

Civil Liberties in Time of War: Document Based Question

Section I: Habeas Corpus

Document I:

"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. "

Article 1 Section 9, U.S. Constitution

Questions:

1. What is habeas corpus?
2. Why is this right important?

Document II:

"Soon after the first call for militia, it was considered a duty to authorize the Commanding General, in proper cases, according to his discretion, to suspend the privilege of the writ of habeas corpus; or, in other words, to arrest, and detain, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety. This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what has been done under it, are questioned; and the attention of the country has been called to the proposition that one who is sworn to ``take care that the laws be faithfully executed," should not himself violate them. Of course some consideration was given to the questions of power, and propriety, before this matter was acted upon. The whole of the laws which were required to be faithfully executed, were being resisted, and failing of execution, in nearly one-third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear, that by the use of the means necessary to their execution, some single law, made in such extreme tenderness of the citizen's liberty, that practically, it relieves more of the guilty, than of the innocent, should, to a very limited extent, be violated? To state the question more directly, 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? But it was not believed that this question was presented. It was not believed that any law was violated. 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 equivalent to a provision---is a provision---that such privilege may be suspended when, in cases of rebellion, or invasion, the public safety does require it. It was decided that we have a case of rebellion, and that the public safety does require the qualified suspension of the privilege of the writ which was authorized to be made. 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 cannot 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."

Excerpt of Lincoln's July 4, 1861 Speech to Congress

Questions:

1. Why did President Lincoln suspend the writ of habeas corpus?
2. How does he justify his suspension of the writ of habeas corpus?

Document III:

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

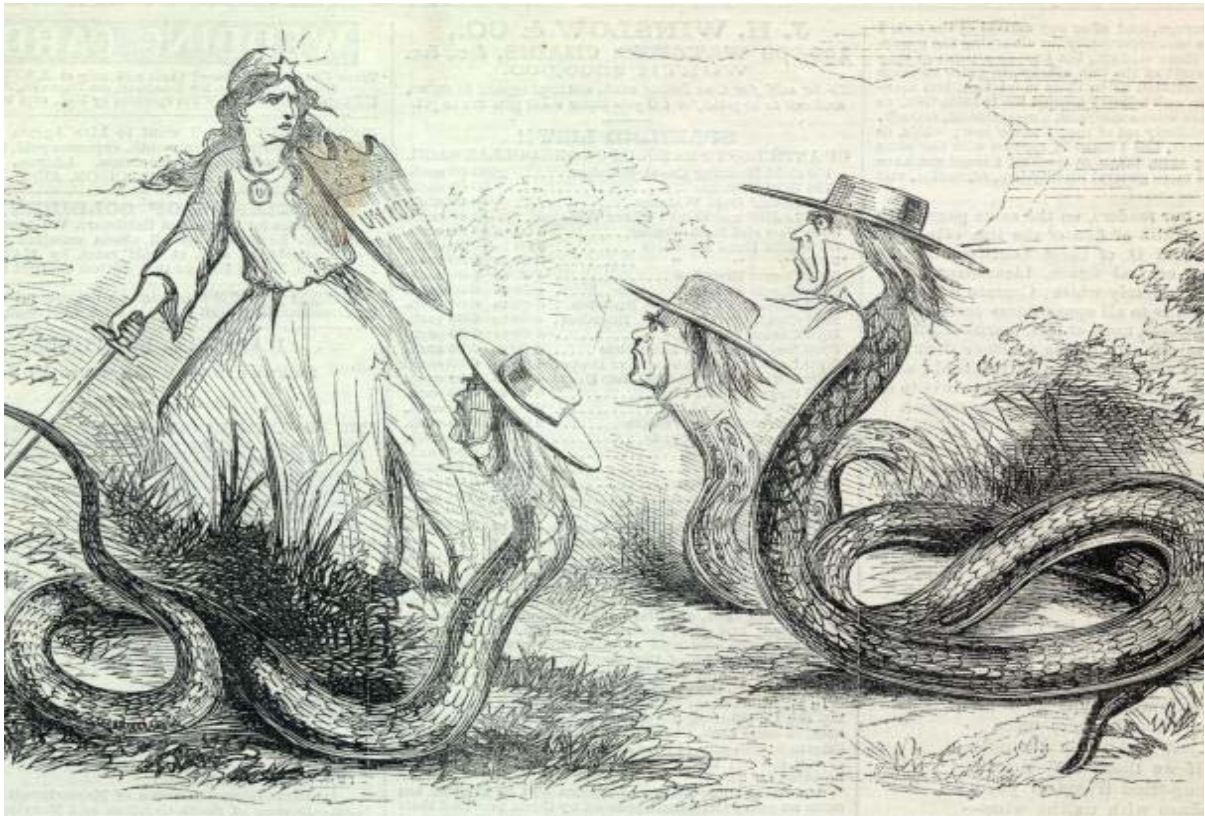
You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military line, which is now used between the City of Philadelphia and the City of Washington, via Perryville, Annapolis City, and Annapolis Junction, you find resistance which 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 resistance occurs, are authorized to suspend that writ.

Abraham Lincoln to Winfield Scott, April 27, 1861

Questions:

1. What authorization does Lincoln give to Winfield Scott?
2. Why does Lincoln do this?

Document IV:



“The Copperhead Party -- In Favor of a Vigorous Prosecution of Peace!”
Harper's Weekly, February, 28, 1863

Questions:

1. Who are the copperheads?
2. How are they viewed in this cartoon?

Big Question:

Was Abraham Lincoln justified in suspending the writ of habeas corpus during the Civil War?

Section II: Espionage and Sedition Acts

Document I: Espionage Act of 1917

Section 2. (a) Whoever, with intent or reason to believe that it is to be used to the injury or the United States or to the advantage of a foreign nation, communicated, delivers, or transmits, or attempts to, or aids, or induces another to, communicate, deliver or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly and document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and

(b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval of military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years.

Questions:

1. What was the Espionage Act?
2. Explain the result of the Espionage Act on mailed news and magazines.

Document II:

Evidence *held* sufficient to connect the defendants with the mailing of printed circulars in pursuance of a conspiracy to obstruct the recruiting and enlistment service, contrary to the Espionage Act of June 15, 1917.

Incriminating document seized under a search warrant directed against a Socialist headquarters, *held* admissible in evidence, consistently with the Fourth and Fifth Amendment, in a criminal prosecution against the general secretary of a Socialist party, who had charge of the office.

Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The character of every act depends upon the circumstances in which it is done.

A conspiracy to circulate among men called and accepted for military service under the Selective Service Act of May 18, 1917, a circular tending to influence them to obstruct the draft, with the intent to effect that result, and followed by the sending of such circulars, is within the power of Congress to punish, and is punishable under the Espionage Act, § 4, although unsuccessful.

The word "recruiting," as used in the Espionage Act, § 3, means the gaining of fresh supplies of men for the military forces, as well by draft as otherwise.

Conviction Affirmed.

Questions:

1. Do you agree or disagree with the Supreme Courts decision in Schenck v United States? Why?
2. Analyze this quote: "This case is also the source of the phrase "shouting fire in a crowded theatre", a paraphrase of Justice Holmes' view that "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." What is your opinion?

Document III:



Questions:

1. What is being portrayed in this political cartoon?
2. Who do the individual people represent?

Big Question:

Was there justification in passing, implementing and enforcing the Espionage and Sedition Acts of 1917 and 1918?

Section III: Japanese Internment

Document I:



All Packed Up and Ready to Go
San Francisco News, March 6, 1942

Questions:

1. What is the main theme of this political cartoon?
2. What is your interpretation of the sign that says "Out of harms way?" Is it that Japanese-Americans are being protected?

Document II:



Photograph Description: An Oakland, California, grocery store bears a "Sold" sign as well as one proclaiming the patriotism of its owner. The Japanese American shop-owner, a University of California graduate, hung the "I am an American" sign the day after the attack on Pearl Harbor. Soon

afterward, the government shut down the shop and relocated the owner to an internment camp, along with thousands of other Pacific Coast Japanese Americans.

Questions:

1. Why would the owner of this store feel the need to broadcast his allegiance?
2. Do you think that Arab-Americans are under pressure today to show similar acts of patriotism to avoid backlash of the war on terrorism in the Middle East?

Document III



Questions:

1. If you were the Japanese child in this picture what would you be thinking about?
2. What kinds of feelings are conveyed either in the picture, or as you are viewing the picture.

Document IV

Media Link: <http://www.archive.org/details/Japanese1943>

Government-produced film attempting to defend the massive internment of Japanese Americans in concentration camps during World War II. **Producer:** U.S. War Relocation Authority

Document V:

Media Link: <http://www.archive.org/details/Challeng1944>

Government-produced film attempting to defend the massive internment of Japanese Americans in concentration camps during World War II. **Producer:** U.S. War Relocation Authority

Questions

What arguments were made in support of the internment of Japanese-Americans?
Do you agree or disagree with the governments statements? Why?

Big Question:

Do the needs of the many outweigh the needs of the one (or the few in this case)? In times of war do the rights of a few of this nation's citizens need to be compromised to ensure the safety of the majority?