helped bring about global interdependence. Improved transportation has been a key factor in increased immigration to the United States. People go where there is economic opportunity and they can go more easily and much farther than in the past. The movement of people across national borders will continue to increase. Such migrations help to reduce cultural and other differences that have historically divided nations. They also create new problems for governments which have the responsibility for providing for the well-being of citizens and other residents.

Citizenship in modern history has been defined largely in terms of nation-states. The idea of being a citizen, however, developed in many different political contexts throughout history, from tiny city-states to large empires. In the American experience, citizenship has changed in its patterns of allegiance and loyalty. Before the

Key Note Term

global village—term used to define achievements of modern technology that indicate shared worldwide cultural, economic, and environmental concerns

Civil War, many Americans would have defined their citizenship in terms of loyalty to their respective states rather than to the United States.

Although national citizenship is likely to remain fundamentally important in the future, the issues confronting American citizens are increasingly international. Issues of economic competition, the environment, and the movement of peoples around the world require an awareness of political associations that are larger in scope than the nation-state.

What Do You Think?

1. In The Federalist essays Madison argued that two conditions would help to prevent a tyranny of the majority in America. One was the diversity of interests in the new nation. The other was geographic distance making it difficult for these different interests to combine. As you evaluate the significant changes now taking place in American society, do you think the threat of such a democratic tyranny has increased or decreased? What trends may have increased the danger? What trends decreased it?
2. In his observations about American democracy, Tocqueville warned of the danger of individual isolation in a society where everyone was equal. Democracy, he said, “throws [each individual] back forever upon himself alone and threatens in the end to confine him entirely within the solitude of his own heart.” Has computer technology made such individual isolation more or less likely today? Explain your answer.
3. What advantages might be offered by world citizenship? What disadvantages? Do you think that world citizenship will be possible in your lifetime?

Why the Constitution Has Been Changed Infrequently

Some critics believe the system of government created by the Framers for the world of the eighteenth century has proven itself unsuited for the more complex, faster-paced world of the twenty-first century. Others, however, respond by noting that any system that has managed to adapt itself to the changes of 200 years deserves the benefit of the doubt. Tampering with the Constitution, they say, should always err on the side of caution.

Americans have never been reluctant to tinker with the Constitution. More than 10,000 constitutional amendments have been introduced; but only 33 have been approved by Congress and submitted to the states for ratification; and only 27 of these have been adopted. Changing the Constitution has proven to be difficult, which is what the Framers intended when they outlined the requirements for amendment in Article V. After all, it took two centuries for the Twenty-seventh Amendment to the Constitution to be adopted.

The Framers wanted the Constitution to remain the nation's fundamental law, not to be confused, as a result of frequent changes, with ordinary laws and regulations. Because it has proven difficult to amend, the Constitution remains one of the oldest and shortest written constitutions, with a total of 7,591 words.

Constitutional Rights Issues Raised by Changes in American Society

Progress and change have created new issues for the Constitution. Their complexity challenges the nation's historic commitment to resolve its problems through constitutional means. Among the issues likely to be important in the years ahead are the following:

- **Group rights**
- **Right to life and death**
- **Right to privacy**
- **Rights of the individual and providing for the common good**
- **Rights of citizens and rights of resident aliens**

Group Rights

America's increasingly pluralistic society and the nation's ongoing commitment to equality have forced Americans to recognize the differences that exist between groups. How far should constitutional guarantees go, for example, in providing for favored treatment of historically excluded groups? In a multilingual society to what extent should the government be obliged to provide ballots, income tax returns, and other government forms in languages other than English?

Right to Life and Death

The accomplishments of modern science in sustaining life before full-term pregnancy and into old age have made our society reexamine both the legal and ethical meaning of life itself. To some, high tech life support systems have created a distinction between life and existence. When does life begin? When does it end? Does an individual have a right to take his or her own life? Does an individual have the right to assist someone else's suicide?

Right to Privacy

Electronic communications pose new potential threats to individual privacy. Federal, state, and local governments now keep vast computer databases on individual citizens. In the computer age, to what extent do the constitutional protections of personal "papers and effects" under the Fourth Amendment extend beyond one's home into these government files? Who has access to these records and for what purposes?

Moreover, Fourth Amendment protections do not apply to the actions of the private sector of our society. Corporations, hospitals, and other private agencies also keep computer records. Both private and public institutions can invade the privacy of individuals through "electronic snooping"—using video cameras, audio "bugs", and microwave technology to spy on individuals. The constitutional limitations on such activity have yet to be developed.

Rights of the Individual and Providing for the Common Good

The enduring tension between these two conflicting values in our constitutional democracy is being tested once again by environmental and other issues in modern society. How will our constitutional arrangements balance the rights of the individual to property and pursuit of happiness with the responsibility to provide for the general good of the larger society by guaranteeing such things as clean air and the preservation of natural habitats? Controversies surrounding the protection of old-growth forests, preservation of the spotted owl, and the effects of cigarette smoking exemplify this tension.

Right of Citizens and Rights of Resident Aliens

The increasing movement of peoples across national borders is likely to raise new constitutional issues regarding the meaning of citizenship and the status of aliens in the United States. Aliens enjoy many of the civil rights that the Constitution accords to “persons” as distinguished from citizens. These include most provisions of the Bill of Rights and freedom from arbitrary discrimination. Aliens are subject to the laws of the United States and must pay taxes. If immigration continues in future years new issues are likely to arise regarding the rights of both citizens and aliens under our Constitution.

Unenumerated Rights

The perplexing constitutional issues of modern life have not only prompted reinterpretations of well established rights, they also have given new importance to a largely unexplored frontier of our Constitution—unenumerated rights. Unenumerated



How can government agencies best mediate the conflict between legitimate individual rights and the common good?

Photos courtesy of AP/Wide World Photos, EPG. International, Kenneth Garrett.

ated rights are rights possessed by every American that are not listed or enumerated in the Constitution. They are unspecified rights.

One of the principal objections to a federal bill of rights was that such a document could not possibly list all the rights of the people. Leaving some rights unlisted, or unenumerated, might imply that they did not exist. Omission also could be interpreted to mean that such rights, even if they did exist, were not important.

It was probably as a result of these concerns that the Ninth Amendment was included in the Bill of Rights. It says:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The Ninth Amendment embodies that great principle that can be traced back through the history of constitutional government to the Magna Carta—the principle that there exist certain fundamental rights that we take for granted, not just those rights that happen to be specified in a particular document. Justice William O. Douglas stated, “It well may be that guarantees which must be written are less secure than those so embedded in the hearts of men that they need not be written.”

Power to Identify Unenumerated Rights

Who should decide what is an unenumerated right protected by the Constitution? There are differences of opinion on how this question should be answered. At issue is a basic principle of constitutional government that requires the powers of all the agencies of government be limited by law.

The Supreme Court has the power according to the principle of judicial review to decide whether a legislative act or executive order violates a right protected by the Constitution. This task is difficult enough with issues involving rights explicitly



Who should determine which matters of personal privacy should remain free from government regulation?

Courtesy of the Center for Civic Education.

listed in the Constitution, such as the rights to a writ of habeas corpus or protection against unlawful entry by the authorities. The task becomes even more difficult when the issue involves unenumerated rights. What standard, if any, can justices use to avoid reading their own prejudices into the Constitution?

Critics of judicial power have claimed that anyone can find any right they want through a subjective interpretation of the Constitution. These critics often refer to the language of the majority opinion in *Griswold v. Connecticut* (1965), written by Justice Douglas. The case involved a Connecticut law that prohibited the use of contraceptives in all circumstances. A physician had been arrested for giving information on contraception to a married couple.

Douglas's opinion claimed that the Connecticut law violated the right of marital privacy. This right is not specifically referred to anywhere in the Constitution. In his opinion, however, Douglas argued that the right was protected by "penumbras, formed by emanations" from other enumerated rights, specifically those in the First, Third, Fourth, and Fifth Amendments. By this, he meant that some provisions of the Bill of Rights implied a right to marital privacy. In terms of his colorful metaphor, unenumerated rights were to be found in the shadows cast by the light of enumerated rights.

Should judges be given the freedom to decide what rights are to be discovered in the shadows of the Constitution's emanations? Some critics believe that to allow such latitude gives the Court almost unlimited power, not only to interpret the law but by doing so to create new law. There has been, and will continue to be, disagreement about the role judges should play in a constitutional democracy. There is disagreement about how the Constitution should be interpreted, with some believing in a strict construction, adhering as closely as possible to the original intent of the Framers. Others believe in broad construction, giving judges considerable leeway in applying the words of the Constitution to the circumstances of a changing world.

There also is disagreement about the degree to which judges should intercede in the activities of the legislative and executive branches. Some believe in a philosophy of **judicial restraint**, which places strong limitations on the discretionary powers of judges and relies instead on the political process to influence legislators to pass laws that protect rights. In the words of former Chief Justice Warren Burger, "In a democratic society, legislatures, not courts, are constituted to respond to the will, and consequently the moral values, of the people."

Others have argued for judicial activism by pointing out that the nation's courts, as watchdogs of the Constitution, have always had a special role to play in the identification, definition, and protection of individual rights. It was an advocate of judicial activism and broad construction, Justice William J. Brennan, who said:

"We current Justices read the Constitution in the only way we can, as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. The ultimate question must be, what do the words of the text mean for our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs."

In a sense, what Justice Brennan said applies to every citizen called on to make sense of the Constitution—we cannot escape altogether the context and perspective of our

Key Note Term

judicial restraint—the belief that the Supreme Court should neither overrule the decisions of elected officials nor make public policy

own time. The challenge, as always, will be to apply the principles of the Constitution to changing circumstances without losing its basic principles in the process.

Conclusion

This lesson looked to the future. You focused on some major developments taking place in our society that are likely to affect the very nature of citizenship during your lifetime. You learned how the increased diversity of our society, technological progress, and closer international relationships are likely to affect your life as a citizen. You also learned how diversity has challenged our civic culture, how the computer and modern telecommunications are expanding the possibilities of citizenship, and how our nation's greater interdependence with the rest of the world is changing the pattern of civic loyalties.

This lesson focused on some constitutional issues being raised by our changing roles as citizens and the influence of many developments in modern society. You examined how these issues have challenged our understanding of group rights, the rights to life and to privacy, and the conflict between individual rights and the general good.

Lesson Review

1. How would you describe the challenges and opportunities created by the increasing diversity of American society?
2. How might modern technology expand the opportunities for direct participation by citizens in self-government?
3. How would you describe “strict construction” and “broad construction” of the Constitution?
4. What is meant by “judicial restraint”? What is meant by “judicial activism”? What arguments have been made in support of these two approaches to fulfilling the responsibilities of being a judge?