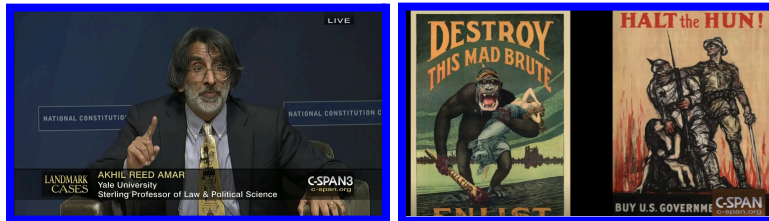


This question requires you to compare a Supreme Court case you studied in class with one you have not studied in class. Two related video clips and a summary of the Supreme Court case you did not study in class is presented below and provides all of the information you need to know about this case to answer the prompt.

Video Clip #1: [Akhil Reed Amar on *Schenck v. United States* \(1919\)](#) (4:23)

Video Clip #2: [Schenck v. United States \(1919\): Committee on Public Information](#) (2:11)



Whitney v. California (1927)

After breaking with the Socialist Party in 1919, Charlotte Whitney helped form the Communist Labor Party of California. That same year, California passed a Criminal Syndicalism Act which criminalized organizing groups that sought to affect economic and political change using violence. Whitney was charged and convicted for violating the state's syndicalism law based on her previous affiliation with the Socialist Party and because of the creation of the Communist Labor Party which was associated with the goal of overthrowing the federal government.

Whitney appealed to the Supreme Court on the grounds that California's syndicalism law violated her rights under the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Supreme Court held that California's syndicalism law did not violate the Due Process or Equal Protection Clause because the state had the discretionary authority to craft legislation against what it deems an evil.

In a unanimous decision, the court upheld Whitney's conviction on the grounds that First Amendment rights are not absolute and that the state exercising its police power may punish those who abuse freedom by inciting crime, disturbing the peace, or endanger the foundations of government. In a concurring opinion, Justice Brandeis stated that although the actions taken by Whitney posed only potential harm to the public, her involvement contributed to the preparation of the action.

- A. Identify the civil liberty that is common to both *Whitney v. California* (1927) and *Schenck v. United States* (1919).
- B. Explain how the Supreme Court's reasoning in *Schenck v. United States* and *Whitney v. California* led to similar holdings.
- C. Explain how those unhappy with the precedent established in *Whitney* can use a constitutional process to have it overturned.

SCOTUS Comparison - *Whitney v. California* - 4 points

<p>A. Identify the civil liberty that is common in both <i>Whitney v. California</i> (1927) and <i>Schenck v. United States</i> (1919).</p> <ul style="list-style-type: none"> • The civil liberty is freedom of speech 	<p>1 point</p>
<p>B. Explain how the Supreme Court's reasoning in <i>Schenck v. California</i> and <i>Whitney v. California</i> led to similar holdings.</p> <p>Acceptable responses include:</p> <p>One point for describing relevant information about the reasoning in the required Supreme Court case.</p> <ul style="list-style-type: none"> • In <i>Schenck v. United States</i>, the reasoning of the court led them to hold that the Espionage Act of 1917 did not violate the First Amendment protection of Free Speech because it was an appropriate congressional action during wartime. The Court held that speech that approaches a clear and present danger is not protected. <p>OR</p> <p>Two points for correctly explaining how the reasoning in both cases led to a similar holding.</p> <ul style="list-style-type: none"> • In <i>Schenck v. United States</i>, the reasoning of the court led them to hold that the Espionage Act of 1917 did not violate the First Amendment protection of Free Speech because it was an appropriate congressional action during wartime. The Court held that speech that approaches a clear and present danger is not protected. In <i>Whitney v. California</i>, the court reasoned that California's Criminal Syndicalism Act was constitutional and that free speech rights are not absolute. A State exercising its police power may punish those who abuse freedom of speech when speech may be harmful to the public welfare, incite crime, advocate overthrowing the government by illegal means. 	<p>1 point</p> <p>OR</p> <p>2 points</p>
<p>C. Explain how those unhappy with the precedent established in <i>Whitney</i> can use a constitutional process to have it overturned.</p> <p>Acceptable explanations include the following:</p> <ul style="list-style-type: none"> • States can ratify an amendment that would invalidate the decision. • A constitutional convention can be called to propose an amendment that would invalidate the decision and then state constitutional conventions can ratify it. 	<p>1 point</p>