

# Extended Controversial Issue Discussion Lesson Plan

## Lesson Title: The Greater Good vs Individual Rights within the Scope of War

\*\*\*\*This Lesson is designed to be used during the review period leading us to the AP exam and to serve as a mini-review for parts of sections I (*Constitutional Underpinnings of United States Government*) IV (*Institutions of National Government*) and VI (*Civil Rights and Civil Liberties*) of the course curriculum\*\*\*\*

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**Appropriate for Grade Level(s):** 11<sup>th</sup>/12<sup>th</sup>

**US History Standard(s)/Applicable CCSS(s):** NSSS C13.5, 13.6, CCS RH.11

**Discussion Question(s):** Along with text-dependent questions for each document, students will also answer the following questions: In times of war, when should the “greater good” trump individual rights? When, if ever, is the government justified in restricting individual rights? What would justify a preemptive restriction of first amendment rights by the Federal Government?

**Engagement Strategy:** Structured Academic Controversy

**Student Readings (list):** Proclamation Suspending the Writ of Habeas Corpus (Lincoln), U.S. Espionage Act, 7 May 1918, Schenck v. U.S.(1919), Freedom of Speech in Wartime-Chafee(1919), Abrams v U.S.(1919) w/Dissenting Op. (Holmes), Executive Order 9066, Korematsu v U.S. w/ Dissenting Op.(Jackson), Cohen v. California (1971), Hamdi v. Rumsfeld (2003).

**Total Time Needed:** 5-6 Class Periods

### Lesson Outline:

| Time Frame<br>(e.g. 15 minutes) | What is the teacher doing?   | What are students doing?   |
|---------------------------------|--|--|
| 20-25 min<br>DAY 1              | The unit will begin with a class discussion revolving around the concept of the “Greater Good” using a modified Public Issues Discussion Model or other non-text based discussion model.   | Participating in Discussion of “Greater Good”  |
| 20 min<br>DAY 1                 | Leading Walk the Line Activity by providing the statements for students to personally evaluate and respond to.   | Participating in Walk the Line-Greater Good activity by responding to each statement by “walking the line”.  |
| 35-45 min<br>DAY 1              | The teacher will follow the following Summary of Activities related to <b>Abraham Lincoln’s Proclamation Suspending the Writ of Habeas Corpus</b> (Focus on CCS Standards RH.11-12.1-4, 6, & 10) <ol style="list-style-type: none"> <li>1. Teacher introduces the proclamation and students read it independently.</li> <li>2. Teacher then reads the passage out loud to the class and students follow along in the text.</li> <li>3. Teacher then asks the class a small set of guiding questions</li> </ol> | Textual Analysis w/text dep. Questions. Students will: <ol style="list-style-type: none"> <li>1. Read the document independently.</li> <li>2. Follow along in the text as the teacher reads it aloud.</li> <li>3. Compile answers and support, from the text, for the questions posed at the end of each document.</li> <li>4. Contribute answers to the class process of reflection on each question for the document.</li> </ol> |

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|                         | <p>located at the end of the document and allows time for students to compile answers and support, from the text.</p> <ol style="list-style-type: none"> <li>The teacher then leads a reflection of each question, prompting students to provide their answer(s) and textual support.</li> </ol>  |  |
| <p>75 min<br/>DAY 2</p> | <p>The teacher will follow the following Summary of Activities related to <b><u>U.S. Espionage Act (1918) and Schenk v. U.S. (1919)</u></b> (Focus on CCS Standards RH.11-12.1-4, 6, &amp; 10)</p> <ol style="list-style-type: none"> <li>Teacher pairs-up students to work together throughout process.</li> <li>Teacher introduces the both documents, one at a time, and students read each independently.</li> <li>One student then reads the passage out loud to the other as he/she follows along in the text.</li> <li>Teacher then asks directs the class towards a small set of guiding questions located at the end of each document and allows time for students to work with partner to compile answers, and support, from the text.</li> <li>The teacher then leads a reflection of each question, prompting students to provide their answer(s) and textual support.</li> </ol> | <p>Textual Analysis w/text dep. Questions. Students will:</p> <ol style="list-style-type: none"> <li>Sit with partner.</li> <li>Read the document independently.</li> <li>Either read aloud to partner or follow along as partner reads aloud both documents. Students may take turns reading aloud.</li> <li>Working together, student pairs will compile answers and support, from the text, for the questions posed at the end of each document.</li> <li>Contribute answers to the class process of reflection on each question for the document.</li> </ol> |
| <p>75 min<br/>DAY 3</p> | <p>The teacher will follow the following Summary of Activities related to <b><u>Freedom of Speech in Wartime-Chafee (1919) and Abrams v. United States, incl. Holmes' Dissent (1919)</u></b> (Focus on CCS Standards RH.11-12.1-4, 6, &amp; 10)</p> <ol style="list-style-type: none"> <li>Teacher pairs-up students to work together throughout process.</li> <li>Teacher introduces the both documents, one at a time, and students read each independently.</li> <li>One student then reads the passage out loud to the other as</li> </ol>  | <p>Textual Analysis w/text dep. Questions. Students will:</p> <ol style="list-style-type: none"> <li>Sit with partner.</li> <li>Read the document independently.</li> <li>Either read aloud to partner or follow along as partner reads aloud both documents. Students may take turns reading aloud.</li> <li>Working together, student pairs will compile answers and support, from the text, for the questions posed at the end of each document.</li> <li>Contribute answers to the class</li> </ol>  |

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|                         | <p>he/she follows along in the text.</p> <ol style="list-style-type: none"> <li>4. Teacher then asks directs the class towards a small set of guiding questions located at the end of each document and allows time for students to work with partner to compile answers, and support, from the text.</li> <li>5. The teacher then leads a reflection of each question, prompting students to provide their answer(s) and textual support.</li> </ol>   | <p>process of reflection on each question for the document.</p>   |
| <p>75 min<br/>DAY 4</p> | <p>The teacher will follow the following Summary of Activities related to <b><u>Executive Order 9066 (1942) and Korematsu v. United States, incl. Jackson's Dissent (1944)</u></b> (Focus on CCS Standards RH.11-12.1-4, 6, &amp; 10)</p> <ol style="list-style-type: none"> <li>1. Teacher pairs-up students to work together throughout process.</li> <li>2. Teacher introduces the both documents, one at a time, and students read each independently.</li> <li>3. One student then reads the passage out loud to the other as he/she follows along in the text.</li> <li>4. Teacher then asks directs the class towards a small set of guiding questions located at the end of each document and allows time for students to work with partner to compile answers, and support, from the text.</li> <li>5. The teacher then leads a reflection of each question, prompting students to provide their answer(s) and textual support.</li> </ol> | <p>Textual Analysis w/text dep. Questions. Students will:</p> <ol style="list-style-type: none"> <li>1. Sit with partner.</li> <li>2. Read the document independently.</li> <li>3. Either read aloud to partner or follow along as partner reads aloud both documents. Students may take turns reading aloud.</li> <li>4. Working together, student pairs will compile answers and support, from the text, for the questions posed at the end of each document.</li> <li>5. Contribute answers to the class process of reflection on each question for the document.</li> </ol> |
| <p>75 min<br/>DAY 5</p> | <p>The teacher will follow the following Summary of Activities related to <b><u>Cohen v. California (1971) and Hamdi et al. v. Rumsfeld (2003)</u></b>(Focus on CCS Standards RH.11-12.1-4, 6, &amp; 10)</p> <ol style="list-style-type: none"> <li>1. Teacher pairs-up students to work together throughout process.</li> <li>2. Teacher introduces the both documents, one at a time, and</li> </ol>  | <p>Textual Analysis w/text dep. Questions. Students will:</p> <ol style="list-style-type: none"> <li>1. Sit with partner.</li> <li>2. Read the document independently.</li> <li>3. Either read aloud to partner or follow along as partner reads aloud both documents. Students may take turns reading aloud.</li> <li>4. Working together, student pairs</li> </ol>  |

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|                         | <p>students read each independently.</p> <ol style="list-style-type: none"> <li>One student then reads the passage out loud to the other as he/she follows along in the text.</li> <li>Teacher then asks directs the class towards a small set of guiding questions located at the end of each document and allows time for students to work with partner to compile answers, and support, from the text.</li> <li>The teacher then leads a reflection of each question, prompting students to provide their answer(s) and textual support.</li> </ol> | <p>will compile answers and support, from the text, for the questions posed at the end of each document.</p> <ol style="list-style-type: none"> <li>Contribute answers to the class process of reflection on each question for the document.</li> </ol>   |
| Homework                | Once all the students have completed the process, outlined in the previous steps for each document, the teacher will provide a copy of the <u>SAC Guided Questioning Worksheet</u> to each student for completion as homework. Teacher should instruct students that they must be able to provide textual support for each side of all three statements on the worksheet (For and Against) as they will be randomly assigned a position during the discussion.   | Students will use their knowledge, notes, and reflections from each document, along with the <u>SAC Guided Questioning Worksheet</u> , to provide support for and against the three supplied statements pertaining to the concept of <i>The Greater Good vs. First Amendment Rights in Times of War</i> .   |
| 50min<br>DAY 6          | Pair up students to participate in the Structured Academic Controversy Discussion. Using selected Discussion Questions, provide each student a position (For/Against) for each discussion question. Be sure to monitor the time so that each pair is able to complete a SAC discussion for each of the discussion questions.   | Once given their position (For or Against) for each discussion question, students will work through the Structured Academic Controversy handout providing their <u>Claims &amp; Reasons, Evidence &amp; Examples, Opposing Claims &amp; Reasons, Opposing Evidence &amp; Examples, and finally Common Ground &amp; Further Questions (i.e. We can agree that... and We need further clarification on...)</u> This will be completed by each student for each discussion question. |
| Homework                | Assign FRQ question  | Using knowledge gained form the entire process, students will complete a free response to the provided FRQ designed to mirror the format used on the AP US Government and Politics exam.  |
| <i>*If Time Allows*</i> | Provide Rubric for FRQ to students along with a classmate's free response. Allow time for students to grade each other's essays according to the rubric.   | Students will use the provided rubric to score the essay of a classmate and provide feedback in the format of the   |

**Description of Lesson Assessment:** Individual Free Response Using a Prompt That is Structured in a Similar Fashion to The FRQs on the AP United States Government and Politics Exam.

**How will students reflect on the process and their learning?** Students will reflect upon the process via a reflection survey and through the FRQ assessment piece.

1 *By the President of the United States of America*

2 **A Proclamation**

3 Whereas the Constitution of the United States has ordained that the privilege of the writ of *habeas corpus* shall  
4 not be suspended unless when, in cases of rebellion or invasion, the public safety may require it; and

5 Whereas a rebellion was existing on the 3d day of March, 1863, which rebellion is still existing; and

6 Whereas by a statute which was approved on that day it was enacted by the Senate and House of Representatives  
7 of the United States in Congress assembled that during the present insurrection the President of the United States,  
8 whenever in his judgment the public safety may require, is authorized to suspend the privilege of the writ of  
9 *habeas corpus* in any case throughout the United States or any part thereof; and

10 Whereas, in the judgment of the President, the public safety does require that the privilege of the said writ shall  
11 now be suspended throughout the United States in the cases where, by the authority of the President of the  
12 United States, military, naval, and civil officers of the United States, or any of them, hold persons under their  
13 command or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers,  
14 soldiers, or seamen enrolled or drafted or mustered or enlisted in or belonging to the land or naval forces of the  
15 United States, or as deserters therefrom, or otherwise amenable to military law or the rules and articles of war or  
16 the rules or regulations prescribed for the military or naval services by authority of the President of the United  
17 States. or for resisting a draft, or for any other offense against the military or naval service:

18 Now, therefore, I, Abraham Lincoln, President of the United States, do hereby proclaim and make known to all  
19 whom it may concern that the privilege of the writ of *habeas corpus* is suspended throughout the United States in  
20 the several cases before mentioned, and that this suspension will continue throughout the duration of the said  
21 rebellion or until this proclamation shall, by a subsequent one to be issued by the President of the United States,  
22 be modified or revoked. And I do hereby require all magistrates, attorneys, and other civil officers within the  
23 United States and all officers and others in the military and naval services of the United States to take distinct  
24 notice of this suspension and to give it full effect, and all citizens of the United States to conduct and govern  
25 themselves accordingly and in conformity with the Constitution of the United States and the laws of Congress in  
26 such case made and provided.

27 In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed this 15th  
28 day of September, A.D. 1863, and of the Independence of the United States of America the eighty-eighth.

29 ABRAHAM LINCOLN.

30 By the President:

31 WILLIAM H. SEWARD, *Secretary of State* .

- 32
- **According to the text, what has prompted the President to issue his proclamation?**
  - **What reasoning does the President give for suspending the writ of habeas corpus?**
  - **Who is granted the authority to carry out this proclamation and for what purpose?**

1 **U.S. Espionage Act, 7 May 1918**

2 *Be it enacted*, That section three of the Act... approved June 15, 1917, be... amended so as to read as  
3 follows:

4 "SEC. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false  
5 statements with intent to interfere with the operation or success of the military or naval forces of the  
6 United States, or to promote the success of its enemies, or shall willfully make or convey false reports,  
7 or false statements, or say or do anything except by way of bona fide and not disloyal advice to an  
8 investor... with intent to obstruct the sale by the United States of bonds... or the making of loans by or  
9 to the United States, or whoever, when the United States is at war, shall willfully cause... or incite...  
10 insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United  
11 States, or shall willfully obstruct... the recruiting or enlistment service of the United States, and  
12 whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal,  
13 profane, scurrilous, or abusive language about the form of government of the United States, or the  
14 Constitution of the United States, or the military or naval forces of the United States, or the flag... or the  
15 uniform of the Army or Navy of the United States, or any language intended to bring the form of  
16 government... or the Constitution... or the military or naval forces... or the flag... of the United States  
17 into contempt, scorn, contumely, or disrepute... or shall willfully display the flag of any foreign enemy,  
18 or shall willfully... urge, incite, or advocate any curtailment of production in this country of any thing or  
19 things... necessary or essential to the prosecution of the war... and whoever shall willfully advocate,  
20 teach, defend, or suggest the doing of any of the acts or things in this section enumerated and whoever  
21 shall by word or act support or favour the cause of any country with which the United States is at war or  
22 by word or act oppose the cause of the United States therein, shall be punished by a fine of not more  
23 than \$10,000 or imprisonment for not more than twenty years, or both...."

- **What is meant by “willfully...urge, incite, or advocate any curtailment of production in this country of anything or things...necessary or essential to the prosecution of the war...”?**
- **What references are there within the text to spoken expression; unspoken expression?**

1 **SCHENCK v. U.S. , 249 U.S. 47 (1919)**

2 **249 U.S. 47**

3 **SCHENCK**

4 **v.**

5 **UNITED STATES.**

6 **Nos. 437, 438.**

7 **Argued Jan. 9 and 10, 1919.**

8 **Decided March 3, 1919.**

9 Mr. Justice HOLMES delivered the opinion of the Court.

10 This is an indictment in three counts. The first charges a conspiracy to violate the Espionage Act of June 15,  
11 1917...by causing and attempting to cause insubordination in the military and naval forces of the United States,  
12 and to obstruct the recruiting and enlistment service of the United States, when the United States was at war with  
13 the German Empire, to-wit, that the defendant wilfully conspired to have printed and circulated to men who had  
14 been called and accepted for military service under the Act of May 18, 1917,... a document set forth and alleged to  
15 be calculated to cause such insubordination and obstruction...The second count alleges a conspiracy to commit an  
16 offense against the United States... to use the mails for the transmission of matter declared to be non-mailable...  
17 The defendants were found guilty on all the counts. They set up the First Amendment to the Constitution  
18 forbidding Congress to make any law abridging the freedom of speech, or of the press, and bringing the case here  
19 on that ground...

20 We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would  
21 have been within their constitutional rights. But the character of every act depends upon the circumstances in  
22 which it is done.... The most stringent protection of free speech would not protect a man in falsely shouting fire in  
23 a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may  
24 have all the effect of force.... The question in every case is whether the words used are used in such circumstances  
25 and are of such a nature as to create a clear and present danger that they will bring about the substantive evils  
26 that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things  
27 that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so  
28 long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be  
29 admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that  
30 effect might be enforced. The statute of 1917 in section 4 punishes conspiracies to obstruct as well as actual  
31 obstruction. If the act, (speaking, or circulating a paper,) its tendency and the intent with which it is done are the  
32 same, we perceive no ground for saying that success alone warrants making the act a crime.... But as the right to  
33 free speech was not referred to specially, we have thought fit to add a few words.

34 .... Judgments affirmed.

- **What are the three counts Schenk was indicted on?**

- **What is meant by the Court in lines 20-21 when it states, “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.”?**

- **How is the “clear and present danger” test applied by the Court in their decision?**

1 **Legal Scholar Zechariah Chafee, Jr.,**

2 **Freedom of Speech in Wartime-1919**

3

4 Never in the history of our country, since the Alien and Sedition Laws of 1798, has the meaning of free speech  
5 been the subject of such sharp controversy as to-day. Over two hundred prosecutions and other judicial  
6 proceedings during the war, involving speeches, newspaper articles, pamphlets, and books, have been followed  
7 since the armistice by a widespread legislative consideration of bills punishing the advocacy of extreme radicalism.  
8 It is becoming increasingly important to determine the true limits of freedom of expression, so that speakers and  
9 writers may know how much they can properly say, and governments may be sure how much they can lawfully  
10 and wisely suppress. The United States Supreme Court has recently handed down several decisions upon the  
11 Espionage Act, which put us in a much better position than formerly to discuss the proper limits of radical agitation  
12 in peace, and also to make a detailed historical examination of the events and documents leading up to the free  
13 speech clauses in our state and federal constitutions. For the present it is not feasible to do more than consider  
14 the application of those clauses to the treatment of opposition to war...

15 Clearly, the problem of the limits of freedom of speech in war time is no academic question. ...In the familiar  
16 remark of Ludendorff, wars are no longer won by armies in the field, but by the *morale* of the whole people. The  
17 widespread Liberty Bond campaigns, and the shipyards, munition factories, government offices, training camps, in  
18 all parts of the country, are felt to make the entire United States a theater of war, in which attacks upon our cause  
19 are as dangerous and unjustified as if made among the soldiers in the rear trenches. The government regards it as  
20 inconceivable that the Constitution should cripple its efforts to maintain public safety. Abstaining from  
21 countercharges of disloyalty and tyranny, let us recognize the issue as a conflict between two vital principles, and  
22 endeavor to find the basis of reconciliation between order and freedom.

23 At the outset, we can reject two extreme views in the controversy. First, there is the view that the Bill of Rights is a  
24 peacetime document and consequently freedom of speech may be ignored in war. At the opposite pole is the  
25 belief of many agitators that the First Amendment renders unconstitutional any Act of Congress without exception  
26 "abridging the freedom of speech, or of the press," that all speech is free, and only action can be restrained and  
27 punished.

28 Since it is plain that the true solution lies between these two extreme views, and that even in war time freedom of  
29 speech exists subject to a problematical limit, it is necessary to determine where the line runs between utterance  
30 which is protected by the Constitution from governmental control and that which is not....

31 The true meaning of freedom of speech seems to be this. One of the most important purposes of society and  
32 government is the discovery and spread of truth on subjects of general concern. This is possible only through  
33 absolutely unlimited discussion, for...once force is thrown into the argument, it becomes a matter of chance  
34 whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest.

35 Or to put the matter another way, it is useless to define free speech by talk about rights. The agitator asserts his  
36 constitutional right to speak, the government asserts its constitutional right to wage war. The result is a deadlock.

37 In our problem, we must regard the desires and needs of the individual human being who wants to speak and  
38 those of the great group of human beings among whom he speaks.

39 The First Amendment protects two kinds of interests in free speech. There is an individual interest, the need of  
40 many men to express their opinions on matters vital to them if life is to be worth living, and a social interest in the  
41 attainment of truth, so that the country may not only adopt the wisest course of action but carry it out in the  
42 wisest way. This social interest is especially important in war time.

43 Truth can be sifted out from falsehood only if the government is vigorously and constantly cross examined, so that  
44 the fundamental issues of the struggle may be clearly defined, and the war may not be diverted to improper ends,  
45 or conducted with an undue sacrifice of life and liberty, or prolonged after its just purposes are accomplished.

46 The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the  
47 principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very  
48 important social interests, in public safety and in search for truth.

- In paragraph two, what is meant by the phrase “wars are no longer won by armies in the field, but by the *morale* of the whole people.”?
  - Explain the two “extreme views” of this controversy.
- What value does “absolutely unlimited discussion” have in the meaning of freedom of speech?
  - How can truth be “sifted out from falsehood”?

1 ***Abrams v. United States, 1919***

2 Definitions

3 Mr. Justice Clarke delivered the opinion of the Court.

4 The plain purpose of their propaganda was to excite, at the supreme crises of the war,  
5 disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of  
6 embarrassing and if possible defeating the military plans of the Government in Europe...

7 ...for the language of these circulars was obviously intended to provoke and to encourage  
8 resistance to the United States in the war, as the third count runs, and, the defendants, in terms, plainly  
9 urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of  
10 curtailing the production of ordnance and munitions necessary and essential to the prosecution of the  
11 war as is charged in the fourth count. Thus it is clear not only that some evidence but that much  
12 persuasive evidence was before the jury tending to prove that the defendants were guilty as charged...

13 Mr. Justice Holmes dissenting.

14 I do not doubt for a moment that by the same reasoning that would justify punishing persuasion  
15 to murder, the United States constitutionally may punish speech that produces or is intended to  
16 produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the  
17 United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war  
18 than in time of peace because wars open dangers that do not exist at other times.

19 Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt  
20 of your premises or your power and want a certain result with all your heart you naturally express your  
21 wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you  
22 think the speech impotent, as when a man says that he has squared the circle, or that you do not care  
23 wholeheartedly for the result, or that you doubt either your power or your premises. But when men  
24 have realized that time has upset many fighting faiths, they may come to believe even more than they  
25 believe the very foundations of their own conduct that the ultimate good desired is better reached by  
26 free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the  
27 competition of the market, and that truth is the only ground upon which their wishes safely can be  
28 carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an  
29 experiment. Every year if not every day we have to wager our salvation upon some prophecy based  
30 upon imperfect knowledge. While that experiment is part of our system I think that we should be  
31 eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be  
32 fraught with death, unless they so imminently threaten immediate interference with the lawful and  
33 pressing purposes of the law that an immediate check is required to save the country. ... Only the  
34 emergency that makes it immediately dangerous to leave the correction of evil counsels to time,  
35 warrants making any exception to the sweeping command, "Congress shall make no law...abridging the  
36 freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which  
37 were all that were uttered here, but I regret that I cannot put into more impressive words my belief that

38 in their conviction upon this indictment the defendants were deprived of their rights under the  
39 Constitution of the United States.

40

- **What action (described in the second paragraph) was urged by the circulars that would have the possibility of “defeating the military plans of the Government in Europe”?**
- **What does “persuasion to murder” mean? How is this related to speech that urges people to revolt against their government?**
- **How does this test of truth contradict his assertions in lines 23-28? What are some possible reasons for Holmes to contradict himself?**
  - **When does Holmes believe it is appropriate to limit individual expression?**
    - **According to Holmes, what is the best test of truth?**

1 **Executive Order No. 9066**

2 The President

3 Executive Order

4 Authorizing the Secretary of War to Prescribe Military Areas

5 Whereas the successful prosecution of the war requires every possible protection against espionage and  
6 against sabotage to national-defense material, national-defense premises, and national-defense utilities  
7 as defined in Section 4, Act of April 20, 1918...

8 Now, therefore, by virtue of the authority vested in me as President of the United States, and  
9 Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the  
10 Military Commanders whom he may from time to time designate, whenever he or any designated  
11 Commander deems such action necessary or desirable, to prescribe military areas in such places and of  
12 such extent as he or the appropriate Military Commander may determine, from which any or all persons  
13 may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be  
14 subject to whatever restrictions the Secretary of War or the appropriate Military Commander may  
15 impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such  
16 area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may  
17 be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other  
18 arrangements are made, to accomplish the purpose of this order. The designation of military areas in  
19 any region or locality shall supersede designations of prohibited and restricted areas by the Attorney  
20 General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and  
21 authority of the Attorney General under the said Proclamations in respect of such prohibited and  
22 restricted areas.

23 I hereby further authorize and direct the Secretary of War and the said Military Commanders to take  
24 such other steps as he or the appropriate Military Commander may deem advisable to enforce  
25 compliance with the restrictions applicable to each Military area hereinabove authorized to be  
26 designated, including the use of Federal troops and other Federal Agencies, with authority to accept  
27 assistance of state and local agencies.

28 I hereby further authorize and direct all Executive Departments, independent establishments and other  
29 Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this  
30 Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation,  
31 use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

32 This order shall not be construed as modifying or limiting in any way the authority heretofore granted  
33 under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or  
34 modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the  
35 investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the  
36 Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for

37 the conduct and control of alien enemies, except as such duty and responsibility is superseded by the  
38 designation of military areas hereunder.

39 Franklin D. Roosevelt

40 The White House,

41 February 19, 1942.

- **Who is granted/authorized use of power by E.O. 9066?**

- **What justification does Roosevelt provide within the order for instituting E.O. 9066?**

- **According to the text, who is subject to the regulations of E.O. 9066?**

1 **Excerpt from majority opinion in Supreme Court case, *Korematsu v. United States* (1944)**

2 ***Author: Justice Hugo Black***

3 It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are  
4 immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must  
5 subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such  
6 restrictions....

7 Exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number  
8 of disloyal members of the group, most of whom we have no doubt were loyal to this country.

9 We uphold the exclusion order.... In doing so we are not unmindful of the hardships imposed by it upon a large  
10 group of American citizens.... But hardships are a part of war, and war is an aggregation of hardships. All citizens  
11 alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its  
12 responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of  
13 large groups of citizens from their homes, except under circumstances of direst emergency and peril, is  
14 inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores  
15 are threatened by hostile forces, the power to protect must be commensurate with the threatened danger....

16 It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely  
17 because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the  
18 United States.... To cast this case into outlines of racial prejudice, without reference to the real military dangers  
19 which were presented, merely confuses the issue. *Korematsu* was not excluded from the Military Area because of  
20 hostility to him or his race. He was excluded because we are at war with the Japanese Empire.

21 **Korematsu v. United States**

22 MR. JUSTICE JACKSON, dissenting.

23 Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United  
24 States by nativity, and a citizen of California by residence. No claim is made that he is not loyal to this country.

25 There is no suggestion that, apart from the matter involved here, he is not law-abiding and well disposed.

26 Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in  
27 the state whereof he is a citizen, near the place where he was born, and where all his life he has lived.

28 Even more unusual is the series of military orders which made this conduct a crime. They forbid such a one to  
29 remain, and they also forbid him to leave. They were so drawn that the only way Korematsu could avoid violation  
30 was to give himself up to the military authority. This meant submission to custody, examination, and  
31 transportation out of the territory, to be followed by indeterminate confinement in detention camps.

32 A citizen's presence in the locality, however, was made a crime only if his parents were of Japanese birth. Had  
33 Korematsu been one of four -- the others being, say, a German alien enemy, an Italian alien enemy, and a citizen of  
34 American-born ancestors, convicted of treason but out on parole -- only Korematsu's presence would have  
35 violated the order. The difference between their innocence and his crime would result, not from anything he did,  
36 said, or thought, different than they, but only in that he was born of different racial stock.

37 Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all  
38 of one's antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him,  
39 for it provides that "no attainder of treason shall work corruption of blood, or forfeiture except during the life of  
40 the person attainted." But here is an attempt to make an otherwise innocent act a crime merely because this  
41 prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to  
42 resign. If Congress, in peacetime legislation, should enact such a criminal law, I should suppose this Court would  
43 refuse to enforce it.

44 My duties as a justice, as I see them, do not require me to make a military judgment as to whether General  
45 DeWitt's evacuation and detention program was a reasonable military necessity. I do not suggest that the courts  
46 should have attempted to interfere with the Army in carrying out its task. But I do not think they may be asked to  
47 execute a military expedient that has no place in law under the Constitution. I would reverse the judgment and  
48 discharge the prisoner.

- 4
- **How does the opinion of the court apply the following to this case? *"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..."***
    - **Why is the government allowed to exclude certain citizens of their civil rights?**
      - **What examples does Justice Jackson give of Korematsu's "crimes"?**
    - **What does Justice Jackson mean when he says, "guilt is personal and not inheritable."?**

1 **COHEN v. CALIFORNIA, 403 U.S. 15 (1971)**

2 **403 U.S. 15**

3 **COHEN v. CALIFORNIA**

4 **APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT**

5 **No. 299.**

6 **Argued February 22, 1971**

7 **Decided June 7, 1971**

8 This case may seem at first blush too inconsequential to find its way into our books, but the issue it presents is of  
9 no small constitutional significance.

10 Appellant Paul Robert Cohen was convicted in the Los Angeles Municipal Court of violating that part of California  
11 Penal Code 415 which prohibits "maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or  
12 person . . . by . . . offensive conduct . . ." He was given 30 days' imprisonment.... "On April 26, 1968, the defendant  
13 was observed in the Los Angeles County Courthouse in the corridor outside of division 20 of the municipal court  
14 wearing a jacket bearing the words 'Fuck the Draft' which were plainly visible. There were women and children  
15 present in the corridor. The defendant was arrested. The defendant testified that he wore the jacket knowing that  
16 the words were on the jacket as a means of informing the public of the depth of his feelings against the Vietnam  
17 War and the draft."

18 The conviction quite clearly rests upon the asserted offensiveness of the words Cohen used to convey his message  
19 to the public. The only "conduct" which the State sought to punish is the fact of communication. Thus, we deal  
20 here with a conviction resting solely upon "speech," not upon any separately identifiable conduct which allegedly  
21 was intended by Cohen to be perceived by others as expressive of particular views but which, on its face, does not  
22 necessarily convey any message and hence arguably could be regulated without effectively repressing Cohen's  
23 ability to express himself...Cohen could not, consistently with the First and Fourteenth Amendments, be punished  
24 for asserting the evident position on the...immorality of the draft his jacket reflected....

25 ...the First and Fourteenth Amendments have never been thought to give absolute protection to every individual to  
26 speak whenever or wherever he pleases, or to use any form of address in any circumstances that he chooses...

27 This Court has also held that the States are free to ban the simple use, without a demonstration of additional  
28 justifying circumstances, of so-called "fighting words," those personally abusive epithets which, when addressed to  
29 the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction... While  
30 the four-letter word displayed by Cohen in relation to the draft is not uncommonly employed in a personally  
31 provocative fashion, in this instance it was clearly not "directed to the person of the hearer."... No individual  
32 actually or likely to be present could reasonably have regarded the words on appellant's jacket as a direct personal  
33 insult. Nor do we have here an instance of the exercise of the State's police power to prevent a speaker from  
34 intentionally provoking a given group to hostile reaction....There is, as noted above, no showing that anyone who  
35 saw Cohen was in fact violently aroused or that appellant intended such a result....

36 .... While this Court has recognized that government may properly act in many situations to prohibit intrusion into  
37 the privacy of the home of unwelcome views and ideas which cannot be totally banned from the public dialogue,  
38 ...we have at the same time consistently stressed that "we are often `captives' outside the sanctuary of the home  
39 and subject to objectionable speech."

40 In this regard, persons confronted with Cohen's jacket were in a quite different posture than, say, those subjected  
41 to the raucous emissions of sound trucks blaring outside their residences. Those in the Los Angeles courthouse  
42 could effectively avoid further bombardment of their sensibilities simply by averting their eyes. And, while it may  
43 be that one has a more substantial claim to a recognizable privacy interest when walking through a courthouse  
44 corridor than, for example, strolling through Central Park, surely it is nothing like the interest in being free from  
45 unwanted expression in the confines of one's own home.

46 The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is  
47 designed and intended to remove governmental restraints from the arena of public discussion, putting the  
48 decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom  
49 will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach  
50 would comport with the premise of individual dignity and choice upon which our political system rests.

51 ..."so long as the means are peaceful, the communication need not meet standards of acceptability...

52 Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most  
53 squeamish among us...For, while the particular four-letter word being litigated here is perhaps more distasteful  
54 than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric.

55 Finally, and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without  
56 also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the  
57 censorship of particular words as a convenient guise for banning the expression of unpopular views. We have been  
58 able, as noted above, to discern little social benefit that might result from running the risk of opening the door to  
59 such grave results.

60 It is, in sum, our judgment that, absent a more particularized and compelling reason for its actions, the State may  
61 not, consistently with the First and Fourteenth Amendments, make the simple public display here involved of this  
62 single four-letter expletive a criminal offense. Because that is the only arguably sustainable rationale for the  
63 conviction here at issue, the judgment below must be

64 Reversed.

- 65
- **According to the Los Angeles Municipal Court decision, how did California Penal code 415 apply to this case?**
    - **How does the Supreme Court argue against Cohen's jacket displaying "fighting words"?**
    - **What arguments does the court use in support of Freedom of Speech throughout their decision? How do they apply these to Cohen?**

1 *From Hamdi et al. v. Rumsfeld, Secretary of Defense, et al., No. 03-6696. Argued April 28, 2004--Decided June 28,*  
2 *2004. Justice Souter, with whom Justice Ginsburg joins, concurring in part, dissenting in part, and concurring in the*  
3 *judgment.*

4 ...The defining character of American constitutional government is its constant tension between security and  
5 liberty, serving both by partial helpings of each. In a government of separated powers, deciding finally on what is a  
6 reasonable degree of guaranteed liberty whether in peace or war (or some condition in between) is not well  
7 entrusted to the Executive Branch of Government, whose particular responsibility is to maintain security. For  
8 reasons of inescapable human nature, the branch of the Government asked to counter a serious threat is not the  
9 branch on which to rest the Nation's entire reliance in striking the balance between the will to win and the cost in  
10 liberty on the way to victory; the responsibility for security will naturally amplify the claim that security  
11 legitimately raises. A reasonable balance is more likely to be reached on the judgment of a different branch, just as  
12 Madison said in remarking that "the constant aim is to divide and arrange the several offices in such a manner as  
13 that each may be a check on the other...

- **What is meant by "tension" on line four?**

- **How is the concept of separation of powers/checks and balances argued throughout this decision?**

***Greater Good vs. First Amendment Rights in Times of War***  
***-S.A.C. Guided Questioning-***

Using evidence from the text(s), support each position (FOR and AGAINST) in addressing the statements below. Be sure to cite line numbers from documents as needed

*“Majority might over minority rights” is an acceptable and even necessary concept within American Democracy*

**EVIDENCE FOR**

**EVIDENCE AGAINST**

*Preemptive action by the government to restrict first amendment rights is justifiable*

**EVIDENCE FOR**

**EVIDENCE AGAINST**

*In times of war, it is imperative that the “greater good” trump individual rights*

**EVIDENCE FOR**

**EVIDENCE AGAINST**

# Structured Academic Controversy

**“Majority might over minority rights” is an acceptable and even necessary concept within American Democracy.**

## Preparing My Argument

| My Claims & Reasons | My Evidence & Examples |
|---------------------|------------------------|
|                     |                        |

## The Other Side of the Issue

| Opposing Claims & Reasons | Opposing Evidence & Examples |
|---------------------------|------------------------------|
|                           |                              |

## Common Ground & Further Questions

| We can agree that... | We need further clarification on... |
|----------------------|-------------------------------------|
|                      |                                     |

# Structured Academic Controversy

**Preemptive action by the government to restrict first amendment rights is justifiable.**

## Preparing My Argument

| My Claims & Reasons | My Evidence & Examples |
|---------------------|------------------------|
|                     |                        |

## The Other Side of the Issue

| Opposing Claims & Reasons | Opposing Evidence & Examples |
|---------------------------|------------------------------|
|                           |                              |

## Common Ground & Further Questions

| We can agree that... | We need further clarification on... |
|----------------------|-------------------------------------|
|                      |                                     |

# Structured Academic Controversy

**In times of war, it is imperative that the “greater good” trump individual first amendment rights.**

## Preparing My Argument

| My Claims & Reasons | My Evidence & Examples |
|---------------------|------------------------|
|                     |                        |

## The Other Side of the Issue

| Opposing Claims & Reasons | Opposing Evidence & Examples |
|---------------------------|------------------------------|
|                           |                              |

## Common Ground & Further Questions

| We can agree that... | We need further clarification on... |
|----------------------|-------------------------------------|
|                      |                                     |

**Cross the Line Statements Regarding the Greater Good vs. Individual Rights**

1. All people should be treated exactly the same.
2. Diversity is important in society
3. Diversity is important in all school environments
4. All students are capable of learning at the same intellectual level
5. Every high school in the Washoe County School District should be treated equally in terms of funding
6. Early Socio-Economic status is a determining factor in one's level of lifetime success
7. If seniors are given off campus opportunities, all other grade levels should be as well
8. "Students of need" are often provided more resources than non-students of need within schools
9. The government should provide whatever is deemed necessary to increase the graduation rate of students
10. I would give up my life to save that of a stranger
11. I would give up my life to save that of a family member
12. The loss of a single life is acceptable if it prevents the loss of numerous others
13. I would give up my future to help the present circumstances of others

**AP® UNITED STATES GOVERNMENT AND POLITICS**  
**(PRACTICE) FREE-RESPONSE QUESTION**

**UNITED STATES GOVERNMENT AND POLITICS**

**SECTION II**

**Time—25 minutes**

**Directions:** You have 25 minutes to answer the following question. Unless the directions indicate otherwise, respond to all parts of the question. It is suggested that you take a few minutes to plan and outline your answer. In your response, use substantive examples where appropriate. Make certain to number your answer as the question is numbered below.

1. Over the course of the twentieth century, the federal government has ruled upon numerous cases revolving around First Amendment freedoms during times of war.
    - a. Select TWO of the following and describe the facts/background of each case
      - *Schenck v. U.S.*
      - *Abrams v. U.S.*
      - *Korematsu v. U.S.*
      - *Cohen v. California*
    - b. For each case you selected in (a.), describe the decision of The Court making sure to link the decision to how the “clear and present danger” test was applied in each instance.
- 

**STOP**

**\*\*Modeled after the Advanced Placement United States Government and Politics Free Response Format designed by The College Board\*\***

Name\_\_\_\_\_

Class Period\_\_\_\_\_

### **Student Reflection Survey on Structured Academic Controversy**

#### **PAIRED DISCUSSION AND TEXTUAL ANALYSIS**

The most compelling argument for and against each question was:

Question 1 (*“Majority might over minority rights” is an acceptable and even necessary concept within American Democracy.*)

FOR:

AGAINST:

Question 2 (*Preemptive action by the government to restrict first amendment rights is justifiable.*)

FOR:

AGAINST:

Question 3 (*In times of war, it is imperative that the “greater good” trump individual first amendment rights.*)

FOR:

AGAINST:

What is the real world relevance of this topic and why is it important to discuss?

#### **INDIVIDUAL REFLECTION: WHAT I LEARNED**

Which number best describes your understanding of the discussion/lesson topic? (circle one)

1

2

3

4

5

←  
No Deeper  
Understanding

→  
Much deeper  
Understanding

What did you do best in the process?

What did you struggle most with during the process?

What is one thing you feel you could work on that would result in a stronger individual performance in the future?

Jason Aytes

2011-2012 TAHP

Controversial Issue Research Paper

### In Times of War, Does the Greater Good Trump Individual Rights?

What is meant by the greater good? Can a country built on the ideals of freedom, liberty, and sovereignty be convinced to give up that which is held so dearly and sacred? These are questions that have been as much a part of American history as any Declaration or founding father. Over the course of nearly two hundred and fifty years, the American people have faced these questions when at their most vulnerable. Whether during the “fiery trial” that was the tearing apart of our Union; following the “sudden and deliberate attack” at the hands of the empire of Japan; to 9/11, a day we will never forget. All of these instances have one specific commonality; they were/are considered times of war. It is during these times of war that America is so often forced to reflect inward at nearly the same moment as responding outward.

From time to time, the people of this country must answer whether, in times of war, does the greater good trump individual rights? Often, the answer to this question has been made at the hands of the Executive branch of government. John Locke referred to this power as prerogative. Locke believed that the “executor of the laws, having the power in his hands, has by the common law of nature a right to make use of it for the good of the society...” (Locke) and thus, in times of war, the Chief Executive possessed the power to answer first, question later. This has happened on numerous occasions and, when it does, the questions seem to be endless, albeit after the fact. Ultimately, from Lincoln’s suspension of habeas corpus in Baltimore, to the Supreme Court addressing freedom of speech in times of war in their Abrams and Schenk decisions;

FDR's issuing of Executive Order 9066, to Bush unleashing America's "War on Terror"; where these decisions justifiable because the greater good trumped individual rights or did they all move towards taking away individual rights under the guise of the greater good?

During the early days of the Civil War, while the South was capitalizing on a renewed sense of independence, many in the Border States and into the North had questions regarding the necessity and motives behind the war. Along those lines, one of the most unsettled areas at the time had to be Baltimore, Maryland. Already, the then president-elect Lincoln had to travel through Baltimore in disguise as a result of rumored assassination attempts. Following the secession of Virginia, Maryland became vital to the Union effort because of the access it afforded to the Chesapeake Bay and shipping lines. After an attempt by the Supreme Court, led by Chief Justice Taney, to order delivery of a writ of habeas corpus in the case of John Merryman was essentially ignored by Union leaders including the President, it became apparent that the power of issuing or suspending the writ would fall at the feet of the Executive and/or Legislative powers.

On September 24, 1862, Lincoln "issued a proclamation imposing martial law and suspending the writ of habeas corpus. The proclamation orders that, for the rest of the war, (i) "all rebels and insurgents, their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid or comfort to rebels against the authority of the United States, shall be subject to martial law and liable to trial and punishment by courts martial or military commission," and (ii) "the writ of habeas corpus is suspended in respect to all persons arrested or imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority or by the sentence of any court martial or military commission." (Dueholm) This sweeping action at

the hands of President Lincoln would set the tone for the remainder of the war regarding the rights of the individual during the Civil War. Freedom of speech could be contested on most every occasion as a result of the President's actions and the Supreme Court and to a lesser extent, Congress, would play the role of bystander as Lincoln sought to "restore the Union", even at the cost of individual rights. While some historians argue the President was issuing nothing more than a counter attack against an uprising of Confederate sympathizers, it could be argued that Lincoln's actions were a giant leap towards abusive of power and attacked civil liberties of all Americans. Aside from determining the reach of the Constitution as a result of the Spanish American War (*Balzac v. Porto Rico*), it wouldn't be until WWI that the Supreme Court would step forth again to address the issue of individual rights in times of war.

The U.S. Espionage Act of 1917, amended May, 1918, and Sedition Act of 1918 would provide a true test of freedoms in times of war. As a result of these two Acts, the federal government, from President to Postmaster General, would find unprecedented power in regulating speech, information, and radicalism within the country. While both acts have a strong basis in the greater good, one could make the argument that both are more akin to fear of opposition than fear of losing war. While the issue may indeed be more complicated, as stated by scholar Zechariah Chafee, "the government regards it as inconceivable that the Constitution should cripple its efforts to maintain public safety. Abstaining from countercharges of disloyalty and tyranny, let us recognize the issue as a conflict between two vital principles, and endeavor to find the basis of reconciliation between order and freedom." (Chafee) This reconciliation between order and freedom would be the focus of two Supreme Court cases decided only months apart.

In *Schenk and Abrams*, the Supreme Court would decide the legality of convictions upheld on the precedent(s) of the Espionage and Sedition Acts. In both cases, the plaintiffs were accused of acting against the United States' war effort and producing and distributing material that was destructive to the country's efforts and ability to successfully wage war in Europe. At the heart of each case was the "reconciliation between order and freedom" as referred to by Chafee. Further complicating the issues regarding each of these cases was the building "red scare" that had gripped the United States post WWI. Radicalism of the time had become, at once, more visible and targeted. Fear of communism could certainly be seen as a major influencing factor in not only the cases themselves but the creation of the Sedition and Espionage Acts as well. Regardless of the factors behind each, the decisions of the Court in both instances proved to further quantify the rights of individuals in times of war. While consistency can be seen in the decision of both cases, further insight can be gleaned through analysis of the transformation presented in the opinions of Chief Justice Holmes.

While delivering the majority opinion in *Schenk*, Holmes states, "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." (*Schenk v. U.S.*, 249 U.S. 47-1919) Holmes essentially states that in times of war, what may otherwise be accepted may now be unaccepted. Interestingly, in delivering the dissent in *Abrams*, Holmes states, "Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time, warrants making any exception to the sweeping command, 'Congress shall make no law...abridging the freedom of speech.'" Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my

belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.” (Abrams v. U.S. 1919), seemingly contradicting his beliefs from Abrams only months prior. This transformation in thought by Justice Holmes is symbolic of the complexity of the issue at hand in both instances; the balancing of order and freedom, or in other words, the rights of the individual versus the greater good.

While the twentieth century is undoubtedly one of the most transformative in all of human history, it is also one of the most destructive. War itself transformed alongside society and human life during the twentieth century. From horseback charges to drone attacks, war has undergone both tactical change and fundamental change. During WWII, the United States was attacked by the empire of Japan and, as a result, began to implement a program of internment as a means of securing the country’s western coastline. These internment camps would once again bring about the question of individual rights versus the greater good in times of war.

Executive Order 9066, issued by Franklin D. Roosevelt, established the legal internment of Japanese Americans as a means of restricting their access to “military areas” throughout the western United States. As in past actions by the federal government, E.O. 9066 was a preemptive strike against possible espionage and attack from within during war time. Also, as in past federal actions, this order would greatly restrict the individual rights of American citizens in regards to such things as speech, liberty, and property. In two separate Supreme Court cases, *Hirabayashi* and *Korematsu*, the Court upheld the legality of E.O. 9066 and subsequently restricted the rights of Japanese Americans during WWII for the sake of the greater good. While the underlying fear of the federal government that Japanese Americans were potential spies for the Japanese Emperor and military would later be called into question, during the time of the war, their fears need not be unquestionably substantiated by evidence to gain public acceptance.

While Japanese internment can be traced, in large part, to a “day that will live in infamy”, the war on terror stems from “a day we will never forget”; September 11th, 2001.

On September 11<sup>th</sup>, 2001 in an address to the American public and the world, President George W. Bush stated the United States will “make no distinction between the terrorists who committed these acts and those who harbor them.” This statement marked not only the end of the President’s remarks that night, but also provided the directive for an unprecedented military, intelligence, and global operation that would once again bring about the question of the rights of the individual in times of war and the balance of individual right with the greater good. After the attacks of 9/11, the United States as a whole was reeling emotionally but actively pursuing a new war, a war on terror; the intricacies, components, and realities of which would unfold over the subsequent five plus years. During that time, the United States would be in an ever present time of war. Marked by colored levels of alert, American citizens would find constant reminders of how close a terrorist attack could be at any given moment. In retrospect, some might say that a gripping fear of attack blinded many to the attack on individual rights that was unfolding at the exact same time.

Passed overwhelmingly 98-1 (along with one non-vote) on October 25<sup>th</sup>, 2001, HR 3162 better known as the Patriot Act, afforded the federal government unprecedented power, access, and control over information and previously private individual communications. This legislation would come to represent the desire of many Americans to give up freedoms for the sake of protection. Most people in the United States would encounter very little change to their daily life as a result of the passage of the Patriot Act but for some, the regulations and power the law would provide the federal government would make them a target of potential monitoring, interrogation, and even imprisonment. Make no mistake, for most Americans at the time, it was

a time of war and necessary precautions would have to be taken to ensure the security of the nation. It was no different than Lincoln's actions during the Civil War, the rulings upheld during WWI on the backs of the Espionage and Sedition Acts, or even the institution of Japanese internment camps during WWII. As fear began to subside and many Americans "awoke" from the post 9/11 hangover, more and more people began to question how far we had collectively gone to ensure safety in the name of the greater good. The balancing of order and freedom continues to be a major focus of a post 9/11 world, let alone the United States. For this country, it is an ongoing balancing act within the experiment that is the American Democracy. The perfect balance of these two polarizing forces may never be struck but a failure to continue pursuing perfection in this matter could potentially result in catastrophic damage to the rights of not only the individual but the greater good as well.

## Works Cited

Abrams v. United States 250 U.S. 616. Supreme Court of the United States. 1919. Web. 10 June.

2012

Bush, George. "Address to Nation." Oval Office, Washington, D.C.. Sept. 11, 2001. Address.

Accessed from [http://articles.cnn.com/2001-09-11/us/bush.speech.text\\_1\\_attacks-deadly-terrorist-acts-despicable-acts?\\_s=PM:US](http://articles.cnn.com/2001-09-11/us/bush.speech.text_1_attacks-deadly-terrorist-acts-despicable-acts?_s=PM:US)

Chafee, Zachariah. Freedom of Speech in Wartime-1919. Harvard Law Review. Dunster House Bookshop. Cambridge, Mass.

Accessed from

[http://books.google.com/books?id=XVUWAAAAYAAJ&pg=PA951&source=gbs\\_toc\\_r&cad=4#v=onepage&q&f=false](http://books.google.com/books?id=XVUWAAAAYAAJ&pg=PA951&source=gbs_toc_r&cad=4#v=onepage&q&f=false)

Dueholm, James A. *Lincoln's Suspension of the Writ of Habeas Corpus: An Historical and Constitutional Analysis*. Volume 29, Issue 2, summer 2008

Accessed from <http://hdl.handle.net/2027/spo.2629860.0029.205>

Locke, John. *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764).  
Chapter: CHAP. XIV. Of PREROGATIVE.

Accessed from <http://oll.libertyfund.org/title/222/16412>

Schenk v. United States 249 U.S. 47. Supreme Court of the United States. 1919. Web. 10 June.

2012