

**The Role of Courts in a Democratic Society**  
**Middle School (7<sup>th</sup>-8<sup>th</sup> grade) Social Studies Unit**

Funded by the Historical Society for the Courts of the State of New York  
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*Overview:*

This 10-theme, 20-class unit in Social Studies for 7<sup>th</sup> and 8<sup>th</sup> graders is designed to give students an engaging introduction to the judicial branch of government and the role of courts in American democracy. Students will explore conceptual matters of justice and the need for an independent judiciary; learn about the structure of the court system in the United States; participate in debates about how judges should be selected and how judges' roles should be conceived; investigate two important case studies in constitutional law involving the 1<sup>st</sup> and 14<sup>th</sup> Amendments; and have the opportunity to view real courts in action through a field trip to the courts of the State of New York. The curriculum is a demanding, inquiry-based unit that strongly emphasizes writing, critical analysis and discussion skills. The unit will thoroughly address two New York State Social Studies Standards for middle school: Standard 1 (History of the United States and New York) and Standard 5 (Civics, Citizenship and Government). It will deeply engage the English Language Arts Standards for History and Social Studies for grades 6-8 of the Common Core as well.

*Essential questions:*

Theme 1	What is justice?
Theme 2	Why do we need an independent judiciary?
Theme 3	How does the court system in the United States operate?
Theme 4	What is the proper role of a judge in a democracy?
Theme 5	How should judges be selected?
Theme 6	Field Trip: How do real courts operate?
Theme 7	What principles should guide sentencing in a democratic society?
Theme 8	What is the proper role of juries in a democracy?
Theme 9	Case Study I: Are racially based school assignment plans consistent with the Equal Protection guarantee of the 14 <sup>th</sup> Amendment?
Theme 10	Case study II: What is the scope of free speech for school children under the Free Speech clause of the 1 <sup>st</sup> Amendment?

### **A note on readings:**

Though designed for upper middle school, we can and do use many of these texts at Bard High School Early College for 9<sup>th</sup> graders or upperclassmen. It is recommended that teachers adapt the lessons as needed to include more time for explicit reading comprehension instruction, such as developing guided reading questions, pre-reading vocabulary practice, or integrating some of the methods suggested by Douglas Fisher and Nancy Frey in *Engaging the Adolescent Learner: Text Complexity and Close Readings* (International Reading Association, January 2012).

We also recommend assigning readings as homework. That said, reading aloud as a class with pen in hand is an integral part of the curriculum, establishing the connection between reading, writing, and thinking as a community. This may intimidate some students not used to participatory reading, who are afraid of stumbling over terms, or who see reading aloud as itself an assessment of their skills. If this is the case, we suggest giving students a few minutes to read it silently (or assign a first independent reading as homework), then reading aloud a sentence at a time, establishing early on that you will quickly help with pronunciation and explanations as needed. Introducing new and difficult-to-pronounce terms (e.g., “stare decisis” or “voir dire”) *before* beginning read-arounds will help significantly.

### **A note on pacing:**

The unit is divided into ten themes; each theme is subdivided into two or three “days.” While some of the “days” may in fact work well as single-day lessons, many will be more profitably divided into two or three lessons – depending on grade level, length of the class period, skills of the students, etc. Teachers should adapt the curriculum to meet their needs. Though we envisioned this as a ten-week unit, it could easily be expanded to a full semester course.

### **A note on assessments:**

Drawing from methods used at Bard High School Early College, this curriculum was designed to take a low-stakes approach to often very complex texts written by and for well-educated adults that introduce students to challenging concepts, principles, and debates about the role of courts in a democratic society. Therefore, it does not include the high-stakes assessments and rubrics more commonly emphasized in traditional school curricula. Teachers are free to apply existing rubrics or develop extension activities (for example, having students return to earlier in-class writing to develop longer, polished essays, or writing an extended judicial opinion after the moot court cases). In any case, we feel strongly that a portfolio-based assessment, perhaps linked with in-class essay questions, matches the content and the spirit of this curriculum more than a multiple choice test would.

*State and National Education standards addressed:*

**Common Core State Standards** (Note: List focuses on 8<sup>th</sup> grade standards)

Grades 6-12 English Language Arts

*Reading Informational Texts*

RI.8.1. Cite the textual evidence that most strongly supports an analysis of what the text says explicitly as well as inferences drawn from the text.

RI.8.3. Analyze how a text makes connections among and distinctions between individuals, ideas, or events (e.g., through comparisons, analogies, or categories).

RI.8.4. Determine the meaning of words and phrases as they are used in a text, including figurative, connotative, and technical meanings; analyze the impact of specific word choices on meaning and tone, including analogies or allusions to other texts.

RI.8.5. Analyze in detail the structure of a specific paragraph in a text, including the role of particular sentences in developing and refining a key concept.

RI.8.6. Determine an author's point of view or purpose in a text and analyze how the author acknowledges and responds to conflicting evidence or viewpoints.

RI.8.9. Analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation.

RI.8.10. By the end of the year, read and comprehend literary nonfiction at the high end of the grades 6–8 text complexity band independently and proficiently.

*Writing*

W.8.1. Write arguments to support claims with clear reasons and relevant evidence.

W.8.6. Use technology, including the Internet, to produce and publish writing and present the relationships between information and ideas efficiently as well as to interact and collaborate with others.

W.8.9. Draw evidence from literary or informational texts to support analysis, reflection, and research.

W.8.10. Write routinely over extended time frames (time for research, reflection, and revision) and shorter time frames (a single sitting or a day or two).

*Speaking and Listening*

SL.8.1. Engage effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grade 8 topics, texts, and issues, building on others' ideas and expressing their own clearly.

*Language*

L.8.4. Determine or clarify the meaning of unknown and multiple-meaning words or phrases based on *grade 8 reading and content*, choosing flexibly from a range of strategies.

L.8.6. Acquire and use accurately grade-appropriate general academic and domain-specific words and phrases; gather vocabulary knowledge when considering a word or phrase important to comprehension or expression.

*Range, Quality, and Complexity of Texts:*

Texts focus on nonfictional texts appropriate to the theme. Texts complexity ranges from those meeting 6-8<sup>th</sup> grade complexity bands all the way up texts aimed at professional audiences. Texts include exposition, argument, speeches, judicial decisions, and journalism written for both broad and for specialized audiences. Texts include both print and digital sources.

*Literacy in History/Social Studies, Science, and Technical Subjects*

RH.6-8.3. Identify key steps in a text's description of a process related to history/social studies (e.g., how a bill becomes law, how interest rates are raised or lowered).

RH.6-8.4. Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.

RH.6-8.7. Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.

RH.6-8.8. Distinguish among fact, opinion, and reasoned judgment in a text.

RH.6-8.10. By the end of grade 8, read and comprehend history/social studies texts in the grades 6–8 text complexity band independently and proficiently.

WHST.6-8.1. Write arguments focused on *discipline-specific content*.

WHST.6-8.5. With some guidance and support from peers and adults, develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach, focusing on how well purpose and audience have been addressed.

WHST.6-8.9. Draw evidence from informational texts to support analysis reflection, and research.

WHST.6-8.10. Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

**New York State Standards**

Standard 5: CIVICS, CITIZENSHIP AND GOVERNMENT

5.1b: consider the nature and evolution of constitutional democracies

5.1c: explore the rights of citizens in other parts of the hemisphere and determine how they are similar to and different from the rights of American citizens

5.2e: value the principles, ideals and core values of the American democratic system based upon the premises of human dignity, liberty, justice and equality

5.3b: understand that the American legal and political systems guarantee and protect the rights of citizens and assume that citizens will hold and exercise certain civic values and fulfill certain civic responsibilities

5.4a: respect the rights of others in discussions and classroom debates regardless of whether or not one agrees with their viewpoint.

## **THEME #1 - WHAT IS JUSTICE?**

### *Overview:*

This theme begins the exploration of the judicial system by piquing students' interest in the question of justice itself. What are courts doing when they "do justice"? What is the difference between law and justice? What is the difference between justice and morality? What are some possible definitions of justice, and how do we decide which is to prevail? How can we apply a conception of justice to specific legal dilemmas? The conceptual emphasis of this week will set the stage for the investigation of judicial independence in Theme #2. Once students have a sense that justice is a contentious and complex idea, and have experience generating conflicting claims about how justice operates, they will be prepared for the question of how and why bodies that render decisions about justice are necessary and why their independence from other institutions of government is important.

### *Readings:*

Day 1: *The Queen v. Dudley and Stephens* (1884)

Day 2: Plato, *Republic* (Book 4)

### *Key concepts:*

Justice

Courts

Adversarial system

## Theme #1 – Day 1: Queen v. Dudley and Stephens (1894)

### *Background for teacher:*

The reading for today is an excerpt from a 19<sup>th</sup> century criminal court case from England involving a shipwreck and cannibalism on the high seas. In this lesson, students will learn the basic story of the tragedy of the *Mignonette* (a 52-foot English yacht) and its four-man crew; construct, in writing, a pair of opposing arguments concerning the just resolution of the case; read aloud one of these arguments; and discuss, in both small groups and a class-wide setting, what the truly “just” decision in the case would be.

### *1. Read/teach the following information to students before handing out the text:*

“Today we are beginning a 10-week unit on justice and the role of courts in a democracy by diving into a real court case from the 19<sup>th</sup> century. On May 19, 1894, an English yacht (the *Mignonette*) set sail from Southampton, England on its way to Sydney, Australia. Four men were on board: Captain Tom Dudley, Edwin Stephens, Edmund Brooks, and Richard Parker, a 17-year-old cabin boy. All went well for the first few weeks, but on July 5, the yacht sank in bad weather, and the men jumped into a small lifeboat. Fending off sharks, and 700 miles from land, the men had only two cans of turnips and one turtle to eat, plus a little rainwater they were able to collect. On July 29, a passing boat found the lifeboat and saved the men. But only three of the crew remained. [*dramatic pause*] We are now going to read the facts of the case as presented to the criminal court in England, and you will find out what happened.”

### *2. Hand out the reading.*

### *3. Read the handout aloud, each student taking one sentence.*

### *4. Ask for clarification questions (but keep it quick and get to the writing).*

*5. Writing prompt #1 (5 min.):* “Pretend you are a lawyer in this case, arguing that Dudley and Stephens should be punished for their actions. Write one paragraph that argues, as compellingly as you can, why the just outcome of this case is the punishment of the two men.”

*6. Writing prompt #2 (5 min.):* “Now switch sides. You are now the lawyer representing Dudley and Stephens. Write a paragraph in which you argue, as compellingly as you can, why as a matter of justice the men should not be punished.”

*7. Read over.* “Read over your two paragraphs. Decide, regardless of whether it is your own actual view or not, which sounds more persuasive. Circle it.”

*8. Sharing.* Each student reads her more persuasive paragraph aloud to the class without disclosing whether it is her actual opinion or not. Students/teacher take notes on the various arguments raised.

9. *Writing prompt #3 (1-2 min.):* “Jot down the best argument or two you heard from other students during sharing.”

10. *Small group discussion (5-10 min.):* Ask each group of 3 or 4 students to take a few minutes to discuss the matter and decide, as a judges’ panel, whether the men should be punished and why or why not. (Make sure students leave aside the question of what the punishment should be – that would complicate matters and lead them astray from the central query.)

11. *Class-wide discussion.* Ask each group for its decision: punishment or no punishment. Tally the results on the board. Use remaining time to allow groups to defend their positions, critique others’.

12. *Closing note:* There will probably be disagreements in the room over whether the men should be punished. Make, or elicit from the students, this observation. Note that justice is a notoriously complex and difficult concept and is often hard to apply to specific situations. *[You’ll build on this idea next week when discussing the need for a judiciary.]* Also introduce the students to the term *adversarial system*. In our justice system, the truth is presumed to emerge from a combative process in which each side makes the best arguments it can muster for its position. Each student performed two roles in the adversarial system today, making her best effort to defend both sides of the case in writing. Now let the students know the outcome of the case. The men were found guilty in court and sentenced to the death penalty. But after their conviction, Queen Victoria pardoned them, and their punishment was reduced to six months in prison.

## Theme #1 – Day 2: Plato, *Republic*

### *Background for teacher:*

Today's lesson ascends from the particularity of the first class to a higher level of abstraction. The goal today is to motivate students to propose and discuss their own conceptions of justice and then to consider two very different accounts of the nature of justice found in Plato's *Republic*. The first excerpt comes from Book I of the *Republic*, where the hot-tempered, skeptical Thrasymachus interrupts the inquiry into the proper definition of justice to offer what is essentially an ode to injustice; he defines justice as that which redounds to "the interest of the stronger," or that which is of benefit to the ruling class in a city. The second selection comes from Book IV and represents a watershed in the long discussion that started back in Book I. After entertaining and showing the illogic inherent in many would-be accounts of justice, Socrates finally answers his own question. Justice, it turns out, is (quite literally) minding one's own business. That is, justice consists in everyone doing his or her appointed job and not "meddling" in the affairs of people whose have other roles and other duties.

1. *Writing Prompt #1:* "Justice is \_\_\_\_\_." Fill in the blank to write a one-sentence definition of justice, then expand on your definition by giving an example.
2. *Writing Prompt #2:* Make a list of issues/problems of justice. Think broadly and in different contexts: issue of justice in the world, country, state, city, school, family.
3. *Pairs.* Pair up with someone sitting near you and read your definitions of justice to each other. Discuss your different perspectives/issues.
4. *Read around.* Each student reads just the first sentence of the first piece of writing aloud and lists one issue of justice from the second. Teacher takes notes on board.
5. *Brief discussion.* What do you notice about these definitions? Any patterns? Which definitions of justice apply to which issues of justice?
6. *Plato.* Divide students into two equal groups. One group reads the first excerpt, other group reads the second.
7. *Writing prompt #3:* What does justice seem to be, for Socrates/Thrasymachus? Do you agree with his claim? Why or why not?
8. *Teaching.* Using the third piece of writing, each group meets to prepare to "teach" the gist of its excerpt to the other group, explaining how Socrates or Thrasymachus understands justice.
9. *Discussion.* Who is right, if anyone? Is Thrasymachus correct to be so skeptical about justice? Does justice really have any content, or is it just defined by the powers that be? Is Socrates correct that justice is "minding your own business"?



## THEME #2 – WHY DO WE NEED AN INDEPENDENT JUDICIARY?

### *Overview:*

This theme builds on the exploration of the nature of justice from Theme 1 by considering the role of judicial institutions in the administration of justice. The first day begins with a creative challenge for the students: develop a story in which two people strongly disagree about what to do in a tough situation and in which the result of their conflict is disaster. After students formulate their narratives, additional writing exercises will push students to imagine solutions to these dilemmas, and they will be led to the inevitable conclusion: sometimes only a third party, a disinterested observer, can resolve disputes. The day will close with a quick reading of an excerpt from Locke's *Second Treatise* where just this claim is made. Day two will open with more discussion of the Lockean idea that it is absurd for people to be "judges in their own cases" and move toward the next step of this insight from Alexander Hamilton: the idea that the judiciary needs to be independent not only of the parties that approach it but from the executive and legislative branches of government as well.

### *Readings:*

Day 1: Locke, *Second Treatise on Civil Government*, sects. 13-19

Day 2: Publius (Alexander Hamilton), *Federalist Paper #78* (excerpt), Dr. Seuss, *The Zax*

### *Key concepts:*

State of nature

Neutrality

Objectivity

Third party

Adjudication

The Federalist Papers

Publius

Judicial independence

## **Theme #2 – Day 1: Locke’s *Second Treatise* (sects. 13, 19)**

### *Background for teacher:*

Today begins with a collaborative creative writing exercise to help students think about various contexts in which two individuals face each other in a conflict and in which they are unable, without a third party, to resolve their dispute. The idea is to elicit the need for a judiciary through their stories, though you will not tell the students this at the outset. After learning the day’s main lesson through the writing exercises — the idea that disinterested judges are a necessary component of civil life — you will look at a brief excerpt from Locke’s *Second Treatise*. The discussion comes in the context of Locke’s description of the “state of nature,” the natural state of humankind before the advent of political society. While Locke (who inspired many aspects of the Declaration of Independence and the U.S. Constitution) believes that people can generally live peaceably according to reason in such an anarchic environment, he admits that conflicts are inevitable. The main deficiency of the state of nature is its lack of a “common judge,” a neutral third party to adjudicate disputes. Without a common judge, daily disagreements can escalate to violence, or worse.

### *1. Read/teach the following information to students:*

“Think back to last week’s court case involving the ill-fated English yacht and the crew facing starvation in the lifeboat. When Dudley proposed his cannibalism idea to Stephens and Brooks, Brooks was unhappy with the plan. But he didn’t put up a fight and looked the other way when the cabin boy, Parker, was killed. (He did later partake of the meal, though.) Imagine the story were different. If Brooks put up a fight to defend Parker’s life, and Dudley did not back down, with both men baring their teeth at each other, how do you think the story would have ended?”

*2. Entertain some responses.* Listen especially for answers involving violence and irresolvable conflict between the two men. If you get answers involving peaceful resolutions to the conflict, acknowledge them, but emphasize the hypothetical that neither Dudley nor Books backs down from his position, and Stephens & Parker are too weak to join in the debate. You want to move toward the conclusion that no good resolution is possible absent a third party that is both powerful and disinterested.

*3. Writing prompt #1 (5 min.):* “Think of an example of a conflict between two people that might emerge when there is no one to mediate their conflict and the result of their conflict is some terrible consequence. This can be a real or imaginary example. Take five minutes to write out your story.” *[If students need examples/further instruction, prompt them to imagine conflicts that might brew between two siblings when their parents are out, two people who are shipwrecked and end up by themselves on a desert island, or two people playing a game of tennis (with no umpire) when they disagree about whether an important shot was “in” or “out,” etc.]*

*4. Continue the creative writing assignment (10-15 min.).* Divide the class into groups of three or four. Ask each student to read writing prompt #1 to his fellow group members and together, to choose one or more to develop into the group’s conflict story. Ask them to

make the stories as gory and graphic as they dare, but to emphasize the impossibility of a reasonable, peaceful resolution to the conflict.

5. *Read around.* Each group shares its conflict story orally.

6. *Writing prompt #2 (3 min.)* “Think about these stories. What connects them? Why does each end in tragedy? What could change the ending to prevent such a bad result?”

7. *Discussion.* Ask for a few students to share their second writing pieces. The day’s lesson should emerge on its own, with any luck.

8. *Hand out the handout.* Read the Locke selection aloud slowly, asking students to interpret the meaning of the passage as you go.

9. *Closing note.* Emphasize the main idea of the day’s lesson: when two people disagree about something important to their interests, often they are unable to reach a resolution to their conflict without turning to a third party — someone who has no stake in the outcome of the conflict who can judge their “case” fairly and objectively. This, in a nutshell, is why all political societies need courts.

## Theme #2 – Day 2: Federalist #78

### *Background for teacher:*

Today you will emphasize the main idea from the previous class and push forward to a more refined claim: the idea that a judiciary (a system of courts) should be independent of the other branches of government in a democracy. The day begins with an apropos story from Dr. Seuss and a creative extension thereto, and moves on to consider the founding fathers' thoughts behind the judicial system outlined in the United States Constitution. The reading is the 78<sup>th</sup> of 85 articles that three founders (Alexander Hamilton, James Madison and John Jay) wrote in 1788 to persuade the people of New York to adopt the draft Constitution that had been approved in Philadelphia in 1787. It addresses the nature and details of the judiciary.

1. *Read "The Zax" by Dr. Seuss.* "The Zax" perfectly illustrates, in a non-bloody way, the message of the previous class: stubborn people can ruin their own lives, and complicate the lives of others, when they have no common judge to help them solve their dispute. Locate a copy of this story to read to the class, or show an Internet video version of it. Here are two: <http://www.youtube.com/watch?v=kKz3lG2Rt2o&NR=1>  
<http://www.youtube.com/watch?v=KbtU15j5GG8&feature=related>

2. *Writing prompt #1:* "Rewrite the ending of "The Zax" such that one or both of the Zax approaches a third party to help them solve their dispute."

3. *Share.* Ask several students to read their new endings.

4. *Wrench throw.* Focus on one of the students' new endings that features a happy resolution to the conflict brokered by a judge or other supposedly disinterested third party. Shake things up by saying that the judge is also the mayor of the town where they are at an impasse, and the townspeople who elected him are united by a longstanding and deep hatred of furry individuals from the North and an equally longstanding and strong allegiance with creatures from points south. The mayor is up for reelection next year, and would suffer at the polls if his decision included any concessions to the South-going Zax (coming, as he does, from the north). So the judge/mayor's decision is as such: the South-going Zax must step aside and make way for his North-going counterpart. Is this decision fair, and will it be acceptable to the South-going Zax? Entertain students' answers. They should implicitly sketch the basic reasoning behind judicial independence: when a judge is beholden to other branches of government, or to the biases of the majority of the people, she is unable to judge fairly. And without the perception of fairness, the judge lacks legitimacy and will be unable to fill her role. Judicial independence is a necessity.

5. *Read Federalist #78 aloud.* Ask students to explain the main claims and reasoning behind them. Why is the judiciary "the least dangerous branch" of government? Do you agree that it is "the citadel of the public justice and the public security"? Do you think that the American justice system is indeed independent of all interests other than strict justice under the law? If not, to whom is it possibly beholden?

## **THEME #3 – HOW DOES THE UNITED STATES COURT SYSTEM OPERATE?**

### *Overview:*

Having considered the value of an independent judiciary, students will turn to consider the functional structure of courts in the United States. This unit begins by returning to themes important to Alexander Hamilton and other Founders from last week's readings – the federal structure of sovereignty in the United States, where power is not only divided between branches of government, but between governments – the national (federal) government, and the governments of the states. This unit moves from the evolving philosophy of dual sovereignty and its implications for the law to a look at the constitutional foundations of the U.S. and New York legal systems, and from there to a focus on the structure and workings of the various New York State courts. It emphasizes the use of texts (print and electronic) created by justices and New York State law associations in order to expose students to resources they can use after the end of this course.

*Note: Have dictionaries available for Day 1. Day 3 requires Internet access and preferably the assistance of the school librarian.*

### *Readings:*

Day 1: U.S. Constitution Preamble, Article III Sections 1 & 2, and Marbury vs. Madison (excerpt)

Day 2 & 3: U.S. Constitution excerpts (Preamble, Article III Sections 1 & 2, Bill of Rights, and the 14<sup>th</sup> Amendment Section 1); Schoolhouse Rock video clips; Kaye and Lippman, "The New York State Courts: An Introductory Guide" excerpt (p. 4-7); New York State Constitution Article VI, Section 1; New York State Unified Court System website [www.nycourts.gov](http://www.nycourts.gov);

### *Key concepts:*

federalism  
checks and balances  
judicial review  
criminal and civil courts  
trial court  
appeal  
court of last appeal

## **Theme #3 – Day 1: Judging What? Federalism and the U.S. Supreme Court**

*Note: Have a dictionary or dictionaries (physical or electronic) available*

1. *Write* on the board: If, as Hamilton said, the judiciary is “the least dangerous branch” of government, what are the other branches, and how do they relate to each other?  
Terms:  
Executive branch  
Legislative branch  
Judicial branch  
Checks and balances
2. Watch Schoolhouse Rock’s “Three Branches of Government” and “I’m Just a Bill” clips (about 3 minutes each). Use clips and The American System of Government handout to explain what each branch of the national government is and how checks and balances work. Explain that the structure of the national government is set up by the U.S. Constitution (if necessary, there is a Schoolhouse Rock clip for this too)
3. *Read* aloud the U.S. Constitution Preamble, Article III Sections 1 & 2, and the Marbury vs. Madison excerpt. Use these to establish the powers of the U.S. Supreme Court, especially the power of “judicial review” as outlined in Marbury vs. Madison.

### **Theme #3 – Day 2: Constitutional Foundations of the U.S. and NYS courts**

1. *Write* on the board: “How does the NY State Constitution set up the NY state courts?”

Terms:

federalism

criminal court

civil court

trial court

appeal

2. *Tell* students that besides the national government, which they considered yesterday, there are state governments with state constitutions and state courts. This system of having both a national government and separate state governments is known as federalism. Review the American System of Government page if necessary.
3. *Read* aloud the NYS Constitution, Article VI, Section 1. Have students select one court they don't know about and write out a situation in which they imagine someone might go to this court. (5 minutes)
4. *Tell* students that they are going to make a Jeopardy-style game for the New York State courts. They get to use two sources of information, “The New York State Courts: An Introductory Guide” (in their anthology) and the New York State Unified Court System website. Today they will read and create questions and answers from the Guide.

*Read* around the Guide excerpt. For each section, students should underline one or two important “answers” about that section. (25 minutes). Using page 4 (and a dictionary), define criminal court versus civil court and trial court versus court of appeals.

5. With remaining time, *divide students into groups*. Assign each group a court from the Guide (might have multiple groups work on the Court of Appeals, Family Court, and Surrogate Court).

### **Theme #3 – Day 3: New York State Courts**

*Note: In computer lab or using laptops, and preferably with the assistance of the school librarian. Students should sit in groups. It is recommended that the teacher or librarian create public Google docs for the class and for each group to facilitate collaboration.*

1. *Introduce* students to the New York State Unified Court System website ([www.nycourts.gov](http://www.nycourts.gov)). Click the “Courts” link on the right.
2. *Select* “Introduction to the Courts – Structure of the Courts” rollover link. Ask students what these charts represent (two types of law (criminal and civil) AND the chain of appeals for New York State courts). Ask if any of them can think of courts NOT on this chart (answer: federal courts).
3. *Learn more about NYS courts.* Exploring the website and the guide, each group should create three to five answer/question pairs for their court and rank them in order of perceived difficulty. Questions should highlight important aspects of the NYS court system. Students should type their answer/question pairs in a class Google doc and informally cite the URL or the Guide (with page number). Tell students that the games they create with these questions will be shared with the Historical Society for the Courts of the State of New York. (25 to 30 minutes)

Note: The structure of the Guide is different from the structure of the website, so students might have to hunt for information, and information might be in more than one place. When in doubt, focus on the New York City courts section.

4. *Create a class list of answer/questions.* Copy the class questions into small group Google docs. Have each small group select and organize 25 of the answer/questions into 5 student-generated categories. Arrange in ascending order of difficulty. Each group should then enter their answer/questions into a Jeopardy powerpoint template, save it, and email it to the teacher. (25 minutes)
5. *Closing (if time):* Compare the games to see what shared or unique categories or judgments of “value” there were between groups.



## **THEME #4 – WHAT IS THE PROPER ROLE OF A JUDGE IN A DEMOCRACY?**

### *Overview:*

Having considered the need for an independent judiciary and the U.S. court structure, we now turn to the question of individual justices and the philosophies that guide decision-making. Students will be introduced to the concepts of precedent and stare decisis and will engage the question of what principles guide judges in interpreting constitutional disputes.

### *Readings:*

Day 1: image of “Blind Justice”; John Roberts’ opening statement before the U.S. Senate Judiciary Committee (2005, printed in *USA Today*); Senator Barack Obama’s floor statement on Roberts’ nomination (2009, printed in *The Wall Street Journal*);

### *Key concepts:*

precedent  
stare decisis

## Theme #4 – Day 1: What is the proper role of a judge in a democracy?

1. *Tell* students that today the class is moving from the structure of the courts as a system to considering how judges make decisions. On board, write:

Terms:  
precedent  
stare decisis

*Writing Prompt #1* (write prompt on board): What is the proper role of a judge in a democracy? (3 minutes)

2. *Blind Justice*. Have students look at Blind Justice and group brainstorm what they notice.

*Writing Prompt #2*: “How does the image of Blind Justice compare to your initial thoughts on the role of a judge in a democracy?” (3 minutes)

Define the terms precedent and stare decisis with students, either having students look up the terms in a dictionary or explaining that these two concepts are key to judicial decision making. Precedent is related to the word precede, which means to come before. In this case, precedent is a judicial decision that came before - a prior decision. Stare decisis is the principal that rulings on new cases should adhere to, or follow, precedent. Decisions by higher courts are considered binding precedent – that is, lower courts have to follow them (remember the graph of the New York State courts – the arrows showed hierarchy).

3. *Read aloud John Roberts' opening statement*. Inform students that though the President nominates justices for the Supreme Court, the Senate must confirm the nomination as parts of checks and balances. This text is now-Chief Justice John Roberts opening speech to the Senate when he was nominated for the Supreme Court.

Students should underline passages that strike them as illuminating Roberts' thoughts on the proper role of a judge in a democracy. (7 minutes)

4. *Three-column journal responses (about 20 minutes total)*: Students divide a piece of paper into three columns on both sides (see example in reader).

In the front side left column, students should *copy* the quote “...we are a government of laws and not of men. It is that rule of law that protects the rights and liberties of all Americans.”

In the middle column, students should *respond* to the quote. Responses can be anything – musings, questions, attempts to understand, personal connections, etc. The only requirement is that they keep their pen moving for 3 minutes.

Pass journals left. Students should *respond to the response* in the third column. (3 minutes)

Pass journals left and turn the page over. In the left column, students should copy a passage from Roberts they underlined while reading.

Pass journals left. Students respond in the middle column to the second quote. (3 minutes)

Pass journals back to owners. Owner responds to the response. (3 minutes)

5. Direct students to Roberts' second page where he states "Justices have to have the humility to recognize that they operate within systems of precedent."

*Ask students* to consider why Roberts says that humility is important, relating it back to stare decisis and precedent (5 minutes)

6. *Read aloud* Obama's statement on Roberts' nomination. Students again underline passages they think are key to understanding Obama on the proper role of a judge in a democracy. (5 minutes)
7. *Picturing Justice*: Return to the image of Blind Justice. Have students draw what they imagine Roberts and Obama think Justice looks like. (*remaining time*)

#### **Theme #4 – Day 2: What is the proper role of a judge in a democracy? (cont.)**

1. *Roberts responds to Obama.* Give students a few minutes to review the Obama and Roberts texts and then create a piece of paper into three columns. In the left column, students should copy one Obama passage they underlined in the last class.

Pass the journal to the right. In the middle column, students should respond in Roberts' voice. Return to owner, and leave the third column blank. (10 minutes)

2. *Students debate the role of a judge.* Have students return to Writing Prompt #1 from the previous class. Give students 3 minutes to continue or amend their initial thoughts on the proper role of a judge in a democracy. Open the floor for discussion.
3. *Closing:* If discussion ends early, introduce other images of justice. Have students draw and share their own image of Justice and explain.

## **THEME # 5 – HOW SHOULD JUDGES BE SELECTED?**

### *Overview:*

This theme, the midpoint of the unit, builds on the previous four weeks by posing a fundamental question about the selection of judges in a democracy. Given the twin needs for an independent judiciary (discussed in Theme 2) and government responsiveness to public opinion, and given the conflicting ideals of justice that courts are designed to adjudicate, the question of how individuals become judges is both complex and ripe for analysis. During the two days on this theme, students will learn the basic terrain of how judges at various levels and in the state and federal systems are selected (through appointment, election or merit selection); analyze arguments for and against the election of state judges in New York State; explore actual and possible reforms to judicial selection; and develop their own reasoned, reflective perspective on the question.

### *Readings:*

Day 1: Wilhelm, “O’Connor against judicial elections” (2011); Chermerinsky & Sample, “You Get the Judges You Pay For” (2011),

Day 2: Brown, “Elected v. Appointed Judge: Which Selection Process is Best”; Wall Street Journal, “NY judges won't handle big campaign donors' cases” (2011)

### *Key concepts:*

Article III of the Constitution  
Judicial elections  
Appointment  
Merit selection

## Week #5 – Day 1: Election of judges

### *Background for teacher:*

Today is the first of two days in which the class will consider an important question in American democracy: how should judges be selected? Students should now be comfortable with the idea that justice is a complex, important goal of any political society and should appreciate the need for independent arbiters to mediate disputes between people who find themselves in conflict with one another. They should also have a sense of how judges should interpret their role on the bench from Week 3. This week students will have an opportunity to critically evaluate a hot debate over the selection of judges in New York State: *should judges be elected?*

- *Read/teach the following information to students:*

“Who knows how judges are selected in the United States? [*entertain some answers*]. Well, you’re all partially right and partially wrong. According to Article III of the U.S. Constitution, all judges in the federal courts are appointed by the President of the United States and confirmed by the U.S. Senate. But judges on the state level are selected in a range of ways. Some are appointed by the governor, some are nominated by the governor and confirmed by the state legislature, some are selected by the governor from a list provided by a nominating commission, and some are elected directly by the people. In New York State, many judges find their way to the bench through partisan elections in much the same way that members of the state assembly are chosen. Here is the specific breakdown:

*New York State Court of Appeals (highest court):* governor appoints a candidate recommended by a nominating commission and the state senate confirms (14 years)

*New York State appellate courts:* governor appoints a candidate recommended by a nominating commission made up of all the judges on the Court of Appeals (5 years)

*New York State Supreme Courts (trial courts):* partisan elections (14 years)

*New York State County Courts:* partisan elections (10 years)

- Read around: “O’Connor Against Judicial Elections” (Article 1)
- *Writing prompt #1:* “What is the best argument against the election of judges? State it, and explain why it is so persuasive.” *Students can draw on the arguments in the article or develop their own ideas.*
- *Writing prompt #2:* “Pass your notebook to the person sitting to your left. Read and develop a response to the argument your neighbor wrote about. Why might the election of judges be a good idea? Write your response in your partner’s notebook under the original argument. Then pass the notebooks back to their owners.”

- *Volunteers to launch discussion.* Ask for pairs of volunteers to read their pro & con arguments. Once three or four pairs have read, open up the question to the full class for discussion.
- Read around: “You Get the Judges You Pay For” (Article 2)
- *Ask a few questions* for discussion. Why do the authors think that judicial elections “are here to stay”? If there are so many problems with the idea of electing judges, why stick with this system? What is “recusal” of judges and is it a good idea? Why do the authors think that recusals aren’t enough to solve the problem?

*Closing thought:* we’ve discussed some compelling reasons why the election of judges is a bad idea today, as well as some reasons elections work well and are consistent with democratic principles. In our next class, we will look at one way to address the difficulties judicial elections pose for judicial independence.

## Week #5 – Day 2: Election of judges II

### *Background for teacher:*

Today students will consider whether New York State’s method of selecting judges should be changed, and how. Students will reflect on the two articles from Tuesday’s class: Article 1 describing Justice O’Connor’s opposition to judicial elections and Article 2 by two law professors that rejects the call to eliminate judicial elections but suggests improvements that might be made to the system. They will read Article 3, which contains clear pro and con arguments regarding judicial elections. Students will engage in a debate about these proposed reforms and consider whether judicial elections in New York State should be abolished.

- *Teach/say the following:* “Last time we learned about the way that judges are selected in the United States. All federal judges are appointed by the President and confirmed by the Senate, but judges in the state system (including New York State) are often elected directly by the people. We read one article (Article 1) about former Supreme Court Justice Sandra Day O’Connor’s opposition to judicial elections and another (Article 2) by two law professors who support judicial elections but argue that campaign financing for judgeships should be changed and that judges should recuse themselves in cases involving campaign donors. Today we will look more closely at these proposals and consider a third possibility: that judicial elections are good for democracy and should continue to be the method we use to select judges.”
- *Read around Article 3* (Brown, “Elected v. Appointed Judge: Which Selection Process is Best”)
- Brief discussion/clarifying the arguments in Article 3.
- *Writing prompt #1:* “Should New York reform or end judicial elections, as Justice O’Connor argues in Article 1, or should New York continue with its present methods of selecting judges (including elections for trial court judges)?” Before students begin writing, instruct them which position you want them to defend. Divide the class into three equal groups. One third of the class (Group A-REFORMERS) will push for reforming or ending elections (their choice), drawing on Article 1, Article 2 and the first half of Article 3; one-third (Group B-STATUS QUO DEFENDERS) will argue that the present methods of judicial selection in New York, including elections for trial court judges, should continue; and one third (Group C-DEBATE JUDGES) will prepare questions to ask both sides.
- *Debate.* Assemble Group C in the middle of the room; they are the judges. Groups A and B will read and embellish their arguments, trying to convince the judges of the merits of their positions. Debate format: 4-minute speeches for each side; 6 minutes of judges’ questions for both teams; 5 mins. prep time; 3-minute rebuttals for each team. Debate should take about 30 minutes total. After the debate concludes, Group C will vote for the more persuasive team and explain the reasons for their vote.



- *Closing note:* Notice how the topic of Week 5 is really a debate about how democracy should operate. Some people worry that judges will be unaccountable to the people and divorced from their interests and opinions if they are simply appointed by other office holders; they argue that it makes perfect sense for voters to have control over who serves in a given community's courts. Many other people worry that judges who are forced to campaign for office impugn their independence and sully their objectivity by accepting campaign donations from individuals who may one day end up in their courtroom. Read students excerpts from Article 4, "NY judges won't handle big campaign donors' cases," where you can give them a great takeaway: information on how New York State recently changed the rules for judges in the courtroom.

## **THEME #6 – WHAT PRINCIPLES SHOULD GUIDE SENTENCING IN A DEMOCRACY?**

### *Overview:*

Having considered the role of judges and judicial decision-making in interpreting the law, the course turns to look at another form of judicial decision – criminal sentencing. Today students will learn about judicial discretion in sentencing and the limits imposed on that discretion (mandatory sentencing) by the democratic process. Students will then shift to examine two controversial examples of sentencing, public shaming and the New York State problem-solving courts.

### *Readings:*

“Albany Reaches Deal to Repeal ‘70s Drug Laws” (2009); New York State Problem-Solving Courts brochure

Video: National Geographic’s Taboo, Season 2, Episode 4, titled “Justice”

### *Key concepts:*

mandatory sentencing  
judicial discretion  
recidivism

## Theme #6 – Day 1: What Principles Should Guide Sentencing in a Democracy?

1. *Write on the board:* What principles should guide sentencing in a democracy?  
Terms:  
Mandatory sentencing  
Judicial discretion  
Recidivism
2. *Read/teach the following:* “Though defendants have a right to a jury trial to determine guilt, in most cases judges deliver the sentence following a guilty verdict. There are important limits to judicial discretion – that is, there are often boundaries set on sentencing which judges have to follow. These boundaries are set by the legislative branches of government, which can create minimum and maximum sentencing guidelines based on the type of crime and the defendant’s criminal history. For example, “making graffiti” is a misdemeanor in New York State and the maximum punishment is one year in prison. Some states with capital punishment (the death penalty) require that a jury recommend the death penalty before it can be considered. In these examples the democratic process that sets limits on the severity of the sentence. At the other end, minimum sentencing requirements, particularly for drug related or repeat offenses, are a controversial way for the legislature imposing limits on judicial discretion. For example, in 1973, New York made a mandatory minimum prison sentence of 15 years to life for possession of more than 4 oz of a hard drug.”

*Writing Prompt #1:* Remember that Chief Justice Roberts said “we are a government of laws and not of men. It is that rule of law that protects the rights and liberties of all Americans.” Argue in support of the following claim: “Mandatory minimum sentences are simply another way for a democratic society to create a “government of laws and not [individual] men.” (4 minutes)

3. *Sentencing policy: New York State drug law:* Read aloud the 2009 New York Times article “Albany Reaches Deal to Repeal ‘70s Drug Laws.” Students should underline passages that speak to the guiding question “what principles should guide sentencing in a democracy?”

From the article and students’ thoughts, brainstorm factors that might guide sentencing *policy* (as opposed to individual cases), such as justice, budget, public safety, rehabilitation as the goal, the balance of power between judicial, legislative, and executive (prosecution/district attorneys) branches, etc. Discuss what factors student feel are more or less legitimate in sentencing policy. (10 minutes)

4. *Sentencing decisions:* Students will now compare two distinctive methods of criminal sentencing, the New York State problem-solving courts and a judge in Texas who uses “public shaming.”

*New York State’s problem-solving courts:* Read around the New York State Problem-Solving Courts brochure (read it as though the brochure was folded, starting with the

center of the first page). While reading, define “recidivism” (repeating a negative behavior even after punishment or treatment – in this case, committing another crime after having been convicted and released). Give students a few minutes to record their initial thoughts on these courts (benefits, limitations, questions) in their notebook. (10 minutes)

*Public shaming:* Watch the public shaming excerpt from National Geographic’s *Taboo* series “Justice” episode. (15 minutes)

*Discuss* what principles students think should guide sentencing. Possible questions: If public shame is effective in reducing recidivism, does that mean it is a valuable sentence? If the problem-solving courts are not statistically as effective at reducing repeat crime, does this mean they are not a valuable alternative to jail time? Is the function of sentencing rehabilitation or public safety by removing criminals? Does sentencing function as punishment? Prevention through deterrence?

5. *Closing: Questions for a trial justice:* With the last few minutes, have students write down questions on sentencing they would like to ask the judge they will meet on their field trip to a NYS court.

## **THEME #7 – THE COURTS IN ACTION: FIELD TRIP TO THE NEW YORK STATE COURTS**

### *Overview:*

Students have now spent a significant amount of time learning about and discussing justice, the roles of courts and judges in a democracy, and the operations of the New York State legal system. These conditions help make a field trip to an area court a rich and rewarding experience for students, enabling them to appreciate the daily activities of the courts but also ask fruitful questions inspired by the unit thus far.

To arrange a field trip, contact the NYS Courts Access to Justice Program at 1-646-386-5405 or the Office of Public Affairs (<http://www.courts.state.ny.us/admin/publicaffairs>).

## **THEME #8 – WHAT IS THE PROPER ROLE OF JURIES IN A DEMOCRACY?**

### *Overview:*

Though relatively few students will become justices, many will have a role in the U.S. court system as jurors or potential jurors. The next two classes will therefore ask students to consider the role of juries and jury trials in a democracy. Students will consider the principles that should and that do guide the jury system in the United States after considering an alternative form of trial, trial by ordeal. This theme will close by considering the burden imposed on jurors by the U.S. criminal legal system to determine if a defendant is guilty beyond a reasonable doubt. Students will do this by reading from the New York State criminal jury instructions and then returning to the case of *Queen v. Dudley and Stephens* encountered in the very first lesson in order to role play the parts of prosecution, defense, and jury.

### *Readings:*

Day 1: American Bar Association, “Principles of Juries and Jury Trials” excerpt (2005); National Geographic’s *Taboo* series “Justice” episode (DVD, 2005)

Day 2: New York State Criminal Jury Instructions excerpt; *The Queen v. Dudley and Stephens* (1884); New York Penal Article 125.25: Murder in the second degree

### *Key concepts:*

burden of proof  
presumptions of innocence

## **Theme #8 – Day 1: What is the proper role of juries in a democracy?**

Note: If students took a field trip to an NYS court prior to this class, feel free to allow time at the beginning of class to process the visit.

1. *Tell students:* “For the next two lessons the class is shifting from judges to juries. You are probably aware that there is a right to a jury trial, and that in criminal cases juries decide questions of guilt. You may or may not be aware that juries in the U.S. do *not* decide the question of innocence. For a few minutes, I’d like to write in your notebook your thoughts on juries. Feel free to think of specific cases you’ve heard about in the media.” (3 minutes)

After students have finished writing, give them a few minutes to share their thoughts. Feel free to mention contemporary controversial cases. Then ask if they can think of other ways to determine guilt.

2. *An alternative to juries: trial by ordeal.* Watch the trial by ordeal excerpt from National Geographic’s *Taboo* series “Justice” episode. Briefly discuss with students whether this was a fair trial. (20 minutes)
3. *Principles of Juries and Jury Trials:* Divide students into small groups. Each group quickly brainstorms a list of principles they think should govern juries (10 minutes)

Read the ABA’s “Principles for Juries and Jury Trials” excerpt.

Compare to the initial student lists. Ask students to note the similarities and differences. For differences or absences, ask students if there are any that they would like to include in their lists or any that they would NOT include, and why. (20 minutes)

With remaining time, draw up a class list of principles for juries and jury trials.

## Theme #8 – Day 2: Judging Guilt

1. *Write on board:*

Terms:

burden of proof

presumption of innocence

trial court

adversarial system

prosecution

defense

2. (Re)define trial court, adversarial system, prosecution, and defense, if necessary.

3. *Tell* students: “Even if you do not choose to be involved professionally as a lawyer or a judge with the American courts, jury duty is one of the responsibilities of adult U.S. citizens. In the last class we considered principles of juries. Today we’re going to focus on one of the most important aspects of the jury system – determining questions of guilt. As I said yesterday, juries in the U.S. do not decide questions of innocence. Defendants are presumed to be innocent – that is, it is assumed that the defendant did not commit the crime of which they are accused. Therefore, the prosecution has what we call the “burden of proof.” In other words, in a criminal case the prosecution has to demonstrate that the defendant is guilty because the assumption is that he or she is not. Before juries deliberate, justices give instructions to the jurors on how to proceed. We are now going to look at an excerpt of instructions given to New York juries.”

4. *Read aloud the NY State Criminal Jury Instructions* excerpt. Students should underline passages that strike them as exceptionally meaningful. (10 minutes)

Have students select the sentence or phrase that they found most powerful. Read these around aloud. (5 minutes)

5. *Role-play Queen v. Dudley:*

Say the following: “The class is now going to look again at the case you read the very first day, *The Queen v. Dudley and Stephens*. On the first day you discussed the justice of punishment, taking positions for and against and considering the persuasiveness of arguments irrespective of your initial beliefs. That prepared you for today, where you will put into practice the principles of the New York and U.S. criminal justice system by acting as prosecution, defense, and jury. This time, though, there are important modifications in the case that you should take note of. Instead of *Queens v. Dudley and Stephens*, it is *New York v. Dudley*. New York has charged Dudley with murder in the second degree. The text you are re-reading is Stephens’ testimony against Dudley. In exchange for this testimony, Stephens was only charged with negligent homicide, even though he has a prior record for petty theft. Brooks left the scene and therefore did not witness the actual killing. Fingerprints from all 3 men were on the knife. Brooks has pled not guilty, but did not testify on his own behalf.”



*Read aloud Queens v. Dudley and Stephens and then re-read the above changes. While reading, students should take note of facts they believe will be important to the prosecution and to the defense. (10 minutes)*

*Read aloud from New York Penal Article 125.25: Murder in the second degree.*

*Writing Prompt #1: "You are now going to play the role of prosecutor. For five minutes, write the strongest closing statement possible to convince a jury that Dudley should be found guilty of murder in the second degree." (5 minutes)*

*Writing Prompt #2: "Now you are the defense. For five minutes, write the strongest closing statement possible to convince a jury to find Dudley not-guilty of murder in the second degree." (5 minutes)*

*Students as Jury: Tell students: "After closing arguments, the judge would give the instructions we read at the beginning of class and jurors are left alone to deliberate, that is, to discuss, the case. It is now your job, as the jury, to decide whether to rule that Brooks is guilty or not-guilty of murder in the second degree. As with a real jury, a verdict must be unanimous. If you cannot decide by [5 minutes to end of period], I will have to declare a mistrial."*

- Closing: If students find Dudley guilty or not guilty with more than five minutes left in class, ask them to process this experience compared to the first time they considered Dudley's case. Otherwise, proceed to Writing Prompt #3.*

*Writing Prompt #3: "We opened this theme by asking you to reflect on your thoughts about juries. What are your thoughts now? I would like you to finish class by returning to this question in a very personal way. How do you think will react someday when you get a notice that you have been selected for jury duty?"*

## **THEME #9 – CASE STUDY I: ARE RACIALLY BASED SCHOOL ASSIGNMENT PLANS CONSISTENT WITH THE EQUAL PROTECTION CLAUSE OF THE 14<sup>TH</sup> AMENDMENT?**

### *Overview:*

Now that students have been familiarized with the conceptual basis for justice and a judiciary and explored several issues related to judges and juries, they are ready to look closely at an actual legal dispute of interest. This week is the first of two in which students will read excerpts of U.S. Supreme Court cases related to a particular theme. For Week 8, the theme — race, education and equality — relates directly to the students' lives and represents one of the most contentious areas of constitutional jurisprudence today. Students will begin on day 1 by reading and analyzing excerpts from *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954); on day 2 they will consider two opposing perspectives on the meaning of *Brown* in a recent case involving racial integration in the high schools of Seattle, Washington: *Parents Involved v. Seattle School District* (2007). Through writing and discussion, the students will explore two rival conceptions of equality and develop their own point of view on whether Equal Protection is necessarily colorblind or sometimes must be color-conscious.

### *Readings:*

Day 1: *Plessy v. Ferguson* (1896); *Brown v. Board of Education* (1954); Wechsler, "Toward Neutral Principles of Constitutional Law" (1959)

Day 2: *Parents Involved in Community Schools v. Seattle School District* (2007)

### *Key concepts:*

Civil War  
Reconstruction Amendments  
Equal Protection Clause  
"separate but equal"  
segregation  
diversity  
color-blindness  
color-consciousness

## Theme #9 – Day 1: *Brown v. Board of Education* (1954)

1. *Read/teach the following information to students:*

“Three amendments were added to the Constitution in the period known as Reconstruction following the Civil War (1861-1865). These amendments addressed the most basic inequalities between whites and blacks that reigned under the centuries-long period of slavery in the United States. The 13<sup>th</sup> Amendment banned slavery; the 14<sup>th</sup> Amendment guaranteed citizenship to all persons ‘born or naturalized in the United States’ and guaranteed ‘equal protection of the laws’ to all; and the 15<sup>th</sup> Amendment provided voting rights to male citizens of all races. The Equal Protection Clause of the 14<sup>th</sup> Amendment has provoked a contentious set of debates. What is equality? How can it be guaranteed under the law? Does equal treatment mean ‘same treatment,’ or does it mandate differential policies to bring about greater social equality between the races? One context in which these questions have been asked is the field of public education. In 1954, the U.S. Supreme Court ruled that segregated public schools were unconstitutional despite earlier rulings which held that separation of the races did not necessarily entail unequal treatment. Today we’ll look at the source of the ‘separate but equal’ idea that justified legal segregation from 1896 until 1954; read a bit of the famous *Brown* decision that spelled the end of ‘separate but equal’; and consider a critique of the reasoning used in *Brown*.”

2. *Read the two Plessy excerpts aloud:* the first is the majority opinion, authored by Justice Brown, and the second is from Justice Harlan’s famous dissent.

3. *Writing prompt #1.* “Today we are accustomed to the idea that ‘separate but equal’ is anything but true equality. But take a moment and make your best argument for the position defended by Justice Brown to the effect that equality *can be* consistent with separation.”

4. *Share.* Ask for a few volunteers to read their pieces. Build a short discussion on the merits of the majority opinion in the case, and consider the arguments in Harlan’s dissent as well.

5. *Read the Brown and Wechsler excerpts aloud.*

6. *Focus groups.* Divide the class into small groups of 3-4 students, and task them with discussing and the third reading on the handout: Herbert Wechsler’s critique of the reasoning in *Brown v. Board of Education*. [To be clear: Wechsler was not a segregationist! He agreed with the outcome in *Brown* but condemned the Court’s reasoning in the case.]

- Is Wechsler correct that Chief Justice Warren misses the boat in explaining why segregated schools are unconstitutional?
- Does *Brown* in fact depend on the idea that black schoolchildren feel a “badge of inferiority” when being taught in separate (and unequal) public schools?
- Would the Court’s decision have to change if the evidence showed that segregation had no psychological effect — or even positive effects — on black children?

- Is “freedom of association” — guaranteed by the First Amendment — in fact a preferable way to justify ending segregation of the schools (rather than using the Equal Protection Clause of the 14<sup>th</sup> Amendment)?

7. Class-wide discussion on these questions, interrogating the arguments on which *Brown v. Board* is based.

## **Theme #9 – Day 2: Parents Involved v. Seattle (2007)**

*Background for teacher:*

1. *Teach/say the following:* “Today we’re going to think about race and education and what kinds of measures cities can take to increase racial integration in its schools. But first we’re going to think about why racially integrated schools might, or might not, be an important goal.”
2. *Writing prompt #1:* “In your middle school, or the elementary school you attended, how diverse is/was the student body? First classify your school(s) as ‘very diverse,’ ‘somewhat diverse,’ or ‘not diverse at all.’ Then write a few lines describing the racial makeup of your school(s).”
3. *Board work.* Students go up to the blackboard and place a mark (or marks) in one of three sections: very diverse, somewhat diverse, or not very diverse.
4. *Read around.* All students briefly describe the racial demographics of their schools.
5. *Writing prompt #2:* “In your experience, what difference, if any, does diversity make in a school setting? Is it valuable? How so?”
6. *Pass notebooks.* Pass your notebook to the person sitting to your right. Read your partner’s second writing piece and write a response to it. Then pass the notebook back to its owner.
7. *Sharing.* Ask two or three volunteers to read the second piece of writing and the response.
8. *Brief discussion.* We hear a lot about diversity as a valuable feature of schools. Is it? Why exactly might racial diversity in schools be a good thing?
9. *Teach/say the following:* “After *Brown v. Board of Education*, it took a while for public schools to begin to integrate, but eventually the races were brought together in schools as school districts adopted measures to do so. [Note that this is NOT affirmative action, as the schools in question were not selective. Many students will conflate the two, and you need to explain the difference. Affirmative action involves using minority race status as a plus factor in the admission of students to selective programs.] In Seattle, the northern part of the city is disproportionately white, which the southern part is home to more blacks and Hispanics. If students merely attended the schools that were closest to their homes, the city would end up with “white schools” and “non-white schools” — depriving students of the benefits of racial integration — so Seattle decided to assign students to schools based on a combination of family choice and racial integration goals. If the demographics of a certain school deviated too much from the overall city breakdown of 41% white/59% non-white, a “racial tiebreaker” would be used to bring it into better balance. Some parents objected to this, arguing that it violated the principle of racial equality in the 14<sup>th</sup> amendment. They sued, and they won. But the Supreme Court’s vote was 5-4 in this case, with Chief Justice Roberts and Justice Breyer taking opposite views of whether the 14<sup>th</sup> Amendment allows race-conscious policies. *Roberts: all government uses of race are unconstitutional. Breyer:*

*some uses of race to promote racial diversity are constitutional, and they are sometimes necessary to overcome de facto segregation.*"

10. *Read aloud* the *Parents United* excerpts from Chief Justice Roberts and Justice Breyer.

11. *Writing prompt #3.* "I agree with Roberts/Breyer because..." Be sure to include one or two lines from the Opinion you agree with as you explain why you take that position."

12. *Writing prompt #4:* "Switch sides! Write a piece defending the opposite view from the one you just argued for."

13. *Discussion.* Who is right here? Is racial justice colorblind, or color-conscious?

**THEME 10 – CASE STUDY II:  
WHAT ARE THE FREE SPEECH RIGHTS OF SCHOOL CHILDREN?**

*Overview:*

Following the case study in race and public education, we end the Unit with a two-day theme concerning the constitutional right to freedom of speech and how it applies to minors. The first day begins with a conceptual question that is often neglected in debates over freedom of expression: *why* is free speech valuable? True to the theme of these lessons, students will speak first and brainstorm reasons the framers of the U.S. Constitution may have put such a premium on this right — appearing, as it does, in the First Amendment. After this conceptual ground is clarified, students will be prompted to think critically about ways in which children’s rights should be curtailed from the full extent of liberties that adults enjoy. And then, in a pair of cases to be read over the two days, students will explore *Tinker v. Des Moines* (1969) and *Hazelwood District v. Kuhlmeier* (1988) and develop their own ideas concerning the importance of students’ speech and what justifications might exist for limiting expression in schools. The Unit will close with a debate on the question presented in *Hazelwood*.

*Readings:*

Day 1: The First Amendment to the U.S. Constitution, *Tinker v. Des Moines* (1969)

Day 2: *Hazelwood School District v. Kuhlmeier* (1988)

*Key concepts:*

Freedom of speech  
Freedom of the press  
Democracy  
Individuality  
Dissent  
Censorship  
The Vietnam War

## **Theme #10 – Day 1: Tinker v. Des Moines (1969)**

1. *Read/teach the following information to students:*

“Today we turn from the Equal Protection guarantee of the 14<sup>th</sup> Amendment to the First Amendment and its Free Speech clause. As one of the first rights protected in the Bill of Rights, free speech has a special place in the history and foundation of our country. Today we are going to think about why free speech is so important and focus our study by exploring what the free speech rights of schoolchildren ought to be — and why.”

2. *Write on board:* “Congress shall make no law...abridging the freedom of speech. – First Amendment”

3. *Writing prompt #1.* “Most people think free speech is a very important right. But why? Brainstorm some reasons why freedom of speech is a valuable right.”

4. *Pair and share.* Students read their lists of reasons to a partner.

5. *Board work.* Ask for volunteers to read one of the items on their lists. Record them on the board, assigning pithy tag lines to them. You should get a range of answers. Listen for answers like the following, which you’ll want to add if they don’t come from the students: (1) Necessary for development of the individual (free speech allows people to express themselves and to develop their own political, social and artistic perspectives, as well as a sense of themselves as individuals); (2) Implicit in the concept of democratic government (democracy is government of the people, and its operative principle is conversation among the people; if speech is not free, these conversations, and thus democracy itself, is untenable); (3) Facilitates political change and progress (giving the people a voice enables dissent from the status quo and the development of alternative views; this paves the way for new ideas to improve the nation). *Note this is not an exhaustive list! But these three are important, and they are importantly distinct from each other.*

6. *Writing prompt #2.* “Now think of some ways in which children’s rights are or should be different from the rights of adults. Brainstorm.”

7. *Share.* Ask for a few volunteers to share. Interrogate the reasoning behind each.

8. *Read Tinker v. Des Moines* excerpts aloud, beginning with this introduction: “Now we’re going to apply the question of free speech to kids by looking at a famous case from the Vietnam War era. In 1965, a few high school and middle school students in Des Moines, Iowa, wore black armbands to school to protest the ongoing war that the United States was waging in Vietnam. They were suspended from school for violating a city-wide rule banning armbands in schools, and they sued the school district, claiming their First Amendment rights had been violated.”

9. *Writing prompt #3.* “Do you agree with the majority opinion or the dissent? Defend your position. “



*10. Discussion.* Ask for several volunteers to read their views, and use their ideas to launch a discussion. Try to alternate between defenders of the majority opinion and the dissent. If little support comes for the dissent, you might want to play devil's advocate to improve the discussion and challenge the students: are there no limits to free speech in schools? What about lewd or hateful messages on t-shirts, e.g.?

## Theme #10 – Day 2: Hazelwood vs. Kuhlmeier (1988)

1. *Read/teach the following information to students:*

“This is our final class in the unit on the role of courts in a democracy, and we’re going to take a look at one way that the Supreme Court has decided children in high schools have some limits on their First Amendment rights. When the *New York Times* or the *New York Post* or any publication publishes each day, the content of the articles, the photos, the advertisements and the headlines — everything in the paper — has been approved and edited by its own staff. No outside reader has the right to approve or reject certain articles or viewpoints. The First Amendment protects the “freedom of the press,” or the ability of citizens to write and publish their views without official approval. As we learn in the case we read today, this is not quite the case of student newspapers. Under certain circumstances, teachers and principals have the power to cancel the publications that students publish with school funds within its walls. Today we’ll look at this case and you’ll decide if the Supreme Court was correct in its decision. Here is the quick story. In 1985, the principal of Hazelwood East High School in St. Louis, Missouri deleted two pages from an issue of *The Spectrum*, the student newspaper at his school. He was worried about two articles: one about teenage pregnancy and the experiences of three girls at the school (whose names were not used), another on the impact of divorce on the families of several students. One of the editors of the newspaper, Kathy Kuhlmeier, sued the school district, claiming that her First Amendment rights had been violated and that the newspaper would be left with little to report on — other than “school proms, football games and piddly stuff” — if it could not address sensitive, controversial issues affecting the lives of Hazelwood East students.

2. *Read the Hazelwood excerpts aloud.*

3. *Writing prompt #1 (not to be shared): “Write down your initial reactions to this case. Are you inclined to agree with the majority opinion or the dissent?”*

4. *Divide the class into three groups. Assign Group A to defend the majority opinion, Group B to defend the dissent and Group C, the judges’ panel, to develop critical questions for both sides to press on weak aspects of their arguments.*

5. *Debate preparation.* Give the students 10 minutes to prepare their sides or their questions. Encourage them to build on the arguments in the actual opinions but to develop their own arguments as well, perhaps using examples from their own schools or other relevant hypothetical issues.

6. *Debate.* Begin a loosely structured debate in which each side speaks twice for 4 minutes each time and the judges have 3 minutes to ask questions of the team after its speeches. The first speech should present the main arguments, while the second should address the other sides’ arguments and any lingering concerns from the judges. At the end of the debate, the judges will render a verdict on the appropriateness of the *Hazelwood* decision.