

Answer Key

Unit 2—Commander in Chief: War and the Constitution

Constitutional Connection: War and the Constitution

1. Powers of Congress; Powers denied to Congress
2. Accept reasoned answers.
3. Accept reasoned answers.
4. Accept reasoned answers.

JOHN ADAMS

Handout A: John Adams and the Alien and Sedition Acts

1. Adams wanted to quiet support for the French because he believed the radical ideas driving the French Revolution were extremely dangerous for the young United States.
2. The Alien Act made immigrants wait longer before becoming citizens and voting. The Sedition Act gave the President more power to deport immigrants, and made it a crime to portray the President and Congress in a way designed to stir up hatred.
3. Critics argued the laws violated the First Amendment, which prohibits Congress from passing laws abridging freedom of speech and press. Supporters of the laws argued that they were not violations of free speech and press because they only punished libel and libel was not a right; the law did not impose a prior restraint; and the laws were necessary for national security.
4. Accept reasoned answers.

5. Some students may say that limits such as restrictions on interfering with the draft (or more general limits on speech and press), and increased state power to search are constitutional to prevent war. Others may say that restrictions on civil liberties have been imposed (and been upheld by the Supreme Court) during the Civil War, World War I, World War II, as well as the War on Terror, but that these restrictions have taken place during actual wartime; the threat of war alone (absent actual war) does not justify restrictions on civil liberties.

LINCOLN AND HABEAS CORPUS

Handout A: Abraham Lincoln and *Habeas Corpus*

1. The power of a judge to make the government show just cause for putting someone in jail
2. In listing limits on powers of Congress, the Constitution says *habeas corpus* cannot be suspended except in times of rebellion or invasion.
3. Merryman was arrested for aiding the Confederacy. He demanded to be charged in open court.
4. Taney ruled that only Congress, not the President, could suspend *habeas corpus*, and that even if it were properly suspended, only members of the military could be tried in military courts. Accept reasoned answers.
5. The “one” law refers to writs of habeas corpus. Lincoln meant that in a time of almost complete lawlessness, it would be wrong to let the government fall apart for the sake of not violating one particular law.

Handout B: A Proclamation

1. President Abraham Lincoln; September 24, 1862
2. People rebelling against the US will be subject to martial law and military Courts Martial, and writs of *habeas corpus* will be suspended with respect to all prisoners.
3. A draft has been instituted, and the civil justice system is inadequate to suppress the rebellion.

Handout D: Case Briefing Sheet

1. Article I, Sections 8 and 9: These sections of the Constitution could support Milligan's case because the power to provide for the common defense, and the limit on power to suspend writs of *habeas corpus*, appear in Article I with the powers of Congress and not the President. These sections could also support the government's case, as Congress did suspend *habeas corpus* in 1863. Additionally, the Constitution permits suspensions of *habeas corpus* in cases of rebellion.
2. Article II, Section 2: This section could support the government's case, as the nation is at war and the President is Commander in Chief. This section could also support Milligan's case because Milligan is not a member of the military and therefore the President has no power to try him in a military court.
3. Article II, Section 3: This section could support the government's case because the President has a duty to enforce the laws, and in his view the civil police force and justice system are incapable of effectively keeping order. This section could also support Milligan's case because the President's duty to enforce the laws includes ensuring that the Constitution's due process protections are enforced.

4. The Sixth Amendment: This amendment could support the government's case because the situation is not a criminal prosecution. This amendment could also support Milligan's case because he is a private citizen and should have all the protections for accused persons guaranteed by the Sixth Amendment.
5. Other information: Students may suggest the traditional privilege of *habeas corpus*; the ongoing Civil War, the legal precedent of *ex parte Merryman*; and others, most of which could be used to support either side.

WILSON AND THE ESPIONAGE ACT

Handout A: Woodrow Wilson and the Espionage Act

1. The Selective Service Act; challenges to Bill of Rights protections for accused persons
2. The Act outlawed attempts to cause disloyalty in the military, or to interfere with the country's military recruitment and enlistment efforts.
3. The people were sovereign and did not give up their right to control their government or express their views because the country was at war.
4. The Act was amended to include restrictions on speech. Disloyal speech, speech that was "abusive" towards the US government, and speech that supported the cause of any country with which the US was at war were criminalized.
5. Accept reasoned answers.
6. To evaluate the claim, one would need: historically accurate and complete information about "the suppression of freedom" during World War I as well as historically accurate and complete information about violations of civil liberties by the various branches and levels of government throughout American history.