



The U.S. & The World SS.7.CG.4.4
The Significance of September 11th, 2001
VIDEO SCRIPT



Benchmark Clarification Three: Civil Liberties, Safety, and Security

1. Following the events of September 11th, one of the most important questions facing the United States was how to ensure the safety and security of citizens while also respecting the importance of civil liberties guaranteed by our United States Constitution.
2. After watching this video, you will be able to
Recognize the importance of respecting civil liberties while ensuring safety and security.
3. Now this question we are asking is not a new problem. From the very beginning, our Founding Fathers had to determine how best to balance national security and public safety with our rights and liberties. For example, President John Adams and his Alien and Sedition Acts, which limited immigration to the United States while also restricting speech that challenged the government, got a great deal of criticism for threatening to jail critics.
4. The Alien and Sedition Acts were eventually allowed to expire, but there have been other instances where the government, the courts, and American citizens have clashed over civil liberties, safety, and security. You may learn about some of these throughout the year but let's take a look at a few now.
5. While World War One was not necessarily an unpopular war in the United States, and it had some important critics. As a result, President Wilson pushed Congress to pass the Espionage and Sedition Acts. The Espionage and Sedition Acts of 1917 and 1918 severely impacted free speech during World War One by limiting what people could say about the US war effort. It even led to jail time for a significant political leader, the somewhat popular socialist Eugene V. Debs, who actually ran for president in 1920 from prison and won more than 3% of the popular vote.
6. Why was Debs still in prison in 1920? In the US Supreme Court case of Schenck v. United States (1919), the Supreme Court ruled that this law did not violate the First Amendment. The United States, it said, had the right to limit speech that could pose a threat to national security and public safety.
7. However, in 1969, the Supreme Court essentially overturned that precedent in Brandenburg v. Ohio. In this case, members of the Ku Klux Klan were arrested for violating an Ohio law that made advocating for illegal acts, well, illegal!
8. It stated that the government could not restrict speech if it did not like what was said. It used a 'two prong test': speech could only be banned if it 1. encouraged illegal activity, AND 2. if that activity was likely to happen. Just because the speech COULD be a threat, doesn't mean it IS a threat, according to the courts. The First Amendment matters!

Let's check in. Try to answer the following questions in your own words.

Q: Were our Founding Fathers always successful in answering the question of how to balance security and liberty? Give an example.

ANSWER

Q: What is the 'two prong test' for free speech, according to the US Supreme Court?

ANSWER

Alright, let's turn our attention to other efforts to balance national security with civil liberties.

9. You are likely pretty familiar with this next one, as it is considered one of the most severe violations of individual liberty in favor of security ever. At the start of World War Two, President Franklin Roosevelt issued Executive Order 9066. This order forced both Japanese immigrants and Japanese Americans into internment camps in order to protect public safety following the Empire of Japan's attack on Pearl Harbor.

10. In *Korematsu v. United States* (1944), the US Supreme Court ruled that this did not violate the civil liberties of Japanese Americans, including their 14th Amendment right to equal protection. While this decision has never been overturned, the US government under President Reagan provided reparations to people that had been sent to the internment camps, and apologized for its action.

11. The US Supreme Court has also stated that it would be unlikely to rule the same way if the case came before them today. Chief Justice John Roberts, in *Trump v. Hawaii* (2018), stated that "The dissent's reference to *Korematsu*, however, affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'

12. After 9/11, the US Congress passed the USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism). This act expanded the authority of law enforcement agencies to provide surveillance of both domestic and foreign communications and targets while also detaining suspected terrorists.

13. The United States also created the Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) in an effort to ensure citizens' safety and security.

14. You are probably most familiar at least with the TSA if you have ever been to an airport. The Department of Homeland Security houses a number of agencies tasked with the protection of the United States. This includes the TSA, the Customs and Border Protection Agency, Citizenship and Immigration Services, and the Secret Service, among others.

15. One of the difficulties with both the USA PATRIOT ACT and such things as the DHS and the TSA is ensuring that the habeas corpus and privacy rights of citizens under our Constitution are not violated. Since 9/11, the ability of the government to engage in secret surveillance and extended searches has vastly increased. To help protect us, our Constitution allows for judicial oversight that can help ensure the balance we need between safety and liberty.

16. Remember, habeas corpus is protection against unlawful imprisonment. It is up to our courts, under our Constitution, to protect it.

17. While it doesn't always land on the side of civil liberties, our courts have issued rulings that have sometimes limited the powers of the government. Since the passage of the USA PATRIOT ACT, for example, the courts have ruled several portions of it unconstitutional. Many of these decisions have been based on what the courts ruled were violations of the First or Fourth Amendments. Ultimately, our Constitution plays the largest role in balancing the need for safety and security with protections for civil liberties.

Let's recap what we learned.

18. How to balance national security and public safety with our rights as liberties has always been a difficult question.

19. The Alien and Sedition Acts under President Adams, the Espionage and Sedition Acts under President Wilson, and Executive Order 9066 all imposed limitations on our rights and liberties to try and improve public safety.

20. In *Brandenburg v. Ohio*, the US Supreme Court developed a two prong test to determine if speech could be restricted: does it encourage illegal activity, and is that illegal activity likely to happen.

21. The Supreme Court of today has said that *Korematsu v. United States*, which upheld EO 9066, was wrongly decided.

22. The USA PATRIOT Act was passed in response to the events of 9/11 and expanded the powers of the government in searches, arrests, and surveillance.

23. The courts have ruled parts of the USA PATRIOT ACT unconstitutional under the First or Fourth Amendments.

24. The question of how to best protect Americans while also ensuring respect for our rights and liberties perhaps has no right answer. Ultimately, our Constitution plays the largest role in balancing the need for safety and security with protections for civil liberties. Be sure to watch the other videos in this series to further understand the impact of 9/11.