

Civil Liberties During War

The Bill of Rights provides protections of civil liberties for all those residing in the United States. However, while most assume guarantees of these protections, civil liberties are guaranteed inasmuch the Federal Government allows them to be. If the government can demonstrate a just cause to limit or eliminate a civil liberty, *it can*. Historically, the line drawn between national security (protection for all) and individual liberty (protection for one) is tenuous—especially during war. The Supreme Court, the Federal Government, and citizens have not been all in agreement. This assignment helps you examine this gray line.

There are a few MyPoliSciLab exercises to do/watch and a couple of Supreme Court cases to read. After going through these exercises, write a minimum of a four-page paper (12 point font, double-spaced, 1" margins, citations as necessary) answering the questions at the end of this document. I suggest having the paper questions with you while you do the simulations, watch the videos, and read the case rulings.

MyPoliSciLab

- Under Media Library → Chapter 15 Civil Liberties do/watch the following:
 - ❖ Debate: Privacy v. Government Surveillance Powers.
 - ❖ Timeline: Civil Liberties and National Security.
 - ❖ Watch: Debate—Patriot Act.

- Under New and Videos → Podcasts and Polls → Podcasts and Polls → click on phrase “Longman Political Podcasts” → Scroll down to “War Powers of the President.”
 - ❖ Watch the Greenberg podcast called “Habeas What? Civil Liberties and National Security.”

Supreme Court Cases

From the options below, read the majority opinion from **ONE** Japanese internment case and **ONE** contemporary case:

- **Japanese Internment Cases:**

- *Hirabayashi v. United States* (1943): <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?navby=case&court=US&vol=320&invol=81&pageno=93>
- *Korematsu v. United States* (1944):
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html

Note: “Korematsu's conviction for evading internment was overturned on November 10, 1983, after Korematsu challenged the earlier decision by filing for a writ of [coram nobis](#). In a ruling by Judge Marilyn Hall Patel, the United States District Court for the Northern District of California granted the writ (that is, it voided Korematsu's original conviction) because in Korematsu's original case, the government had knowingly submitted false information to the Supreme Court that had a material effect on the Supreme Court's decision. The *Korematsu* decision has not been explicitly overturned, but remains significant both for being the first instance of the Supreme Court applying the [strict scrutiny](#) standard to racial discrimination by the government and for being one of only a handful of cases in which the Court held that the government met that standard”
(http://en.wikipedia.org/wiki/Korematsu_v._United_States).

- **Contemporary Cases:**

- *Rasul et al v. Bush et al* (2004):
<http://www.law.cornell.edu/supct/html/03-334.ZO.html>
- *Hamdi et al v. Rumsfeld* (2004):
<http://www.law.cornell.edu/supct/html/03-6696.ZO.html>

If you're curious, but not mandatory, for the paper:

- *Here's FDR's Executive Order 9066 allowing Japanese internment:*
 - <http://www.ourdocuments.gov/doc.php?flash=true&doc=74&page=transcript>
- *The Patriot Act:*
 - http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf
- *Obama's Executive Order closing Guantanamo Bay Detention Camp:*
 - http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities/
- *The Dept. of Justice's "Dispelling Myths" about the Patriot Act (a pro-stance):*
 - <http://www.justice.gov/archive/ll/paa-dispelling-myths.html>

Answer these questions below to write your paper:

1. Why has the Supreme Court been reluctant to limit presidential authority during wartime at some points and not others?
2. What civil liberties, if any, should citizens be willing to give up in the name of national security? What exactly is meant by "expectation of privacy?" Does government intrusion during a war make citizens safer—what are justifications that it does?
3. Which Japanese internment case did you read? Which contemporary case did you read? Has there been a change in how we view the relationship between civil liberties, discrimination (racial, ethnic, and religious), and national security since World War II? Why/not?
4. Does the type of war matter—Are there any differences between the nature of WWII and the war on terror that would necessitate a different treatment of civil liberties? Should this matter? Has the concept of "privacy" changed since WWII?