OVERVIEW

After the September 11, 2001 terrorist attacks on the United States, George W. Bush demanded that the Taliban government in Afghanistan turn over Osama bin Laden to the US as well as shut down Al-Qaeda training camps in the country. When the Taliban refused, Bush ordered strikes on the country. After hundreds of enemy combatants were captured on the battlefield in Afghanistan, in the US, and around the world, the question of how detainees in the War on Terror should be treated became problematic. Were accused terrorists criminals, or were they illegal combatants (aggressors guilty of breaking laws of war)? Bush’s answer to that question—that they were illegal combatants not entitled to due process protections of US law, but subject to Military Tribunals—became harder and harder to justify to the American people as time wore on.

OBJECTIVES

Students will:
- Analyze constitutional arguments on the nature of terrorist acts.
- Evaluate whether accused foreign terrorists should be afforded all constitutional due process protections.

CRITICAL ENGAGEMENT QUESTION

Should accused foreign terrorists be afforded all constitutional due process protections?

MATERIALS

- Handout A: George W. Bush and the War on Terror
- Handout B: September Eleventh True or False
- Handout C: Data Points

BACKGROUND/HOMEWORK

Have students read Handout A: George W. Bush and the War on Terror and answer the questions.

WARM-UP [10 minutes]

Put up an overhead of Handout B: September Eleventh True or False. Revealing one statement at a time, ask the class to respond to each statement. Then reveal and discuss each answer.
**Activity [30 minutes]**

A. On the board, write the question: Are acts of terror acts of war, or are they criminal acts?

B. Distribute *Handout C: Data Points*. Have students discuss the chart in pairs.

C. After ten or fifteen minutes, reconvene the class and ask students to share their responses.

**Wrap-Up [10 minutes]**

As a large group, discuss the questions:

- In 2001, to what degree was Bush's response consistent with historical precedent?

- The President has the constitutional duty to enforce the law, as well as the constitutional role of Commander in Chief of the military. How should the President understand these roles with respect to terrorism?

- How should the President respond when an attack is by an "unconventional enemy," i.e. one not officially associated with a foreign state?

- What arguments did Bush offer to justify his argument that accused foreign terrorists should not be afforded all constitutional due process protections?

- What arguments could be made that they should be afforded all those protections?

**Homework**

Have students make an illustrated timeline of major national events, federal legislation, and Supreme Court cases about the War on Terror since September 11, 2001. They should use *Handout A* as well as their textbooks or other resources. Each event should be accompanied by two or three sentences explaining its significance.

**Extensions**

Have students do additional research to compare and contrast the legal treatment of admitted and/or accused terrorists under the Bush Administration and the Obama Administration.
On September 11, 2001, radical Islamic terrorists hijacked and crashed four passenger jets in New York, Washington, DC, and Pennsylvania. The hijackers crashed two jets into the World Trade Center, bringing down the twin towers. The death toll was 2,605. One plane was crashed into the Pentagon, damaging the building and killing 125 people. The fourth jet was crashed into a field in Pennsylvania as forty passengers and crew fought back against the terrorists. There were no survivors.

Responders on that day included police, firefighters, and service people from all branches of the US military. More than 400 emergency workers died in their heroic attempts to help. In all, 2,976 people, mostly civilians, from more than ninety countries, lost their lives on that day. Millions more lost their sense of security.

Bush Address the Nation

In the days following the attacks, US and British intelligence confirmed that Al-Qaeda, led by Osama bin Laden, had planned and carried out the attacks. On September 20, President George W. Bush addressed Americans—many of whom had never heard of Al-Qaeda—in a televised speech before a joint session of Congress.

Bush contrasted the September 11 attacks on civilian targets with December 7, 1941 when the Japanese bombed the naval base at Pearl Harbor.

He told the American people about Al-Qaeda. He explained that its members practiced “a fringe form of Islamic extremism,” and that their “directive commands them to kill Christians and Jews, to kill all Americans and make no distinctions among military and civilians, including women and children.” He explained that while the group was linked to more than sixty countries, its base was Afghanistan. He condemned the Taliban regime which controlled Afghanistan, and announced the beginning of a War on Terror. “Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”

The President continued, “I have a message for our military: Be ready. I have called the armed forces to alert, and there is a reason.”

Bush identified Osama Bin Laden as the “prime suspect” in the attacks. The US demanded that the Taliban deliver Bin Laden and other Al Qaeda leaders to the US, and shut down the numerous Al Qaeda training camps in the country. The Taliban refused. The US began bombing Afghanistan on October 7, 2001.

Two months later, in November of 2001, President Bush approved the use of Military Tribunals to try accused terrorists, including many individuals captured in Afghanistan. Bush said that the Tribunals were needed to “to protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks.” A detention camp was set up at the US Naval base in Guantanamo Bay, Cuba.

Military Tribunals

Military Tribunals are court proceedings used to try the enemy for violations of the laws of war. Military Tribunals differ from criminal trials in the civilian justice system in
Critical thinking questions

1. What ultimatum did President Bush give to the Taliban on September 20, 2001?
2. What are two differences between criminal trials and Military Tribunals?
3. How did the Supreme Court initially respond to habeas corpus petitions from detainees at Guantanamo Bay? How did the Court respond in 2004, 2006, and 2007?
4. Should admitted and/or accused foreign terrorists be afforded all constitutional due process protections? Explain your answer.
1. President George W. Bush was the first President to order strikes on Islamic terrorists.

*False: Thomas Jefferson was the first.*

2. Since most of the September 11 hijackers were from Saudi Arabia, Bush ordered military strikes against that country.

*False: He ordered a strike against Afghanistan, where the Taliban government was harboring Osama bin Laden, the leader of the hijackers.*

3. The overwhelming majority of victims on September 11, 2001 were civilians.

*True*

4. President Bush’s approval rating was over 90% when Congress enacted the USA-PATRIOT Act (an act strengthening law enforcement power to find and capture terrorists.)

*True*

5. The US declared war on Afghanistan when the Taliban government refused to hand over Osama bin Laden.

*False: Congress never declared war. (And only Congress has the power to do so.)*

6. In December of 2001, a CBS poll showed that a large majority of Americans supported giving President Bush “special war powers”.

*True*
**Data Points**

**Directions:** Read the information in the middle of the chart. If the information could be used to support the argument that terrorist acts are acts of war, place a check on the left side of the chart. If the information supports the argument that terrorist acts are criminal acts, place a check on the right side of the chart. If the information supports neither, leave the row blank.

<table>
<thead>
<tr>
<th>Act of War</th>
<th>Criminal Act</th>
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<tbody>
<tr>
<td><strong>Military tribunals for enemy combatants</strong>&lt;br&gt;with limited due process protections</td>
<td><strong>All constitutional due process protections</strong>&lt;br&gt;for accused persons</td>
</tr>
<tr>
<td>1. “Enemy combatants who without uniform come secretly through the lines for the purpose of waging war by destruction of life or property, are ... generally deemed ... to be offenders against the law of war subject to trial and punishment by Military Tribunals.”&lt;br&gt; <em>Ex Parte Quirin</em> (1942)</td>
<td></td>
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<tr>
<td>2. Some terrorists are supported by governments who openly call for the destruction of other countries.</td>
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<td>3. Congress never declared war against Afghanistan; it did, however, authorize the President to use military force against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”</td>
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<tr>
<td>4. When the hijackers boarded their four flights on September 11, 2001, they were not wearing Al-Qaeda uniforms or any military uniform; they were dressed like ordinary civilians.</td>
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## Data Points (cont.)

<table>
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</table>

### 5. Evidence presented at criminal trials will be made public in the US and international press.

### 6. The North Atlantic Treaty Organization (NATO) invoked its charter for the first time in its history in response to the attacks: The September eleventh attacks were an attack on all the NATO allies.

### 7. Some, but not all, detainees at Guantanamo Bay are accused of (or admit to) planning the September 11 attacks. Others are suspected of planning or aiding in other terrorist acts.

### 8. Constitutional protections against self-incrimination should apply even against people who might have information about future terrorist attacks.