

Constitutional Issues: Civil Liberties in a Time of War



Teacher's Guide to Classroom-Based Assessment Activities

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Constitutional Issues: Civil Liberties in a Time of War

Overarching Focus Question:

When our country is at war, must civil liberties be compromised?

View the film, *Civil Liberties in a Time of War*. Present the students with the guiding questions prior to watching the film, and use them as a catalyst for discussion.

Guiding questions for the film:

1. If a person's Constitutional rights are taken away by the government, should the government then be able to draft that person into the military without first restoring those rights? [Frank Emi and WWII draft resisters]
2. Was the Selective Service draft a violation of the Japanese American draft resisters Constitutional rights?
3. Was it legal or Constitutional for the government to require Japanese Americans to sign a loyalty oath and to give harsh penalties for those who refused to sign it, while they were incarcerated in concentration camps during World War II?
4. What are some of the parallels between WWII Japanese American draft resisters and members of today's military who refuse to deploy to Iraq?
5. What constitutes a legal war? Based on your findings, can the war in Iraq be considered a legal war? [See article on UN Charter, Western States Legal Foundation, <http://www.lcnp.org/global/iraqstatement3.htm>]
6. Is entering into a war under false pretenses a violation of the Constitution? Is it a violation of international law?
7. What is the duty of a soldier during war? During an illegal war?
8. What is the duty of a private citizen during war? During an illegal war?
9. Is requiring a soldier to fight in an illegal war a violation of a person's Constitutional rights?
10. How are the "War on Terror" and the war in Iraq related? Are they the same?

Classroom-Based Assessment Activities

ACTIVITY 1: Reflection Exercises on Civil Liberties and the Military

Choose one of the three exercises below.:

1. Read the Seattle Post Intelligencer editorial by Robert Jamieson and the response letters to the editor. (These articles are included as a separate pdf file on the disc.) Take a point of view, and write your own letter to the editor. Carefully research your point of view and use facts to support your position.
2. All soldiers are required to take the military oath at the time of induction. During the Iran-Contra hearings in 1987, Senator Daniel Inouye reminded Lt. Colonel Oliver North about the Uniform Military Code and the duty of a soldier. After reading the oath and Uniform Code of Military Justice, read the passage below, and write a paper on Lt. Ehren Watada and his refusal to deploy to Iraq, contrasting his actions with those of Lt. Col. Oliver North.

Note: You may have to do additional research on the "Iran-Contra affair" and Lt. Col. Oliver North.

MILITARY OATH:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the regulations and the Uniform Code of Military Justice. So help me God."

The Uniform Code of Military Justice (UCMJ) 809.ART.90 (20), makes it clear that a member of the military must obey any "lawful command of his superior officer," any "lawful order of a warrant officer", any "lawful general order", and any "lawful order". In each case, military personnel have an obligation and a duty to obey only lawful orders, and indeed, have an obligation to disobey unlawful orders, even orders of the President if they are unlawful as defined by the UCMJ. The moral and legal obligation of a soldier is to the U.S. Constitution and not to any person who issues unlawful orders, if those orders are in violation of the Constitution or of the UCMJ.

Senator Daniel Inouye of Hawaii, a decorated World War II veteran and hero, during the Iran-Contra hearings of 1987, told Lt. Col. Oliver North that he was breaking his oath by blindly following the commands of President Ronald Reagan. "The uniform code makes it abundantly clear that it must be the lawful orders of a superior officer. In fact it says, 'Members of the military have an obligation to disobey unlawful orders.' This principle was considered so important that we - we, the government of the United States, proposed that it be internationally applied in the Nuremberg trials."

Senator Inouye was referring to the Nuremberg war crimes trials immediately after World War II. Nazi actions resulted in the deaths of millions of innocent men, women, and children. At Nuremberg the U.S. did not allow accused Nazi criminals to defend their actions with the argument that they were "only following orders". In 1953, the Department of Defense adopted the principles of the Nuremberg Code as official policy of the United States. (Hasting Center Report, March-April 1991)

[From: Bill Moyers, *The Secret Government*, 1988, Seven Locks Press. Also in the PBS 1987 documentary, *The Secret Government: The Constitution in Crisis*.]

3. Read the excerpted article below, written by author William Hohri about Japanese American draft resisters in the WWII concentration camps. Write an opinion paper, pro or con, on the legality of the draft during WWII for interned Japanese Americans in the form of a letter to the editor. Support your argument with specific facts, precedents, or references to laws.

Author William Hohri has gathered evidence that it was illegal under the Selective Service Act of 1940 for the U.S. government to draft young Japanese American inmates while they were in the custody of the War Relocation Authority. He published his argument in the January 2005 issue of *The Objector*, in an article titled, "Free Us Before You Draft Us." He writes, "Someone was violating the law. And it was not the resisters. It's about time we recognized this."

On March 21, about three months after Pearl Harbor, the first group of Japanese-American "volunteers" arrived at Manzanar, California, at what would become the first of ten detention camps called "War Relocation Centers," an official euphemism. The final group of new inmates began to arrive at the camp at Jerome, Arkansas, on October 6, 1942. The total number of inmates at all the camps reached 120,313 and they were placed "under the custody of the War Relocation Authority," an agency of the U.S. Government. "Custody" is a key word in this essay.

On June 17, 1942, Selective Service discontinued drafting the Japanese-Americans who were U.S. citizens by classifying them IV-C, as though they were, like their parents, enemy aliens. On January 14, 1944, Selective Service restored the classification to I-A and ordered them to take physical examinations. In response, 315 young male inmates resisted conscription either by not going for their physical exams or refusing to be inducted.

One of their slogans was, "Free us before you draft us." It was not only appropriate; it was good law. According to the Selective Service Act of 1940, "In class IV-F shall be placed any registrant who . . . 5) Is being retained in the custody of criminal jurisdiction or other civil authority." [Note: IV-F means "Not qualified for military service."]

Did the WRA comprise other civil authority by being the custodian of the inmates? The answer is in the official and authoritative report of the U.S. Dept. of the Interior, *The Evacuated People: A Quantitative Description*, 1946. It begins, "Some 120,313 persons of Japanese descent came under the custody of the War Relocation Authority between May 8, 1942 ... and March 20, 1946 . . ."

Since the inmates of the camps were in the custody of the WRA, the male inmates who were registered for the draft should have been classified IV-F. With the IV-F classification, of course, they would not be drafted. This is a major recent discovery that I made when I was finally able to read the classifications for the 1940 version of the Selective Service Act in a book. (The microfilmed version I had been using did not include the classifications.) It was not the resisters who broke the law; it was the U.S. government. "Free us before you draft us."

On November 5 and 6 of 2004, a major conference was held in Los Angeles. It was organized by the North Carolina University's School of Law. Its first panel had, among others, two speakers who had been members of the Fair Play Committee of the 63 draft resisters at the WRA camp at Heart Mountain, Wyoming: Frank Emi and Yosh Kuromiya. In his speech, Kuromiya included the observation on the illegality of conscripting young men who were in the custody of the WRA. To the best of my knowledge, this was the first public statement on this illegality. As far as I could tell, his statement failed to create a stir in the audience of former inmates of the camps and members of the legal profession.

So I much appreciate the invitation to inform members and friends of CCCO of this illegality.

I think it is time that we came to the support of the resisters and express our appreciation for their courage, even if it has taken 60 years. Also, this aspect of our wartime internment does need to become part of its history. We were not only interned illegally as suspect U.S. citizens and residents. We young male U.S. citizens who were detained by the War Relocation Authority should have been classified IV-F under the Selective Service Act of 1940. Instead, we were forced to serve in the U.S. Army in clear violation of the law.

[See <http://www.objector.org/eyeoniraq/freeus.html> for the full article.]

Activity 2: Quotations on Heroism and Patriotism

Read the following quotations. Compare and contrast two points of view from two different authors in a written opinion paper. Use graphic organizers to organize your ideas. Conduct research to get more background information on each perspective.

To announce that there must be no criticism of the president, or that we are to stand by the president, right or wrong, is not only unpatriotic and servile, but is morally treasonable to the American public. (Theodore Roosevelt, 26th President of the United States)

If you want to make peace with your enemy, you have to work with your enemy. Then he becomes your partner. (Nelson Mandela, Former President of South Africa)

It would be our policy to use nuclear weapons wherever we felt it necessary to protect our forces and achieve our objectives. (Former Secretary of Defense, Robert McNamara)

Patriotism - is defined as "love and devotion to one's country." But, oftentimes, it takes as much, if not more courage to speak out against our government. It is that love of country that compels some to speak out and oppose our government's actions. (Senator Daniel Inouye, Senior Senator from Hawaii, and Member of the 442nd Combat Regiment)

I love America more than any other country in this world, and, exactly for this reason, I insist on the right to criticize her perpetually. (James A. Baldwin, Writer)

When we are debating an issue, loyalty means giving me your honest opinion, whether you think I'll like it or not. Disagreement, at this stage, stimulates me. But once a decision has been made, the debate ends. From that point on, loyalty means executing the decision as if it were your own. (General Colin L. Powell, Former Secretary of State)

A patriot must always be ready to defend his country against his government. (Edward Abbey, Writer and Environmental Activist)

You're not supposed to be so blind with patriotism that you can't face reality. Wrong is wrong, no matter who says it. (Malcolm X, Black Nationalist Leader)

The object of war is not to die for your country but to make the other bastard die for his. (General George S. Patton, U.S. Army General)

Dissent is the highest form of patriotism. (Howard Zinn, Historian)

Each man must for himself alone decide what is right and what is wrong, which course is patriotic and which isn't. You cannot shirk this and be a man. To decide against your conviction is to be an unqualified and inexcusable traitor, both to yourself and to your country, let them label you as they may. (Mark Twain, Author and Social Commentator)

After the chaos and carnage of September 11th, it is not enough to serve our enemies with legal papers. (President George W. Bush)

America is a Nation with a mission - and that mission comes from our most basic beliefs. We have no desire to dominate, no ambitions of empire. Our aim is a democratic peace - a peace founded upon the dignity and rights of every man and woman. (President George W. Bush)

Activity 3. In-depth opinion paper:

Select an issue from the list below and explain how this issue connects with the Constitution and with other issues of the relationship between the U.S. government and its citizens. Use the following guidelines:

- **Use specific references to the Constitution to explain its relationship to this issue.**
 - **Develop a position on the issue that attempts to balance individual rights and the common good.**
 - **Make explicit references to sources that provide relevant information and/or support for your position on the issue.**
1. In the United States, who has authority to declare war on another country? How was the Iraq War started?
 2. What is the United Nation's role in a war between member nations? How was the U.N. involved before the start of the Iraq War?
 3. What are the powers of the United States Congress with regard to the Iraq War, compared with those of the President?
 4. Compare the officially stated causes of U.S. entry into the following wars, and discuss what non-government sources have called the "real" causes of each war:
 - World War II
 - Korean War
 - Vietnam War
 - "War on Terror"
 - Invasion of Iraq
 5. What are the main justifications given by the U.S. government for the War in Iraq and its subsequent occupation?

SUPPORT MATERIALS

Below are examples of graphic organizers for use with *Constitutional Issues: Civil Liberties in a Time of War*. Use them to help organize your report or presentation.

SIMILARITIES

Vietnam War and **Invasion of Iraq**

massive peace protests by U.S. citizens

U.S. government lied to American public

many civilian casualties

not located on American soil

DIFFERENCES

Vietnam War	Invasion of Iraq
Supported by South Vietnam	Supported by England
Fought in jungles, countryside	Urban war, fought in cities
Peace protests after war began	Anti-war protests before war started

Definition of Terms:

- WMDs** Weapons of mass destruction: any weapon that kills or injures large numbers of civilian and military personnel (generally includes nuclear, chemical, and biological weapons)
- Iran-Contra Affair** The Iran-Contra Affair involved several members of the Reagan Administration who in 1986 helped to illegally sell arms to Iran, an enemy of the United States, and used the proceeds to fund the Contras, a right-wing counter-revolutionary organization in Nicaragua. It became a political scandal in the United States in 1987, when it was discovered that large volumes of documents relating to the scandal had been destroyed or withheld from investigators by Reagan Administration officials.
- Nuremberg Trials** The Nuremberg Trials were a series of trials following the end of World War II that prosecuted prominent members of the political, military, and economic leadership of Nazi Germany for their actions during the war.
- Selective Service** is the system by which the United States administers military draft, registration, and classification. It entails registering all men between the ages of 18 and 25 for the purpose of having information available about potential soldiers in the event of war.
- War resister** Someone who refuses to comply with a military draft.

Selected References:

- Chang, Thelma. 1991. *I Can Never Forget: Men of the 100th/442nd*. Honolulu: Sigi Productions, Inc.
- Crost, Lyn. 1994. *Honor by Fire: Japanese Americans at War in Europe and the Pacific*. Novato, CA: Presidio Press.
- Kiyota, Minoru. 1997. *Beyond Loyalty: The Story of a Kibei*. Honolulu: University of Hawaii Press.
- McNaughton, James C. 2006. *Nisei Linguists: Japanese Americans in the Military Intelligence Service during World War II*. Washington, D.C.: Department of the Army.
- Moyers, Bill. 1988. *The Secret Government: The Constitution in Crisis*. Cabin John, MD: Seven Locks Press.
- Muller, Eric L. 2001. *Free to Die for Their Country*. Chicago: University of Chicago Press.
- Okada, John. 1976. *No-No Boy*. Seattle: University of Washington Press.
- Zinn, Howard. 1999. *A People's History of the United States*. New York: HarperCollins Publishers, Inc.
- Zinn, Howard and Anthony Arnove. 2004. *Voices of a People's History of the United States*. New York: Seven Stories Press.

Best websites for basic information, photos, and archival materials:

Densho, the Japanese American Legacy Project website: www.densho.org

Japanese American National Museum website: <http://www.janm.org/>

Japanese American Veterans Association website: <http://www.javadc.org/Index1.htm>

Smithsonian Institute History Museum Japanese American Internment website, *A More Perfect Union: Japanese Americans and the U.S. Constitution*:
<http://americanhistory.si.edu/perfectunion/experience/index.html>

Selected references for specific classroom-based assessment activities:

A Duty to Disobey All Unlawful Orders An Advisory to US Troops, in CounterPunch, February 2003 by Lawrence Mosqueda. A summary of domestic and international law, and the military oath of service. <http://www.counterpunch.org/mosqueda02272003.html>

Free Us Before You Draft Us by William Hohri, from *The Objector*, a journal of the Central Committee for Conscientious Objectors. <http://www.objector.org/eyeoniraq/freeus.html>

Conscience and the Constitution: Japanese American resistance to wartime incarceration, PBS website for the film. <http://www.pbs.org/itvs/conscience/>

Japanese Americans Criticize Watada by John Iwasaki, Seattle Post Intelligencer. http://seattlepi.nwsourc.com/local/282353_watada24.html

Watada, Resister: The historic meeting of young Lt. Ehren Watada, who refused to deploy to Iraq, and WWII resisters. A video by Los Angeles filmmaker Curtis Choy. <http://www.youtube.com/watch?v=PTjV8p4bAME>

Video of Lt. Ehren Watada speaking at the Veterans for Peace 2006 National Convention. <http://www.youtube.com/watch?v=wj0h14OyF3A>

Video of Lt. Ehren Watada, speaking about his decision to refuse orders to deploy to Iraq. <http://www.youtube.com/watch?v=J3Y-iZdeL70>

Video of Frank Emi, Heart Mountain draft resister in San Francisco, May 2002, and his remarks to the JACL at the Nisei Resisters of Conscience of World War II Recognition and Reconciliation Ceremony. http://www.resisters.com/study/jacl_apology.htm