

US HISTORY AMI-1

The Supreme Court and the Great Depression Government Regulation of Business

- ★ Schechter Poultry v. United States (1935)
- ★ NLRB v. Jones & Laughlin Steel Corp. (1937)

Background

The cases of *Schechter Poultry v. United States* and *NLRB v. Jones & Laughlin Steel Corporation* deal with the right of the federal government to regulate interstate commerce, a right granted in Article I of the Constitution. In the *Schechter* case dealt with the National Industrial Recovery Act, which placed strict regulations on businesses, including maximum work hours and minimum wages for employees. Lawyers for *Schechter Poultry* argued that, since the employment of workers and the work they did was entirely within one state, it did not fall under the category of “interstate” commerce, even if the products they produced were sold in other states. The Court found the law to be unconstitutional. After the NIRA a new law, the Wagner Act, placed different regulations on labor practices, in particular it required businesses to engage in collective bargaining with labor unions to establish wages and working conditions. In the *NLRB* case, Chief Justice Charles E. Hughes and four other Justices switched sides from the *Schechter* case and upheld the Wagner Act, which placed regulations businesses in regard to labor. The *NLRB* case marked a shift in the attitude and rulings of the Supreme Court toward New Deal legislation. Many people believe that FDR’s plan to expand the Supreme Court by adding six more justices that he would appoint (“Court-packing”) played a major role in convincing Hughes to change his position.

The Rulings

In the Schechter case, the Court held that the federal government could only regulate business activity that *directly* related to interstate commerce. In the NLRB case, the Court reversed itself and extended the power of Congress to include regulation of activity that had a “close and substantial relation” to interstate commerce. This meant that the Wagner Act was constitutional and its regulations on business’ labor practices could remain in place.

The *Schechter* Decision

“The persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce. The question of how many hours these employees should work and what they should be paid differs in no essential respect from similar questions in other local businesses which handle commodities brought into a state and there dealt in as a part of its internal commerce...”

On both the grounds we have discussed, the attempted delegation of legislative power and the attempted regulation of intrastate transactions which affect interstate commerce only indirectly, we hold the code provisions her in question to be invalid [unconstitutional].”

~Chief Justice Charles E. Hughes
writing for the majority of the Court in *Schechter v. U.S.*

The Supreme Court and the Great Depression

The NLRB Decision

"The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection or advancement'...Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control.

When industries organize themselves on a national scale...how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war?"

~Chief Justice Charles E. Hughes
writing for the majority of the Court in *NLRB v. Jones & Laughlin Steel Corp.*

Aftermath

Beginning with the *NLRB* decision, the Supreme Court took a much more favorable approach toward New Deal legislation, whether because of the length and severity of the Great Depression or due to FDR's court-packing threat. Since the Depression, the Supreme Court has continued to expand the definition of "interstate commerce" to give Congress and the federal bureaucracy more power to regulate business. In *Heart of Atlanta Motel v. United States* (1964), the Supreme Court upheld the Civil Rights Act of 1964 and asserted Congress had the right to prohibit discrimination by businesses such as hotels, motels, and restaurants, who served customers who might be travelling between states. In *National Federation of Independent Businesses v. Sebelius* (2012), the Court upheld a provision of the Affordable Care Act which required individuals to purchase health insurance. While the Court relied upon Congress' power to tax rather than the interstate commerce clause in finding the requirement constitutional, it did mark the first time the Court had held that Congress had the power to require people to engage in commerce.

Use the document and additional resources to answer the questions below. The space provided should be used as an indicator of the amount of detail that should be included in your answer.

1. What law was in question in the *Schechter* case? _____

2. What law was in question in the *NLRB* case? _____

3. Which law was found to be unconstitutional and overturned? Why? _____

4. In *Schechter*, why does the Court say that poultry workers were not engaged in interstate commerce?

5. In the *NLRB* decision, how did the Court's reasoning change? _____

6. How would you explain the Court's shift in its attitude toward federal labor regulations?

7. The Supreme Court rarely makes a complete reversal of its previous decisions, as it did in the *Schechter* and *NLRB* decisions, or in the *Plessy v. Ferguson* and *Brown v. Board of Education* decisions. Why might this be important to American society? _____

8. How did the *NLRB* decision set an important precedent for the Court's decisions in the *Heart of Atlanta* and *National Federation of Independent Businesses* cases? _____

US HISTORY AMI-2

The Holocaust

Analyzing Primary Sources

Answer the following questions based on the attached primary documents. Level I questions seek short, factual answers that can be found in the documents. Level II questions require you to compare, evaluate, draw conclusions, or otherwise analyze the documents and demonstrate understanding.

Level I

1. How many prisoners were held in the Buchenwald camp? _____
2. What poison gas was used to kill prisoners at the Birkenau camp? _____
3. At what age were German Jews required to begin wearing a Jewish star in public? _____
4. What survivor of Auschwitz painted *Unable to Work*? _____
5. Which photograph best illustrates the American soldier's diary? _____
6. The Dachau concentration camp was liberated on April 29, 1945. How much later were the prisoners in Primary Source 2 photographed? _____
7. What steps were taken to convince prisoners at Birkenau that they were going to take showers when they were actually going to the gas chambers? _____

8. How many Germans (Weimar citizens) toured the Buchenwald concentration camp? _____
9. How large did the Jewish star worn by German Jews have to be? _____
10. All of the prisoners shown in *Unable to Work* are _____ and _____.

Level II

11. How do you suppose soldiers could participate in such barbaric acts? _____

12. What does the appearance of the survivors in the photographs and painting tell you about conditions in the camps? _____

13. What purpose did the restrictions in Primary Source 3 serve? _____

14. How do you think American soldiers reacted to the horrifying scenes they found in the concentration camps? Why do you think they made German citizens tour the camps? _____

15. In the painting in Primary Source 6, what symbols does the artist use to illustrate the fate of those too weak to work? _____

16. In light of evidence such as the eyewitness accounts and photographs, why do you suppose a few people still try to deny the Holocaust occurred? _____

US HISTORY AMI-2 PRIMARY SOURCE 1

Eyewitness Account

“(There were) two barracks, the men stood on one side the women on the other. They were addressed in a very polite and friendly way: “You have been on a journey, you are dirty. You will take a bath. Get undressed quickly”. Towels and soap were handed out, and then suddenly the brutes woke up and showed their true faces: this horde of people, these men and women were driven outside both summer and winter to go the few hundred yards to the ‘Shower Room.’ Above the entry door was the word “Shower” . One could even see shower heads on the ceiling which were cemented-in but never had water flowing through them.

These poor innocents were crammed together, pressed against each other. Then panic broke out, for at last they realised the fate in store for them. But blows with rifle butts and revolver shots soon restored order and finally they all entered the death chamber. The doors were shut and, ten minutes later, the temperature was high enough to facilitate the condensation of hydrogen cyanide, for the condemned were to be gassed with hydrogen cyanide. This was the so-called ‘Zyklon B’ ...which was used by the German barbarians....One could hear fearful screams, but a few moments later there was complete silence.”

-Andre Lettich, Jewish prisoner assigned to remove bodies from the gas chambers at Birkenau from *Nazism 1919-1945, Volume 3: Foreign Policy, War and Racial Extermination - A Documentary Reader*

PRIMARY SOURCE 2

Photograph

Newly liberated survivors at Dachau concentration camp, May 4, 1945



AMI-2 PRIMARY SOURCE 3

Nazi Decree, 1941

- I (1) Jews over six years of age are prohibited from appearing in public without wearing a Jewish star.
(2) The Jewish star is a yellow piece of cloth with a black border, in the form of a six-pointed star the size of the palm of the hand. The inscription reads "JEW" in black letters. It shall be worn visibly, sewn on the left chest side of the garment.
- II Jews are forbidden:
- (a) To leave their area of residence without written permission of the local police, carried on their person.
 - (b) To wear medals, decorations, or other insignia.

-Nazi decree issued September 1, 1941
from *Nazism 1919-1945, Volume 3: Foreign Policy, War
and Racial Extermination - A Documentary Reader*

PRIMARY SOURCE 4

American Soldier's Diary, 1945

"One thousand Weimar [German] citizens toured the Buchenwald camp in groups of 100. They saw blackened skeletons and skulls in the ovens of the crematorium. In the yard outside, they saw a heap of white human ashes and bones...

The living actually looked worse than the dead. Those who lived wore striped uniforms, with the stripes running up and down. Those who were dead were stripped of their clothing and lay naked, many stacked like cordwood waiting to be burned in the crematory. At one time, 5,000 had been stacked on the vacant lot next to the crematory."

-diary of Captain Luther D. Fletcher, from *World War II: From
the Battle Front to the Home Front*

AMI-2 PRIMARY SOURCE 5

Photograph

American soldiers force German civilians to view bodies after the liberation of the Buchenwald concentration camp.



PRIMARY SOURCE 6

Painting

Unable to Work, by Auschwitz survivor David Olere



US HISTORY AMI-3

Interpreting a Political Cartoon

Neutrality

... and the Wolf chewed up the children and spit out their bones ...
But those were Foreign Children and it really didn't matter."



1. Does the cartoonist think it is a good idea for America to remain neutral in World War II? Explain your answer.

2. Who do you think the “foreign children” might represent?

3. Based on the cartoon, why does the cartoonist think many Americans want to remain neutral?

4. Look at the words on the sweater. Why has this phrase become controversial today?

Primary Source

The “Four Freedoms” Speech

From Franklin Roosevelt’s State of the Union Address to Congress

January 6, 1941

Mr. President, Mr. Speaker, Members of the Seventy-seventh Congress:

I address you, the Members of the Seventy-seventh Congress, at a moment unprecedented in the history of the Union. I use the word “unprecedented,” because at no previous time has American security been as seriously threatened from without as it is today. . . .

Every realist knows that the democratic way of life is at this moment being directly assailed in every part of the world. . . . The assailants are still on the march, threatening other nations, great and small.

. . . Those who man our defenses, and those behind them who build our defenses, must have the stamina and the courage which come from unshakable belief in the manner of life which they are defending. . .

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression—everywhere in the world.

The second is freedom of every person to worship God in his own way—everywhere in the world.

The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.

The fourth is freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create. . . .

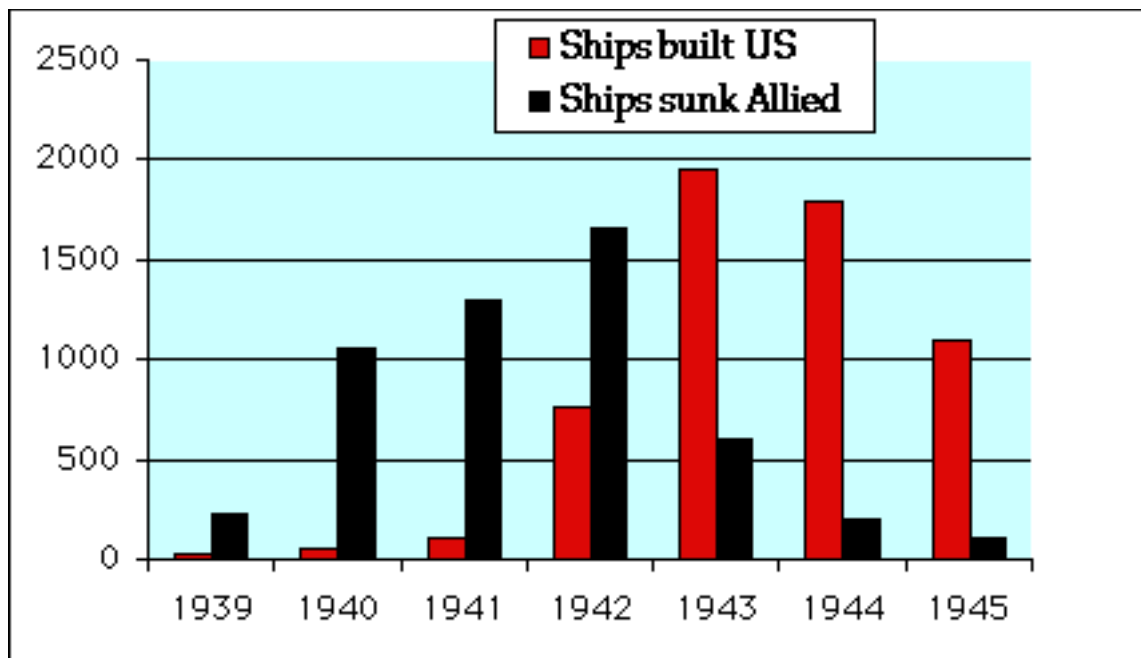
1. According to FDR, what are the four essential human freedoms?

2. How were these freedoms being threatened at the time of FDR's speech?

3. In your opinion, which of these freedoms is most important, and why?

4. What additional freedom or freedoms would you include on this list?

Reading a Chart
Industry During World War II



1. Between what two years did U.S. ship building increase most? _____

2. Why might this be the case? _____

3. In what year did the number of Allied ships sunk begin to decline?) _____

4. Why do you think so many more Allied ships were sunk in 1940 compared to 1939?

US HISTORY AMI-4

Issues Connector: Civil Liberties and National Security

Balancing Civil Liberties and National Security has been a challenge throughout America's history as a nation. The Constitution and Bill of Rights guarantee fundamental freedoms to all Americans yet, in times of war or other crises, we have often found it necessary to put limits on those freedoms in order to protect national security. Read the following descriptions of such limitations and the quotes regarding them, then answer the questions that follow:

1790s - Undeclared War with France

In the 1790s war between Great Britain and France led to tension between the United States and France, its former ally. Conflicts at sea were numerous and serious enough to constitute an undeclared war. Federalists in Congress, along with President John Adams, passed the Alien and Sedition Acts, stating they were necessary to help prevent the French from gaining support within the United States. Their Democratic-Republican rivals, led by Thomas Jefferson, believed the real purpose of the laws was to silence the free press, intimidate supporters of the Democratic-Republicans, and make criticism of the Federalist-controlled government a criminal act. Federalists claimed the Democratic-Republicans were "the French party in America" and warned of an uprising in the U.S. similar to the French Revolution if the Democratic-Republicans gained power. Today, the Sedition Act is looked at as one of the worst and most repressive laws ever passed in America. It made it a punishable offense to criticize the government, the Congress, or the President. While it did make an exception if what was said or written was true, it put the burden of proof on the speaker or writer to prove their statements were true, rather than on the government to prove the law had been violated.

1940s - World War II

During World War II, Japanese immigrants and American citizens of Japanese descent living near the Pacific Coast were forced to relocate to internment camps further inland, including two in Arkansas. This action was challenged in the Supreme Court in the case of *Korematsu v. United States* in 1944. The Court ruled that the relocation was constitutional, even though it was based on race and denied civil rights to the people affected. In a strong dissent, Justice Robert Jackson argued that this decision could lead to other civil rights being denied under less drastic circumstances. The government argued in 1944 that the relocation had been necessary to prevent spying and sabotage from those who might secretly support the Japanese, especially if they attempted to invade the west coast. However, in 1983 a special congressional committee found that the relocation of American citizens had not been militarily necessary.

1950s - The Cold War

During the Cold War, Senator Joseph McCarthy, the House Un-American Activities Committee (HUAC), and others used threats, intimidation, and innuendo to limit freedom of speech. Even though this is one of the fundamental freedoms protected by the First Amendment, anyone brought before HUAC or Senator McCarthy's Senate Committee was subjected to being "blacklisted" if they refused to appear or refused to identify potential communists in America. "Blacklisting" made it difficult or impossible to get a job in the entertainment industry. Lloyd Barenblatt was found in contempt of court for refusing to cooperate. The Supreme Court upheld his conviction. Justice Hugo Black argued against the decision, claiming that such action was an attempt to preserve democracy by adopting the methods of totalitarianism.

2001- The War on Terror

The United States began the “War on Terror” following the 9/11 attacks in New York City and Washington, DC. Congress passed the USA PATRIOT Act to give law enforcement the authority to conduct secret searches, access medical and financial records, and intercept phone conversations and emails of anyone suspected of involvement with terrorist activities. Americans are deeply divided over the question of whether the loss of privacy is worth the increase in security the law provides.

Quotes:

“...if any person shall write, print, utter or publish...any false, scandalous and malicious writings against the government of the United States...or to excite against them...the hatred of the good people of the United States... then such person...shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.”
~*Sedition Act, 1798*

“Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.”
~*James Madison, 1798*

“We will not be driven by fear into an age of unreason, if we dig deep into our own history and our doctrine and remember that we are not descended from fearful men, not men who feared to write, to speak, to associate, and to defend causes which were for the moment unpopular. This is no time for men who oppose Senator McCarthy's methods to keep silent. We can deny our heritage and our history, but we cannot escape responsibility for the result.”
~*Edward R. Murrow, CBS News, 1954*

“Since the terrible attacks of September 11, 2001, the Department of Justice’s highest priority has been to protect Americans by preventing acts of terrorism. I applaud Congress for reauthorizing...the USA PATRIOT Act and providing additional tools to fight terrorism and other serious crimes.”
~*Attorney General Alberto Gonzales, 2006*

1. Under the Sedition Act, what could happen if you said something untrue about the President?

2. What does Attorney General Gonzales say the USA PATRIOT Act will help the Department of Justice accomplish?

3. Of the key provisions listed for the USA PATRIOT Act, which do you think would be most effective in Maintaining national security? Why?

4. When Edward Murrow says that in American history there are people who were not afraid to “defend causes which were for the moment unpopular,” what is he implying?

5. Review the excerpt from James Madison. What is his concern? Give at least one example that supports this point.

6. Based on the quotations and your reading, which rights do you think are in the greatest danger today? Explain your answer.

US HISTORY AMI-5

The Vietnam War

Viewpoints: Can the United States Win the War in Vietnam?

Read the excerpts below regarding the Vietnam War and answer the questions that follow.

Eugene McCarthy, Press Conference, November 30, 1967

I am concerned that the Administration which seems to have set no limit to pay the price which it is willing to pay for a military victory...I am not for peace at any price, but for an honorable, rational and political solution to this war; a solution which I believe will enhance our world position, encourage the respect of our Allies and our potential adversaries, which will permit us to get the necessary attention to other commitments - both at home and abroad, militarily and not militarily - and leave us with resources and moral energy to deal effectively with the pressing domestic problems of the United States itself.

Richard Nixon, Republican Presidential Nomination Acceptance Speech, August 8, 1968

Never has so much military and economic and diplomatic power been used so ineffectively. And if after all of this time, and all of this sacrifice, and all of this support, there is still no end in sight, then I say the time has come for the American people to turn to new leadership not tied to the mistakes and policies of the past. That is what we offer to America. And I pledge to you tonight that the first priority foreign policy objective of our next Administration will be to bring an honorable end to the war in Vietnam. We shall not stop there. We need a policy to prevent more Vietnams. All of America's peacekeeping institutions and all of America's foreign commitments must be reappraised.

1. Why does McCarthy say that is is concerned by the administration's policies?

2. What does Nixon commit to doing as his first foreign policy objective?

3. Why do you think neither man says that the war is winnable or not winnable?

4. How do McCarthy's and Nixon's criticisms about the war differ?

Link to Literature

The Things They Carried

*Tim O'Brien graduated from Macalester College in 1968 and was drafted into the United States Army. Although he protested the war during his college years, he served as a soldier from 1969 to 1970. After the war, O'Brien worked as a newspaper reporter and began writing stories based on his experiences in Vietnam. In 1990 he published *The Things They Carried*, a collection of related short stories which, although fictional, give an accurate representation of what the war was like for many who fought in it.*

"The things they carried were largely determined by necessity. Among the necessities or near-necessities were P-38 can openers, pocket knives, heat tabs, wristwatches, dog tags, mosquito repellent, chewing gum, candy, cigarettes, salt tablets, packets of Kool-Aid, lighters, matches, sewing kits, Military Payment Certificates, C rations, and two or three canteens of water. Together, these items weighed between 15 and 20 pounds, depending upon a man's habits or rate of metabolism. Henry Dobbins, who was a big man, carried extra rations; he was especially fond of canned peaches in heavy syrup over pound cake. Dave Jensen, who practiced field hygiene, carried a toothbrush, dental floss, and several hotel-sized bars of soap he'd stolen on R&R in Sydney, Australia. Ted Lavender, who was scared, carried tranquilizers until he was shot in the head outside the village of Than Khe in mid-April. By necessity, and because 2 Tim O'Brien: *The Things They Carried* it was SOP, they all carried steel helmets that weighed 5 pounds including the liner and camouflage cover. They carried the standard fatigue jackets and trousers. Very few carried underwear. On their feet they carried jungle boots—2.1 pounds—and Dave Jensen carried three pairs of socks and a can of Dr. Scholl's foot powder as a precaution against trench foot. Until he was shot, Ted Lavender carried 6 or 7 ounces of premium dope, which for him was a necessity. Mitchell Sanders, the RTO, carried condoms. Norman Bowker carried a diary. Rat Kiley carried comic books. Kiowa, a devout Baptist, carried an illustrated New Testament that had been presented to him by his father, who taught Sunday school in Oklahoma City, Oklahoma. As a hedge against bad times, however, Kiowa also carried his grandmother's distrust of the white man, his grandfather's old hunting hatchet. Necessity dictated. Because the land was mined and booby-trapped, it was SOP for each man to carry a steel-centered, nylon-covered flak jacket, which weighed 6.7 pounds, but which on hot days seemed much heavier."

1. According to O'Brien, how did soldiers determine what they would carry?

2. Which items did soldiers carry because it was standard operating procedure? How much did these items weigh?

3. Dave Jensen carried extra socks and foot powder "as a precaution against trench foot." What do you think trench foot is?

4. What do the items listed tell you about the lives of American soldiers in Vietnam? How does this passage help you relate to the soldiers?

5. O'Brien repeatedly lists the weight of the things they carried. What effect does this have on the reader? What effect did the weight have on the soldiers?
