



Postmodernism and the Flexibility of the Constitution

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Introduction

Students tend to come to us believing that the rule of law is quite rigid. They have accepted a common notion that history is marked in time and can simply be retold and absorbed as fact. Historians routinely like to challenge this conventional wisdom. Appropriately, the College Board tests students on the Advanced Placement exam as to their ability to be young practitioners of the discipline of history. It is at this point that I think postmodernism has a role to play. Postmodernists view language as a rhetorical tool that can be manipulated to challenge any conventional form of truth, as it is always open to interpretation. The very foundation of this nation is built, in some respect, on this principle. James Madison himself argued in the *Federalist* papers "All new laws, though penned with the greatest technical skill and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications" (Federalist 37).

In other words, the Constitution would be open to interpretation. This will be the backbone of this unit. What arguments were made to bend the Constitution to Lincoln's will? How could the Supreme Court support a law that limited the freedom of speech?

These are the types of questions my students and I can explore and use to understand that civil liberties are given meaning by the context in which they exist. No laws or sets of rules have meaning in and of themselves. Rather, all are interpreted in ways that give them meaning. In the end students might see that it is only the argument over interpretations that results in what we like to call historical truth, not history itself.

Summary of Main Content

This unit is meant to inform students about periods of war in our country's history and how those times affected American civil liberties. The unit will deal with President Adams' administration and the passage of and reactions to the Alien and Sedition Acts, Supreme Court decisions during the Civil War; World Wars I and II; and the Vietnam Era; the consequences of the September 11 attacks including the USA Patriot Act, the 9/11

Commission report and the Guantanamo detainees controversy. Generally speaking, students will learn of the core conflict in a democratic-republic like ours between upholding individual freedoms and maintaining national security. Specifically, students will grapple with the context of each of the aforementioned eras individually and make judgments about the actions of the federal government, the Supreme Court, and American citizens in response to national crises.

Rationale

In October of this past year I was married for the first time. My wife and I are a bit late in this venture as most of our friends have been together for some time, many of them already with a nest full of children. Of course, the inevitable question from many of our friends and family is about the prospect of children in our nest. I often think that it would not be wise to do so considering my mother's curse. She told me when I was a teenager that one day I would have children and they would be just like me. Before there is any speculation let me say, this was not meant as a compliment. I was a tough kid as an adolescent. I had the same tendencies as many at that age, but I think to some extent I was worse. I had a real problem following rules that did not fit into my way of thinking. I know this probably doesn't seem abnormal but I was diligent about formulating arguments to oppose all those attempting, in my estimation, to oppress me. I was clever enough to frustrate the powers that be. Unfortunately, I rarely won because what I esteemed as being intellectual was to my teachers, principals, coaches, and parents little more than an annoyance. Added to this was the frustration that I felt, because I truly believed that I was right. Why should I have a curfew if I am doing nothing wrong? What difference does it make if I am out at 2 a.m. if I am just watching a movie? My parents answer was the usual, "because we said so!" As you might imagine my well-groomed ego did not permit me to respond favorably. Why were they **right?**

Coming full circle, I am now a teacher confronted with a room full of adolescents who think much the same way I did. My maturity (albeit slow) allows me to recognize in my students much of what used to be in me. My experience, however, does not make being an authority in this situation any easier. I have, much to my dismay, found that the "because" rationale is useful when things need to go my way and there is little time for discussion or room for compromise. But, in many ways it is very difficult to insist that they follow rules especially when I too find them pointless or overbearing. Also, students frequently pose cogent arguments that make the rules in our system seem rather silly. So once again I am left to wonder, why are my rules, school rules, and school system regulations **right?**

This leaves us, all of us, with some important questions: Why are there rules or laws and what makes them right? What value do they have in our society? Who gets to decide what rules are in place and how do we know they are right for making them? What mechanism can we use to change laws if suddenly we think they aren't right anymore? Unfortunately, the answers aren't simple and frankly are apt to change depending upon the person you ask, the language you use and the context within which the question is posed. Indeed our history is filled with examples of humans who have pondered the same questions, each instance leading them down very distinct and significant paths. What is considered right or just on one occasion may not be at another. At one point in our history women were considered inferior and were expected to complete certain domestic tasks as a matter of course. The contemporary woman is thought of quite differently and would balk

at any suggestion of the former. But which is right? More importantly, can they both be right and how do we know?

Postmodernism

It is at this crucial point of investigation that my unit begins to unfold. Postmodernists have long held that objectivity is an impossibility. Many facts and truths, they argue, come from some set of beliefs that are shaped by shared perceptions. They argue that since there is variance in perception, there is also variance in belief, meaning there can very well be a variance in what we hold as fact or truth or right. In the final analysis, postmodernism argues that our commonly held beliefs are manifested from some set of, unproven presumptions that we as a people use to determine what is fact or truth or right. We decide what makes sense to us and our perceptions of reality are then validated through the crafting of some belief system in which we place our faith and from which we may, for instance, build our system of laws.

Postmodernism, however, has caused some controversy. Some argue that postmodernism destroys the meaning in our laws and even our religions by claiming that our perceptions are completely relative. It is not, to my understanding, that postmodern theorists claim there can be no facts or truths. It does "not embrace an absolute relativism" but rather "insists that....propositions of truth are time- and context- sensitive" (Jencks, 59, 1986). 'Facts' in a certain context may be considered a human construct and thus open to interpretation. In my discipline, for example, there is no argument to be made that Abraham Lincoln was a President of the United States, but a great deal of debate as to whether he was any good in this position. This unit does not presume that postmodernists are correct. But I do believe that the postmodernist stress on contexts and perspectives can be a valuable tool, a different lens, to observe patterns and developments in history.

To understand better the value of postmodern themes let's return to the previous example. Over much of American history women were not allowed to own property. Women were not allowed to vote. Women did not have the authority to divorce and separate from their husbands. In fact upon marriage women gave up all of their valuables and possessions to their husbands. They worked in the home and raised children. They tended to domestic affairs and were generally not inclined toward higher education or any prestigious profession (Faragher, 117, 2003). This has all changed dramatically. From a modern perspective that sort of treatment of women was wrong. But at the time, be it 1836 or 1956, it was common practice and many women accepted that role. In the context of that period it was 'right' and laws of the time followed suit. So which version of right is the most right? We have to believe, of course, that our right in 2005 is the most right because we want to believe that we are progressing. This is where the postmodern view of right and wrong sheds light on our predicament. Postmodernists might very well say that if an argument is made strong enough and long enough, as many women did for many years, perhaps at some point we all believe it and adopt it as fact. But it is important to realize the evolution of this fact. The question then might be will this fact last another 200 years? What will be the 'right' or 'truth' about women of 2205? If it has changed, isn't it likely to change again? Is our current perception of women in this country the right one? It is not so much that there must be a definitive answer, but rather that the question itself poses an interesting problem. The attempt to solve this mystery is what gives the process its value.

It is these types of questions that are important for students of history to ask. It is part of learning about who we are to understand why it is that we think what we do. It is of crucial importance to understand also why

what we think has changed, and what consequences that has on everyday existence and subsequently the prospect of the future. For example, our system of government was developed because of a set of predominating ideas that became so infectious that they created a revolution. Those ideas were then codified into our Constitution. All of this was based on shifting sets of perceptions about governance, personal freedom, and open commerce. People of this time decided, as I believe postmodernists would say, with some collective sense of right to shed the ways of the old world and create a new human existence to serve as the new **American** truth. When we see the formation of our country from this perspective we can at least consider whether a republican form of government is the right one (the heroic model of history) or simply the result of a clever convincing set of arguments that led early colonials to believe it was right and therefore it "became" right. Even if the latter is true, republicanism can still be right, based on our historical judgment, a point that cannot be overstated. Furthermore, since we consistently make reference to this time and the intentions of the founders of the nation as a means for applying constitutional rules to contemporary situations, we might use this perspective to draw conclusions about whether our republican form of government is serving its purposes and if it can be sustained for years to come. In sum, I believe that teachers can use the tenets of postmodernism as a way of critically thinking about, the evolution of American thought and its many applications: politics, religion, constitutional law, social reformation, economic philosophy, foreign policy, to name only a few. But the philosophy can also be of great assistance to teachers in helping students understand the difficulty in making the transition from one form of what we might call truth to another.

We must consider whether transformations of perspectives and beliefs are easily achieved. Evidence seems to suggest that this is rarely the case. My parents and I had this experience. As I grew older and thought myself ready to make adult decisions without my parents, they did not see fit to let go of rules they felt were appropriate to guard my behavior. In the end, despite my best efforts, they won because my argument paled in comparison to theirs and the overarching view of the community that backs the notion that parents know what is best. This did not keep me from testing the boundaries. There seems to be, in many cases and especially in this personal example, a natural clash between tradition and innovation, for lack of a better word. This sort of thing has happened frequently in our history.

In the early 20th century America and other industrialized, civilized nations (as they were called) became imperial powers. Germany, Japan, Great Britain, among others, sought to expand their influence to smaller, less militarized nations for many reasons. The United States hoped to spread American culture, exploit areas for their natural resources, expand trade, and establish an American military presence around the world. This was regarded by many as a natural progression from expansion west to expansion beyond our borders. By this time it had long been American principle that it was our manifest destiny to be among the great powers of the world (Faragher, 597-604, 2003). But imperialism came with a price. To some extent, it can be argued, the rise of imperialism led to the conflict in WWI. Despite America's best effort to stay isolated from battle, we entered the fray in 1917 (645-652, 2003). There were many Americans during this period including the pacifist spokesman William Jennings Bryan who opposed not only our imperialist ventures but also our entrance into a war that he saw as none of our concern. The federal government felt that there was no place for opposition of this sort and sought to suppress objections to the war by limiting civil liberties in order to protect national security. Their efforts mark a great period of transition in our history. (604, 2003).

As students of history we are left to determine whether the government was and is justified in taking what seems an otherwise unconstitutional approach, or if the boundaries of republican government have been so severely breached that we should not only recognize what has happened with regard to constitutional law but attempt, in a modern political sense, to reverse the trend by setting new precedent. To some degree we are

still making the transition and it has been a difficult one. Where is the line drawn between individual civil liberties and national security in times of war? This is the primary line of demarcation.

And so again we are left with the age-old question, what is the *right* answer? Finally, we must say that there isn't one right answer but in fact there can be many. Each answer is highly dependent on the context in which it is made, the evidence used to support the argument, and the willingness of the audience to respond favorably to a fresh perspective.

Postmodernism and the classroom

My goal as a teacher is not only to impart the information my students need as required by the state in order to achieve success on standardized testing, but to cultivate skilled thinkers who will constantly question the right and the wrong of any situation. This is especially true for my discipline. Over the course of American history much has happened that stirred great controversy and instilled factionalism. We have endured revolution and expansion, slavery, and invasion. At the end of the day, the study of what has happened begs us to make something meaningful from it. Indeed, as the axiom goes, if we do not learn our history we are doomed to repeat it. Therefore, it is incumbent upon us to learn what is right and wrong in our past, or at least, make thoughtful arguments that will allow us to come to a conclusion about what seem to be the best and worst of past events.

The students who participate in my Advanced Placement US History class are to involve themselves in that endeavor; indeed, they are to learn the historian's trade. They must learn about the accumulation of facts or the sets of arguments that have been made by historians thus far and from the information make some determinations for themselves. This is where postmodernism is a powerful tool. We must learn what was thought of as truth in historical context with a strong eye to how that truth evolved. And as a matter of course, we must conclude for ourselves what this means in a current context, while questioning the rationale and meaning of arguments past as we cultivate our own sets of arguments present. This unit is designed to meet both the philosophical goals talked about in this section and the practical goals of teaching a US History class in the public school setting. Specifically, I want students to accomplish several important things. I want them to have comprehensive knowledge about periods of war in American history and the influence those times had on American civil liberties. I want them to articulate the arguments made during those times in the context that they were given and understand what reasoning led to their formation. I want them to make some conscious decisions about how those varying interpretations of the Constitution have affected American civil liberties in history and continue to do so in modern times. I want them to develop persuasive writing skills and know the power of building a concise, clear, well-crafted argumentative essay.

Background information

Before going into detail about specific objectives and strategies I think it would be wise to note some special considerations pertaining to my students, my school, my district and how the unit will relate to the goals that I have as a teacher.

The Charlotte- Mecklenburg school district is the 6th largest in the country and is heavily bureaucratic. The State of North Carolina has a teacher and school accountability program called the ABC goals that uses end of year tests developed by the state to judge students in all the academic disciplines. My course is tested at year's end. The district is very serious about making high marks on these tests and nearly all policy follows this general goal.

Curriculum for all courses is developed at the state level. In our district teachers are given pacing guides, classroom activities, lesson plans, and the like that are aligned to State standards. Added to this is a local quarterly exam that each teacher is required to give as a means for measuring the pace at which individual teachers are moving through the material.

My school is an arts magnet program that is made up of 1300 students, grades 6-12. I teach 11th and 12th graders with approximate class sizes between 15 and 30. The children at this school choose to be there out of a sincere interest in an arts related field. They are chosen by lottery but must complete an audition process before they are allowed to enter the school. Our school normally performs well on English, Science and Social Studies standards but often falls short in Mathematics. I teach and run the Social Studies Department and this unit pertains to the Advanced Placement United States History class that I teach. In this class my students are not only tested by the state in the accountability program but also by the College Board. Pay bonuses for our school are determined, in part, by how well my students perform. There is quite a bit of pressure to do well.

This unit on war and civil liberties will be used to assist in meeting the curriculum requirements. First, the exercises will help meet the needs of content material, and second, they will provide part of the writing component for the AP exam. Students entering the 11th grade should have some understanding of the Constitution. In North Carolina students in the 10th grade take the class "Civics and Economics" that deals almost exclusively with constitutional issues. Therefore, this unit will not cover any critical analysis of the Constitution before considering the issues of civil liberties but will depend on prior knowledge.

The unit was designed in cooperation with the English AP 11 teacher. He is also concerned with persuasive writing and our hope is that the unit will be of cross-curricular use.

My class is very regimented. I require that students keep a notebook to my specifications. For each unit of study I develop a list of criteria referenced objectives that make students aware of each assignment in that grading period. They, along with any additional handouts, are color coded and placed in the notes section of their notebooks in the proper order. My class always begins the same way. There is either a primary document on an overhead to be analyzed or practice/ review questions that are also to be copied into the practice question section of their notebooks. It is commonplace in my class for the structure of assignments to be the same but used for the study of different time periods. For instance, my students complete what is called a Presidential Review System. The PRS asks students to investigate some of the more important administrations and, in part, give brief details about political changes, economic conditions, and cultural happenings that are of special importance. This unit will be along the same vein.

Classroom Objectives

The unit objectives will be repeated six times over the course of the year. The topics will be covered through in class discussion and activities as well as by homework assignment, especially where specific readings are concerned. My classes are block scheduled (90 minutes) and none of the parts of this unit or activities related to the unit will take an entire class period (lesson plans will make this clear later in the explanation of the unit). In each case we will complete essentially the same objectives with slightly different activities and strategies for each. The general directions for each assignment will read as follows:

- Students will receive a reading assignment with guided questions as an introduction to the historical context. In some cases this will be from *All the Laws but One* by William Rehnquist, but in others it will be readings from our textbook *Out of Many*, supplied to us by the school system.
- Next, students will be given a court case, or some corresponding primary document, and be asked to do three things: 1) identify the historical occasion or briefly give an idea of the historical context of the reading selected 2) identify and briefly explain the central argument and constitutional question being addressed 3) describe the way in which the Constitution is being interpreted and explain why you believe the writers and or the primary characters involved have crafted this argument, i.e., what is to be gained via this line of reasoning.
- Having completed steps one and two, there will likely be an activity to complete each of the objectives within the topic area, "war and civil liberties." Those will include but are not limited to: a sample AP prompt on a similar subject; to write either a dissenting or concurring decision of their own arguing the case from their perspective; a piece of poetry (in conjunction with the AP 11 English class) reflecting some aspect of the time period and the question of civil liberties involved; or take part in a classroom debate.

Topics Covered in the Unit

The following is a list of the time periods of concentration and topics:

1. Adams Administration, Alien and Sedition Acts.
2. Civil War, Suspension of the writ of habeas corpus.
3. WWI, Espionage and Sedition Acts.
4. WWII, Japanese Internment.
5. Vietnam, Student protests.
6. September 11 Attacks, Guantanamo detainees.

Specifics for some of these topics will be covered later in the section on lesson plans.

Strategies

Introduction to Arguments

First, I must introduce the concept of postmodernism without sinking deeply into the philosophy itself. It will be necessary to give my students an idea about how arguments can be made in spite of what we may think of as an unarguable fact, but not confuse them with philosophical ramblings that may cause too much confusion. I have used several examples that might do the trick.

If I ask my students to give me the name of the first President of the United States they will quickly respond with the name George Washington. I then, often to their surprise, counter this generally established claim. I tell them that John Hancock was the first President of the Second Continental Congress at the end of the Revolutionary War. I let them know that this governmental body made rules known as the Articles of Confederation that were the basis for American law for almost 8 years. There were other presidents after Hancock and before Washington. I then ask them why they think this isn't regularly taught. The discussion that follows grants me the opportunity to help my students understand that our history is as much about the perception of facts as it is about the facts themselves.

I also like to use textbooks as proof of this proposition. I have three books at my podium; Howard Zinn's *A People's History of the United States*, Paul Johnson's *A History of the American People*, and the class textbook. I briefly explain a bit about each of them and then pose the question, why is there a need for all three? (I make sure to tell them that there are plenty more, Samuel Eliot Morrison, etc.). We of course then talk about how perspectives can be very different and naturally manifest themselves in the writings of different historians who hold some particular view. It is then useful to ask the question, which of the perspectives is the right one? Again, it helps bring about a "teachable moment" whereby students begin to understand what postmodern theorists claim: there are many aspects of 'right', but all of us must decide which one counts.

It can also be useful to begin the discussion by asking their perspective on school rules and then follow with an administrative view of the rules. Then make clear the possible perspectives of the teachers or parents, giving them some idea that there are so many ways of looking at what may appear to them to be a simple matter of black and white. For the purposes of this unit, this discussion allows students to see that there is often variance in perception when it comes to rules and laws.

Teaching the Formation of Arguments

Next, I will teach students the proper way to make a substantive argument. Students should understand that gathering information and using it wisely is the difference between having an opinion and making a persuasive argument. In cases where I want to model some specific skill I like to start by allowing complete liberty in the exercise.

For example, I will choose a school rule that might be especially egregious, then ask students to give reasons as to why the rule is offensive, inappropriate, or even insulting. The result is usually a hodge-podge of loosely knit ideas that have no real beginning or end. Most of them have little to do with the merit of the rule and more to do with their desire for absolute freedom. Expecting as much, I prepare myself to address the question legally. That is, I may make some references to specific laws regarding the rights of minors and school law precedent. In essence I model for students the way one might make a valid argument. I then

usually do a small lecture that details the protocol for forming a lucid claim.

Students are asked to 1) write a position statement-for example: "we believe that it is against our civil rights as students 16 years of age and citizens of the United States that we are disallowed from leaving campus for lunch" 2) accumulate evidence (not opinions) that would support the position, e.g.: by law students are allowed to withdraw from school at the age of 16 and are granted the right to have a driver's license, so why wouldn't we be seen, in the eyes of the law, as cognizant enough to take a lunch break" 3) think about why the law/ rule may exist and then argue that this line of reasoning is ill-conceived, e.g.: "it is likely that the school thinks that a situation might arise putting teenagers in danger during an off campus lunch, but the likelihood of midday crimes is far less that those in the evening, especially since our school is located across the street from Burger King." These hypothetical examples might not be the most compelling in history but they are far better than "because rules are stupid man"! The point is that students begin to understand the need to dig deeper than raw emotion and make a substantial, relevant, valid, points.

Teaching Persuasive/ Argumentative Writing

Third, I will have to be certain to give proper examples about the assignments listed above as well as examples of writing that are appropriate to the Social Studies class.

Of course, writing a formal Social Studies essay is much more complicated than the example given above. And again it is important to model what is to be expected.

As in the previous example I begin with a lecture that involves the introduction of a writing design or rubric (will be included in another draft) that should assist students with their writing. The design is based on the standards of the College Board and is essential if my AP students are to score well on the US History exam. The rubric lays out what needs must be met. There must be an introductory paragraph beginning with a broad general statement and ending with a thesis statement, much like the position statement spoken of earlier. The thesis statement must correspond to the prompt. The body paragraphs must be organized into separate ideas and each must support the thesis statement. I ask that my students write a conclusion statement, but it seems clear that the College Board is not concerned with one.

I then break down the essay into each of its component parts and teach each part separately. The topic paragraph is the most important, so we begin there. I tell students to make general statements that will answer the who, what, where, when, and why of the topic involved. Normally I use a sample prompt and then model appropriate writing (although this essay may indicate the futility in that venture). I begin with a broad statement that will give the reader an idea of what period of time the essay will address and move methodically toward the thesis statement. It may look something like this:

"During the late 1800's and early 1900's the United States began a new program of expansion. The American government thought it necessary to expand beyond our borders to keep pace with other imperial powers. There were, however, many complications associated with this policy, including the development of extreme forms of nationalism around the world that led to WWI. The US, after entering the conflict in 1917, sought to protect its interests abroad and at home. **The result was a period of incomprehensible civil rights and civil liberties violations whereby the federal government invaded the right to free speech, censored the press, and imprisoned innocent citizens.**"

After I compose each sentence students are asked about the important elements of the statement made. The purpose, of course is to determine which of the essential questions have been answered so that we may

thoughtfully answer those remaining. The first statement answers 'when', and once we as a class have drawn this conclusion we may move on. My goal in this exercise is to provide a suitable model that will serve as a pattern that will be recurrently followed during the year eventually helping students develop quality writing habits. To review construction of topic paragraphs I often do what I call a **JUMBLE**. I write a paragraph and then cut and paste the sentences so that they seem fairly disconnected. I use the overhead projector and ask the students to unscramble the sentences and put them in the proper order. I have found this exercise to be great reinforcement for teaching how to write a topic paragraph.

Supporting paragraphs should contain two important elements. Each should have a transition statement that helps the essay move smoothly from one to another and each should contain historical evidence to support the thesis. A common trick of the trade is to make sure that the thesis covers two or three different topics that then serve as the categories for three body paragraphs. This also makes outlining the essay and creating transition sentences much easier. Students have three distinct groupings provided in the sample above and may pool information into those specific columns. The transitions are then quite simple. Topic sentences for body paragraphs might look like these:

- First, our government sought to silence those who were protesting our involvement in the war.
- Secondly, our government formed bureaucratic agencies to censor the press and spread American propaganda.
- Lastly, the federal government jailed private citizens and disallowed them their civil liberties.

In each case students are responsible for giving historical facts that will, at least in part, help to prove their assertions. In the end students have a fairly simple recipe for concocting an essay that will not leave a bad taste in your mouth. I normally will not assign full essays immediately after completing these teaching strategies. It helps to do one piece at a time. In some cases I grade each individually. In others the class will do peer editing in heterogeneous groups. I also find it useful to choose, from previous student work, paragraphs, transition sentences, and thesis statements that demonstrate both typical problems students have with writing and those that show great command of writing skills, to critique as a class.

Sample Lessons/Resources

I must make it clear that I essentially begin the year, the very first day of class by talking about and discussing the multitude of perspectives that can exist with regard to our history. Much of this was discussed in the previous section. The lessons that follow will dig deep into understanding the perspectives of the players involved in historical context and then deal with understanding how we might perceive the situation as students of history. They will follow a similar pattern outside of the materials and information therein.

1. Early Republic

- Students will read the Alien and Sedition Acts as well as excerpts from the Virginia and Kentucky resolutions to complete the series of questions detailed in the **Strategies** section of this unit under the heading Teaching the Formation of Arguments.
- This will be followed by a lecture/ discussion that will center complications during the Adams administration with special attention paid to the constitutional questions raised by federalist policies

that seemingly breached American civil liberties.

- Often I supplement this lecture with a video from the History Channel, an adaptation of the Joseph Ellis book *The Founding Brothers*.
- At this early point in the year I am beginning to work on writing with my students. After teaching introductory paragraph and thesis writing I assign a prompt and ask that they do just that. To be sure I also ask that they list, with limited descriptions in bullet format, the information they will use in their body paragraphs that is to include analysis of the given documents. In the past I have used this prompt and documents found on the AP Central website: **"Although the Alien and Sedition Acts, created in 1798, spurred great dispute, they were created under constitutional guidelines. The acts helped to protect the government of the United States from potential threat." Using the documents and your knowledge of the period, evaluate this statement.**

2. Civil War

- Students will read chapters 1-3 in *All the Laws but One*, again completing the series of objectives listed above.
- This will also be followed by a lecture/ discussion of Lincoln's conduct during the war, the *Ex parte Milligan* case (1866), and the ramifications of Justice Taney's decision.
- Students will then write a decision for themselves. They will also be asked to either rebuke or in some other way support the overall decision in *Milligan*. They will be asked to justify their decision by giving valid historical considerations and of course write with regard to the constitution.

3. WWII

- Students will read the *Ex parte Quirin* (1942), *Korematsu v. U.S.* (1944), and *Dennis v. U.S.* (1951) cases and complete the same series of objectives noted before.
- We will then follow with lecture, discussions, and debate during which I will choose selected stories from the Linfield book, *Freedom Under Fire*, that are particularly inflammable (pun?).
- The culmination of our study here will be to see how concerns over civil liberties manifested themselves on the home front during the Second Red Scare. To this end students will be assigned the 2001 AP data based question (DBQ) found on the AP Central website. It reads: **What were the Cold War fears of the American people in the Aftermath of the Second World War? How successfully did the Administration of Dwight D. Eisenhower address these fears? Use your knowledge of the period 1948-1961 and the documents to construct your response.**

4. Vietnam

- Students will read *Tinker v. Des Moines* (1969) and follow the same directions as previously stated.
- This lecture will begin by asking students what sorts of things they would protest, especially with regard to school system rules and regulations. I will also ask for some prospective solutions. I will then ask about the idea of protest outside of school, for instance because of the "War on terrorism." I expect, as has been the pattern, that students will show great emotion on these issues, which is always a plus in the classroom as long as it is healthy. I will then transition to a discussion of the issues presented by *Tinker* by talking a bit about protest during the Vietnam era. Then we will briefly examine that period in history versus the present. Why was there such great animosity then but not so much now or is there?

The final assignment for this lesson will be a free response sample AP question from the 2005 College Board exam. It reads: **Analyze the extent to which two of the following transformed American society in**

the 1960's and 1970's: The Civil Rights Movement, the antiwar movement, the women's movement.

Bibliography-Teachers

- Charles Jencks, *What is Postmodernism?* 3rd edition (St. Martin's Press, 1986) pp.49-65. Mr. Jencks details the general importance of postmodern philosophy by applying it to art, architecture, and shifting political and economic ideologies while concurrently trying to explain what postmodernism is not. The reading is fairly complex but it is helpful in understanding what postmodern philosophy means.
- Jonathan Dayton and Theodore Sedgewick, *Alien and Sedition Acts (1796)*. Federalists in Congress and executive branch attempt to silence French sympathy and criticism of federal foreign policy resulting in major backlash of the anti-federalists including Jefferson and Madison's Virginia and Kentucky resolutions.
- Thomas Jefferson and James Madison, *Virginia and Kentucky Resolutions (1796)*. Jefferson and Madison respond vehemently to the passage of the Alien and Sedition Acts, claiming that they violate the First Amendment to the Constitution. Importantly these essays outline the right of the states to nullify federal laws that they deem unconstitutional, a precedent that will be followed on many occasions through the American Civil War.
- William H. Rehnquist, *All the Laws but One: Civil Liberties in Wartime* (Vintage Books, 1998). Discusses civil liberties issues during the Civil War, WWI and WWII. This work by the Chief Justice of the United States is especially readable for secondary school students. Gives substantive historical background information and addresses meaningful legal questions of the time.
- *Schenck v. U.S.* 249 U.S. 47 (1919). Supreme Court case of the WWI era that upholds the Espionage and Sedition Acts claiming that the federal government has the ability to limit freedoms during times of "clear and present danger."
- *Ex parte Quirin* 317 U.S. 1 (1942). Supreme Court case of the WWII period that produced the legal term "enemy combatants." German saboteurs captured in NY and Florida, including as American citizen, were tried before military tribunals. The court held that the aforementioned description made their trials legal.
- *Korematsu v. U.S.* 321 U.S. 760 (1944). Supreme Court case of the WWII era that upholds the right of the federal government to hold Japanese Americans interned as a means of protecting national security.
- *Dennis v. U.S.* 341 U.S. 494 (1951). Supreme Court case that upheld the Smith Act that disallowed any activity that could be deemed as conspiring to advocate or teach methods to overthrow or destroy the federal government. This particular case dealt with the arrest and conviction of members of the American communist party.
- *Tinker v. Des Moines* 393 U.S. 503 (1969). Supreme Court case that upheld the right of school age students to wear black armbands as a matter of protest against the federal government's involvement in Vietnam. The court found this activity to fall under the constitutional protection of freedom of speech.
- The 9/11 Commission Report. Report from a committee of public servants, private workers, and concerned citizens put together to study the tragedy of the September 11 attacks. Serves as a guide for public officials to determine preventive measures against prospective terrorists. Also focuses on civil liberties issues during such occasions.
- Michael Linfield, *Freedom Under Fire: U.S. Civil Liberties during Times of War* (South End Press, 1990)

pp.33-112. This left leaning author emphatically portrays the federal government as an oppressive regime. His narrative points to one shocking example after another of civil liberties violations to enrage the reader. It is an easy read and one that does not qualify itself. Linfield is quite obviously taking the side, as his evidence makes clear, that our government has behaved in obtrusive, unreasonable, and despicable fashion during periods of war. Appropriate for understanding the formulation of historical arguments. When reading Linfield one should constantly ask, okay what isn't he telling me?

- Mark Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (Oxford University Press, 1991) pp. 93-184. Neely is concerned with the modern perspective of Lincoln's transgressions during the war that are based on collected information that has not been, to his liking, properly scrutinized. This is a reflection on what sounds like his exhausting research to find out how significant the suspension of the writ of habeas corpus was on the civilian population and what general effect the *Ex Parte Milligan* case has had on subsequent court decisions. This reading drags a bit but is perfect for understanding how historical arguments can be made both absent from and with substantial evidence.
- Paul Johnson, *A History of the American People* (Harper Collins, 1997). Johnson's approach to American History both challenges and reinforces some of what has become the contemporary conventional wisdom of American History. For instance, Johnson attacks the "mythical" notion that President Hoover was a "do-nothing" executive during the early period of the depression, while with vivid prose he spells out the murderous fanatical character of President Andrew Jackson in the early American frontier. I am especially pleased with Johnson's insistence on including details of economic history. His explanation of the '29 crash, the growth of American industry during the Gilded Age, and the idea of eminent domain as it relates to the building of the transcontinental railroad are some of what makes this volume enjoyable and substantive reading.
- Howard Zinn, *A People's History of the United States* (Harper Perennial, 1992). Zinn's approach to America History has gained him widespread fame and criticism. The title itself is meant to let readers know that this work is about those who he believes are the people of the US: those who worked in the factories, toiled in the fields, and generally were used by those in power for material gain. Zinn focuses on American oppression, greed, and racism as the backbone of our country's heritage, not patriotism, freedom, and democracy. The book can be a hard read but is a valuable tool for showing students that there is life outside of the textbook.
- Faragher, Buhle, Czitrom, Armitage, *Out of Many: A History of the American People*, fourth edition (Prentice Hall, 2003). Advance Placement US History textbook that can be a fairly tough read without some guidance. The real perk of the text is that it includes practice data base questions at the end of each chapter. Although the book is quite involved it proves to be an excellent reference for students of history.

Bibliography-Students

Jonathan Dayton and Theodore Sedgewick, *Alien and Sedition Acts* (1796). Federalists in Congress and executive branch attempt to silence French sympathy and criticism of federal foreign policy.

Thomas Jefferson and James Madison, *Virginia and Kentucky Resolutions* (1796). Jefferson and Madison respond vehemently to the passage of the Alien and Sedition acts claiming that they violate the first amendment to the Constitution.

William H. Rehnquist, *All the Laws but One: Civil Liberties in Wartime* (Vintage Books, 1998) pp. 3-39. This particular section focuses

on transgressions of the Lincoln administration during the conduct of the Civil War. Specifically, it gives pertinent background material about Lincoln's decision to emancipate the slaves, declare martial law and suspend habeas corpus and the consequences of these actions in the American courts.

Schenck v. U.S. 249 U.S. 47 (1919). Supreme Court case of the WWI era that upholds the Espionage and Sedition Acts.

Ex parte Quirin 317 U.S. 1 (1942). Supreme Court case of the WWII period that produced the legal term "enemy combatants." German saboteurs captured in NY, including as American citizen were tried before military tribunals. The court held that the aforementioned description made their trials legal.

Korematsu v. U.S. 321 U.S. 760 (1944). Supreme Court case of the WWII era that upholds the right of the federal government to hold Japanese Americans interned as a means of protecting national security.

Dennis v. U.S. 341 U.S. 494 (1951). Supreme Court case that upheld the Smith Act that disallowed any activity that could be deemed as conspiring to advocate or teach methods to overthrow or destroy the federal government.

Tinker v. Des Moines 393 U.S. 503 (1969). Supreme Court case that upheld the right of school age students to wear black armbands as a matter of protest against the federal government's involvement in Vietnam.

The 9/11 Commission Report. Report from a committee of public servants, private workers, and concerned citizens put together to study the tragedy of the September 11 attacks.

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