



Civil Liberties vs. National Security: The Wartime Balancing Act

Grade Levels: 9-12

Number of class periods: 3 (about 60 minutes) with options for extension

LESSON OVERVIEW

This lesson will focus on the case *Korematsu v. U.S.* in comparison with other times in U.S. history when the government was faced with the challenge of how to protect the country during war and, at the same time, protect individual freedoms. Using primary sources, students will examine five events in which U.S. citizens were forced to give up their civil liberties in times of war, highlighting the tension between liberty and security. Students will analyze these events to determine what groups were affected and the reasoning for and against the government action to decide if the government action was justified. Students will be able to form an opinion on the essential question: Is our government ever justified in restricting civil liberties for the security of the nation?

OBJECTIVES

Students will be able to infer how the struggle to balance civil liberties and national security during war has been a constant challenge for the U.S. government throughout history.

Students will be able to evaluate the reasons for government restriction of civil liberties and use historical empathy in considering the role of the citizen during wartime.

Students will be able to analyze primary sources to identify the point of view, purpose, and audience of a source. They will also use primary sources to analyze historical arguments.

Students will be able to use historical thinking to analyze patterns and connections between historical events and developments.

Students will be able to compare and contrast primary sources to determine similarities between key ideas and events in the United States during wartime.

Students will be able to support a position by using and applying primary sources to determine which case study was the worst violation of civil liberties and answer the essential question: Is our government ever justified in restricting civil liberties for the security of the nation?

MATERIALS

- **Video:** [“Korematsu and Civil Liberties”](#) tells the story of Fred Korematsu and the turbulent times that led the Supreme Court to uphold the denial of civil liberties in the interest of national security.
- Case Study Worksheet
- *Korematsu v. U.S.* Primary Sources
- Alien and Sedition Acts Primary Sources
- Lincoln Suspends Habeas Corpus Primary Sources
- *Schenck v. U.S.* Primary Sources
- Patriot Act Primary Sources
- Legacy of Fred Korematsu Worksheet

Supplemental Materials from Annenberg Classroom

- **Book:** [The Pursuit of Justice](#), Chapter 11: Internment of Japanese Americans During World War II
- **Video:** [“A Conversation on the Constitution](#) with Justices Stephen Breyer, Anthony Kennedy, and Sandra Day O’Connor: The Importance of Japanese Internment Cases”

ESSENTIAL QUESTION

Is the government ever justified in restricting civil liberties for the security of the nation?

PROCEDURE

DAY 1:

- Write this quote by Benjamin Franklin on the board: “They who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”
- Ask students what Franklin meant by this and if they agree with him. Explain to the students that many times in U.S. history the government curtailed the civil liberties of American citizens to protect the nation during war.
- Play the video “Korematsu and Civil Liberties.”

DAY 2:

- Divide students into four groups.
- Hand out the worksheet and the Korematsu primary sources.
- Have all groups read and analyze the Korematsu primary sources and fill out that part of the worksheet.

- Then hand out one additional case study to each group (Alien and Sedition Act, *Schenck v. U.S.*, Lincoln suspends habeas corpus, or the Patriot Act)
- Have groups work on their case for the remainder of the period.

DAY 3

- Have each group present its findings to the rest of the class.
- Then have students complete the concluding questions.
- If there is time, students can debate the essential question: Is our government ever justified in restricting civil liberties for the security of the nation?

Options for Homework or Extension Activity

- The Legacy of *Korematsu v. U.S.*
- Real-Life Scenario Questions

9th-10th Grade Common Core Standards

CCSS.ELA-LITERACY.RH.9-10.1

Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

CCSS.ELA-LITERACY.RH.9-10.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

CCSS.ELA-LITERACY.RH.9-10.6

Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.

CCSS.ELA-LITERACY.RH.9-10.8

Assess the extent to which the reasoning and evidence in a text support the author's claim.

CCSS.ELA-LITERACY.RH.9-10.9

Compare and contrast treatments of the same topic in several primary and secondary sources.

11th-12th Grade Common Core Standards

CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-LITERACY.RH.11-12.7

Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-LITERACY.RH.11-12.8

Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

CCSS.ELA-LITERACY.RH.11-12.9

Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

Case #1 – Alien and Sedition Acts (1798)

Passed by the Federalist party in 1798 as the new nation was preparing for a possible war with France. President John Adams tried to avoid war with France while passing the Alien and Sedition Acts with the help of Congress. These acts tightened restrictions on foreign-born Americans and immigrants and limited speech critical of the government.

Primary Source Documents

The First Amendment (1791)

Congress shall make no law...abridging the freedom of speech, or of the press

The Sedition Act (1798)

SEC. 2. And be it further enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up **sedition** within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President...or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person...shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years....

Virginia Resolution, James Madison (1798) reacting to the Alien and Sedition Acts and the abuse of government power, specifically the restriction of the First Amendment.

“A power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is leveled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed, the only effectual guardian of every other right.”

Thomas Jefferson letter to James Madison (June 1798)

“The Federalists were promoting a sedition bill, which among other enormities, undertakes to make printing certain matters criminal, tho' one of the amendments to the Constitution has so expressly taken religion, printing presses out of their coercion. Indeed this bill and the alien bill are so palpably in the teeth of the Constitution as to show they mean to pay no respect to it.”

Federalist Representative James Bayard (1798)

“The Government is bound not to deceive the people, and it is equally bound not to suffer them to be deceived. Delusion leads to insurrection and rebellion, which it is the duty of the Government to prevent. This they cannot prevent unless they have a power to punish those who with wicked designs attempt to mislead the people.”

Federalist Representative Timothy Pickering (1798)

“The Alien Law has been bitterly inveighed against as a direct attack upon our liberties, when in fact it affects only foreigners who are conspiring against us, and has no relation whatever to an American citizen. It gives authority to the First Magistrate [President] of the Union to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of our territory.

The Sedition Act has likewise been shamefully misrepresented as an attack upon the freedom of speech and of the press. But we find, on the contrary, that it prescribes a punishment only for those pests of society and disturbers of order and tranquility ‘who write, print, utter, or publish any false, scandalous, and malicious writings against the government of the United States, or either house of the Congress of the United States, or the President, with intent to defame, or bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States; or to stir up sedition, or to abet the hostile designs of any foreign nation.’”

Case #2 – Lincoln suspends the writ of habeas corpus during Civil War

*At the start of the Civil War, President Lincoln worried about a rebellion in Maryland that would potentially endanger Washington, D.C. He ordered General Winfield Scott to suspend habeas corpus near the railroad lines that connected Philadelphia to the capital. John Merryman, a vocal secessionist, was arrested on suspicion that he was involved with a dangerous secessionist group. He was held at Fort McHenry in Baltimore without a warrant. He brought his case to a circuit court in the case *Ex parte Merryman*. The Court denied the president's authority to suspend habeas corpus, denouncing Lincoln's interference with civil liberties, and argued that only Congress had the power to suspend the writ.*

Primary Source Documents

Sections of the U.S. Constitution (1787)

- A. Article I, Section 8. The Congress shall have power to...provide for the common defense and general welfare of the United States...
- B. Article I, Section 9. ...The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Abraham Lincoln – Letter to Winfield Scott (April 27, 1861)

To the Commanding General of the Army of the United States:

“You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military line [any]... you find resistance which renders it necessary to suspend the writ of Habeas Corpus for the public safety, you, personally or through the officer in command at the point where the [at which] resistance occurs, are authorized to suspend that writ.”

Justice Roger Taney, in the opinion in *Ex parte Merryman* (May 1861)

“The clause in the Constitution which authorizes the suspension of the privilege of the writ of habeas corpus is in the ninth section of the first article. This article is devoted to the Legislative Department of the United States, and has not the slightest reference to the Executive Department. I can see no ground whatever for supposing that the President in any emergency or in any state of things can authorize the suspension of the privilege of the writ of habeas corpus, or arrest a citizen except in aid of the judicial power.”

Lincoln's response to the Merryman case (May 1861)

“Are all the laws but one to go unexecuted, and the Government itself go to pieces lest that one be violated? Even in such a case, would not the official oath be broken if the Government should be overthrown when it was believed that disregarding the single law would tend to preserve it?.. Now it is insisted that Congress, and not the Executive, is vested with this power; but the Constitution itself is silent as to which or who is to exercise the power; and as the provision was plainly made for a dangerous emergency, it can not be believed the framers of the instrument intended that in every case the danger should run its course until Congress could

be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion.”

[Abraham Lincoln – Letter to Erastus Corning and others \(June 1863\)](#)

“Ours is a case of Rebellion – so called by the resolutions before me – in fact, a clear, flagrant, and gigantic case of Rebellion; and the provision of the constitution that ‘The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion, the public Safety may require it’ is *the* provision which specially applies to our present case. This provision plainly attests the understanding of those who made the constitution that ordinary courts of justice are inadequate to ‘cases of Rebellion’ – attests their purpose that in such cases, men may be held in custody whom the courts acting on ordinary rules, would discharge.”

[Clement Vallandigham, Democrat \(1863\)](#)

“The Habeas Corpus Act authorizes the President whom the people made, whom the people had chosen by the ballot box under the Constitution and laws, to suspend the writ of habeas corpus all over the United States; to say that because there is a rebellion in South Carolina, a man shall not have freedom of speech, freedom of the press or any of his rights in the state of New York...our fathers did not inaugurate the Revolution of 1776, they did not endure the sufferings and privations of a seven years’ war to escape from the mild and moderate control of a constitutional monarchy like that of England, to be at last, in the third generation, subjected to a tyranny equal to that of any upon the face of the globe.”

Case #3 – The Espionage Act and *Schenck v. U.S.* during World War I

During World War I, socialist Charles Schenck was arrested for distributing leaflets urging men to disobey the draft, saying that it violated the Thirteenth Amendment prohibiting slavery. Schenck was charged with violating the Espionage Act by causing insubordination to the military by attempting to obstruct recruitment. Schenck appealed his arrest, claiming his First Amendment right to freedom of speech. In Schenck v. U.S., the Supreme Court unanimously upheld Schenck's conviction.

Primary Source Documents

The First Amendment of the U.S. Constitution (1791)

Congress shall make no law...abridging the freedom of speech, or of the press...

President Woodrow Wilson, State of the Union address (1915)

"I am sorry to say that the gravest threats against our national peace and safety have been uttered within our own borders...There are some men among us, and many resident abroad who, though born and bred in the United States and calling themselves Americans, have so forgotten themselves and their honor as citizens as to put their passionate sympathy with one or the other side in the great European conflict above their regard for the peace and dignity of the United States. They also preach and practice disloyalty..."

The Espionage Act (1918) Section 3

"Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies...[or] willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States recruiting or enlistment service of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both."

Justice Oliver Wendell Holmes, writing for the Court (1919)

"We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to

its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right...”

Excerpt from Schenck’s pamphlet: “Assert Your Rights”

“In lending tacit or silent consent to the conscription law, in neglecting to assert your rights, you are (whether knowingly or not) helping to condone and support a most infamous and insidious conspiracy to abridge and destroy the sacred and cherished rights of a free people. You are a citizen: not a subject! You delegate your power to the officers of the law to be used for your good and welfare, not against you. ... Are you willing to submit to the degradation of having the Constitution of the United States treated as a mere scrap of paper ... You are responsible. You must do your share to maintain, support, and uphold the rights of the people of this country ... In this world crisis where do you stand? Are you with the forces of liberty and light or war and darkness?”

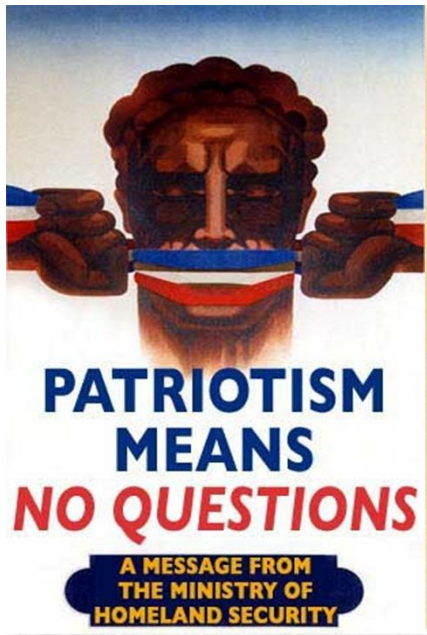
As Gag-Rulers Would Have It – Literary Digest (July 1920)



AS GAG-RULERS WOULD HAVE IT.

—Satterfield in the Jersey City Journal.

World War I Government Posters



Case #4 – *Korematsu v. U.S.*

In 1942, Fred Korematsu, a 22-year-old Japanese American, refused an evacuation order and was arrested, then convicted of a felony. He challenged his conviction in court on constitutional grounds, and the case was appealed to the Supreme Court. The Supreme Court in a 6-3 decision upheld the government's decision to intern of all persons of Japanese ancestry on the grounds of national security.

Primary Sources

The Fifth Amendment (1791)

No person shall be...deprived of life, liberty, or property, without due process of law...

“Date Which Will Live in Infamy” (1941)



Franklin D. Roosevelt's “Infamy” speech (1941)

December 8, 1941

“Yesterday, December 7, 1941 – a date which will live in infamy – the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan....

It will be recorded that the distance of Hawaii from Japan makes it obvious that the attack was deliberately planned many days or even weeks ago. During the intervening time the Japanese Government has deliberately sought to deceive the United States by false statements and expressions of hope for continued peace. ...

As Commander-in-Chief of the Army and Navy, I have directed that all measures be taken for our defense. ...

I believe I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make very certain that this form of treachery shall never endanger us again. ...

Hostilities exist. There is no blinking at the fact that our people, our territory and our interests are in grave danger.

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December seventh, a state of war has existed between the United States and the Japanese Empire.”

[Executive Order No. 9066 \(February 1942\)](#)

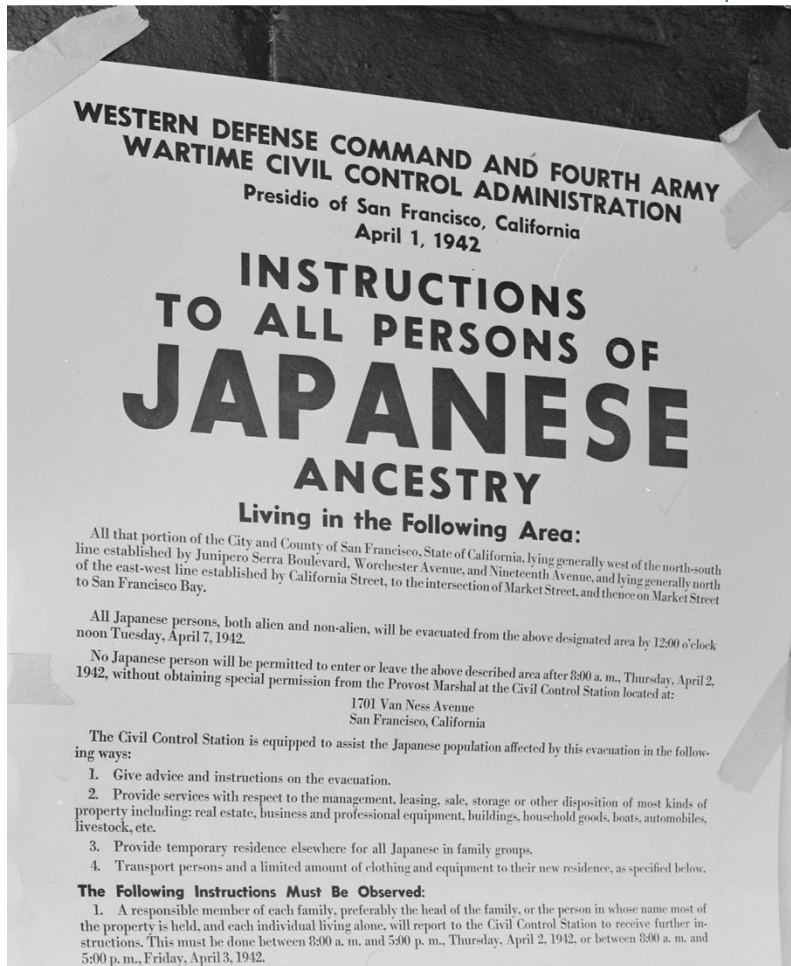
“Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage...

...I hereby authorize and direct the Secretary of War...to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary...for the conduct and control of alien enemies...”

[Executive Order No. 9102 \(March 1942\)](#)

“In the interests of national security, it is ordered as follows...The Director of the War Relocation Authority is authorized and directed to formulate and effectuate a program for the removal, from areas designated from time to time by the Secretary of War or appropriate military commander under the authority of Executive Order No. 9066 of February 19, 1942, of the persons or classes of persons designated under such Executive Order, and for their relocation, maintenance, and supervision...”

Wartime Civil Control Administration instruction to persons of Japanese ancestry (1942)



National Archives and Records Administration

[Justice Hugo Black, writing the majority opinion in *Korematsu v. U.S.* \(1944\)](#)

“We uphold the exclusion order as of the time it was made and when the petitioner violated it. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger....*Korematsu* was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders — as inevitably it must — determined that they should have the power to do just this. There was evidence of disloyalty on the part of some, the military authorities considered that the need for action was great, and time was short. We cannot — by availing ourselves of the calm perspective of hindsight — now say that at that time these actions were unjustified.”

[Korematsu v. U.S. \(1944\), Justice Owen Roberts dissenting opinion](#)

“I think the indisputable facts exhibit a clear violation of Constitutional rights...it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.”

[Fred Korematsu to the San Francisco Chronicle \(2004\)](#)

“Fears and prejudices directed against minority communities are too easy to evoke and exaggerate, often to serve the political agendas of those who promote those fears. I know what it is like to be at the other end of such scapegoating and how difficult it is to clear one’s name after unjustified suspicions are endorsed as fact by the government. If someone is a spy or terrorist, they should be prosecuted for their actions. But no one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy.”

Case #5 – USA Patriot Act

The USA Patriot Act stands for full Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. This act was passed by Congress and President George W. Bush in response to the terrorist attacks of 9/11. The act greatly expanded the surveillance powers of intelligence and enforcement agencies.

Primary Sources

Purpose of Patriot Act, Office of the Director of National Intelligence

“The purpose of the USA PATRIOT Act is to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and other purposes, some of which include:

- To strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism;
- To subject to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse;
- To require all appropriate elements of the financial services industry to report potential money laundering;
- To strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.”

George Bush – Purpose of Patriot Act (March 2006)

“The law allows our intelligence and law enforcement officials to continue to share information. It allows them to continue to use tools against terrorists that they used against – that they use against drug dealers and other criminals. It will improve our nation's security while we safeguard the civil liberties of our people. The legislation strengthens the Justice Department so it can better detect and disrupt terrorist threats. And the bill gives law enforcement new tools to combat threats to our citizens from international terrorists to local drug dealers.”

The PATRIOT Act passage by Congress (2001)

The legislation passed the Senate 98 to 1 and the House 357 to 66.

John Ashcroft, U.S. Attorney General (July 2004)

“In Afghanistan, our Special Operations Forces have deployed state-of-the-art weaponry and cutting edge tactics to hunt [the terrorist group] al Qaeda and destroy their safe haven. Here at home, our domestic warriors – federal, state and local law enforcement – have used the new legal tools and technology in the Patriot Act to hunt down al Qaeda, destroy their safe haven, and save American lives.

Let me be clear about something before I move on: Congress intended that the Patriot Act be used to save lives from terrorist attacks. In fact, there are a number of provisions that are only to

be used to prevent terrorism or foreign spying. But other tools in the Patriot Act were developed to combat serious crime across the board, and we have used those general tools both in terrorism cases as well as in other cases, such as to catch predatory child molesters and pornographers.

We are a nation at war. That is a fact. Al Qaeda wants to hit us and hit us hard. We have to use every legal weapon available to protect the American people from terrorist attacks. Like the smart bombs, laser-guided missiles and predator drones employed by our armed forces to hunt and kill al Qaeda in Afghanistan, the Patriot Act is just as vital to targeting the terrorists who would kill our people and destroy our freedom here at home.”

[ACLU \(American Civil Liberties Union\)](#)

“Hastily passed 45 days after 9/11 in the name of national security, the Patriot Act was the first of many changes to surveillance laws that made it easier for the government to spy on ordinary Americans by expanding the authority to monitor phone and email communications, collect bank and credit reporting records, and track the activity of innocent Americans on the Internet. While most Americans think it was created to catch terrorists, the Patriot Act actually turns regular citizens into suspects.

“Sneak & Peek” Searches: The Patriot Act allows federal law enforcement agencies to delay giving notice when they conduct secret searches of Americans homes and offices – a fundamental change to Fourth Amendment privacy protections and search warrants. This means that government agents can enter a house, apartment or office with a search warrant when the occupant is away, search through his/her property and take photographs – in some cases seizing property and electronic communications – and not tell the owner until later.”

Korematsu's Legacy Worksheet

Did the U.S. government do enough to honor the legacy of Fred Korematsu and thousands of Japanese Americans who were forced to relocate to internment camps during World War II?

Read the following sources to answer this question.

Civil Liberties Act of 1988

Enacted by Congress on August 10, 1988

“The Congress recognizes that, as described in the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent residents of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II.

As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.

The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made.

For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation...

Directs the Attorney General to: (1) identify and locate each eligible individual; and (2) pay from the Fund \$20,000 to each eligible individual. Makes a refusal to accept payment irrevocable. Declares that acceptance of payment shall be in full satisfaction of all related claims against the United States. Provides that payments shall be considered as damages for human suffering for purposes of Federal taxes and shall not be included in determining eligibility to receive certain income-based Federal benefits.”

President George H.W. Bush, letter to internees (1991)

THE WHITE HOUSE WASHINGTON

“A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation’s resolve to rectify injustice and to uphold the rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II.

In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice. You and your family have our best wishes for the future.”

Presidential Medal of Freedom (1998)

In 1998, Fred Korematsu was awarded the Presidential Medal of Freedom by President Bill Clinton.

“All of our honorees have helped America to widen the circle of democracy – by fighting for human rights, by righting social wrongs, by empowering others to achieve, by preserving our precious environment, by extending peace around the world. Every person here has done so by rising in remarkable ways to America’s highest calling, the calling, as the First Lady said, of active citizenship...”

In 1942, an ordinary American took an extraordinary stand. Fred Korematsu boldly opposed the forced internment of Japanese Americans during World War II. After being convicted for failing to report for relocation, Mr. Korematsu took his case all the way to the Supreme Court. The high court ruled against him.

But 39 years later, he had his conviction overturned in federal court, empowering tens of thousands of Japanese Americans and giving him what he said he wanted most of all – the chance to feel like an American once again...In the long history of our country’s constant search for justice, some names of ordinary citizens stand for millions of souls: Plessy. Brown. Parks. To that distinguished list, today we add the name of Fred Korematsu.”

Hawaii v. Trump (2018)

In *Hawaii v. Trump*, the Supreme Court considered whether President Trump’s travel ban exceeded the President’s delegated powers under the Immigration and Nationality Act and violated the Establishment Clause of the First Amendment. In a 5-4 decision, the Court upheld Trump’s travel ban and referred to the Korematsu case in both the majority and dissenting opinions by criticizing the decision and agreeing that it no longer has the force of precedent.

Chief Justice John Roberts Jr. in the majority opinion:

“The dissent’s reference to *Korematsu*, however, affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and to be clear ‘has no place in law under the Constitution.’”

Justice Sonia Sotomayor in the dissenting opinion:

“Today, the Court takes the important step of finally overruling *Korematsu*, denouncing it as ‘gravely wrong the day it was decided.’ This formal repudiation of a shameful precedent is laudable and long overdue.”

Question: Did the U.S. government do enough to honor the legacy of Fred Korematsu and thousands of Japanese Americans who were forced to relocate to internment camps during World War II?

CIVIL LIBERTIES vs. NATIONAL SECURITY: THE WARTIME BALANCING ACT

	Alien and Sedition	Lincoln	Schenck	Korematsu	Patriot Act
Why did the U.S. government fear for the security of the country?					
What groups were affected by the actions of the government?					
What government action was authorized?					
What were some reasons justifying the action? Use at least 4 primary sources in your response.					
What were some reasons against the government action? Use at least 4 primary sources in your response.					
In your opinion, was the government action justified?					

Concluding Questions

1. Which instance was the worst violation of civil liberties: Alien and Sedition Acts, Lincoln, *Korematsu*, *Schenck* or the Patriot Act? Why?
2. Which event was the least violation of civil liberties? Why?
3. In your opinion, is the government ever justified in curtailing civil liberties? If yes, under what circumstances?
4. In the video, Justice Anthony Kennedy said: "The Constitution is at its most vulnerable when we're in a crisis. This clarity of vision that we need to see the meaning of justice tends to be blurred." How can clarity of vision be maintained when the nation is threatened?

Civil Liberties vs. National Security: The Wartime Balancing Act

Real-Life Scenarios

Read the following statements and then explain if you agree or disagree and why.

1) It is acceptable if the government keeps you and your family under surveillance for a week.

2) Your personal e-mails and social media accounts are monitored for a week to identify your friends and contacts as possible terrorists or spies.

3) Your phone is tapped for several months, and the information is used to see if your family members are engaged in illegal activities.

4) You are required to carry a national identification card that includes personal information such as your address and phone, your medical information, and global positioning system information that provides your current location.

5) All airports in the United States are now required to question each traveler for 30 minutes including a full body search and scan. You are now required to arrive at the airport four hours before your flight.

More Korematsu v. U.S. Resources

- Handout: Primary sources in the “Korematsu and Civil Liberties” video.
- Handout: Scholarly articles on *Korematsu v. U.S.*