



The History of Child Labor in the United States: Hammer v. Dagenhart

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Introduction

What is the role of the Supreme Court in American History? How do past Supreme Court rulings affect our lives today? Whether or not you could answer these questions in part or in whole, it is our job as educators to inform students of the judicial process and how it has evolved over time since the signing of the Constitution in 1787.

From the first days of the United States, the Supreme Court has been fundamental in interpreting our Constitution and shaping our government as we know it today. The unit that I have devised is to look at the role of the Supreme Court as it relates to child labor. My main focus is to examine the onset and progression of child labor leading up to the Supreme Court case of *Hammer v. Dagenhart*, 247 U.S. 251. I strongly feel students will gain an insight into the responsibilities and precedence the Supreme Court sets for the entire United States.

This unit will be aimed for the seventh grade special education population that I teach in an inclusive environment. The students that I work with are on a spectrum ranging from Learning Disabled to Autistic. Due to a wide range of disabilities and various learning styles, I feel a multi-sensory approach would be most beneficial to meet the goals and objectives as reflected in each student's Individualized Education Plan.

Some of the material in this unit will be read orally within a large group setting and other material will be researched by students in small pods. Along with the regular education teachers, I will develop many engaging and thought provoking activities that capture and sustain the interest of my special education students as well as the rest of the class.

The lessons that I will cultivate will integrate assorted methodologies of learning such as auditory, visual and kinesthetic. The lessons will be clear and concise for a greater understanding of the historical facts.

Within my proposed unit, I will be able to teach my students' content, intellectual skills such as making inferences, the ability to develop and form conclusions based on evidence within a text and provide them with the civic skills for making informative decisions in order to be an active participant in our democratic society.

As a special education teacher, I am challenged with many barriers educationally, socially and emotionally. Since I am working in an inclusive setting, I see a large number of special education and regular education students having difficulty reading and comprehending material due to a lack of phonemic awareness, phonics and minimal to no vocabulary recall. Therefore, students often give up. As teachers we know that reading is crucial to daily living and without it one would be lost. In trying to teach this unit students must see the information presented to them as a valuable tool.

This above-referenced unit will integrate the two disciplines of Social Studies and Language Arts. The allotted time given for this unit will be approximately two weeks. The intent of this unit is designed to meet the New Haven Board of Education Curriculum Standards and No Child Left Behind Law enacted in 2004.

Based on the seventh grade Social Studies curriculum students are required to research historical data and explain the causes and effects of an event. The Language Arts curriculum focuses on reading a variety of texts and being able to express individual ideas by demonstrating a critical stance. Using an interdisciplinary approach will assist in the overall learning of a subject matter as well as making a transference of curriculum standards.

Industrial Revolution

Usually when an individual thinks about children some words that might come to mind are innocent, sweet, delicate little beings. These colorful words for children have not always been deemed in this fashion.

“There is work that profits children, and there is work that brings profit only to employers. The object of employing children is not to train them, but to get high profits from their work.”(1)
Lewis Hine, 1908

This quote sets the tone of how child labor was recognized by the American government during the late 1800’s and early 1900’s. There is an overall consensus that attributes the Industrial Revolution for the rise of exploitation of child labor.

The idea of the Industrial Revolution came from England. Not only did Americans fancy the revolution occurring back in England but they wanted to replicate the same things here but only better. This revolution phenomenon was dreamy to many Americans. The Industrial Revolution was depicted by fresh technology like the cotton gin and a rising economy. This period in history transformed the way people existed and worked.

Not all individuals agreed with the Industrial Revolution. For example, Thomas

Jefferson, when he was Secretary of State in Washington’s Administration, strongly opposed the idea. He believed that once people started working in industries rather than agricultural pursuits, the United States would marvel in the money and forget about schooling. Contrary to Jefferson’s beliefs, Alexander Hamilton, Secretary of treasury promoted the idea of industrial revolution. He alleged that the benefits of a growing

economy strongly outweighed the negatives.

Due to the rise of cities, many families moved from their rural dwellings. Over two million children worked during this era. Child labor was seen in all facets of work. Children worked in factories, fields, mines and in the city streets. Children were an asset to the employees because they were cheap labor. Children worked to help support their families. As soon as they were old enough to help they did some were young as five years old. At this time in history children were uneducated unless they came from a wealthy family.

Not only were children subjected to work at such a young age but they had to work under deplorable conditions. Children toiled for pennies after a seventy hour work week. Those children who worked in the factories suffered from many health conditions such as bronchitis and tuberculosis due to poor ventilation. Children who worked in the coal mines would face clammy and gloomy conditions. Many of them had to transport the coal on their back which led to back problems, paralysis and on a whole a large number of them expired.

Reformers

Child labor was becoming increasingly more significant due to the economy. In the early 1900's a social movement was established to protest child labor. This assembly was called the reformers. They had a platform that needed to be addressed by the national government. Up until this point the Supreme Court took a laissez fair approach.

Facing opposition by employers many felt that social reformers were unable to see how child labor was the driving force of the United States economy. Employers who favored child labor suggested that it added to the moral fiber of the child by instilling a value system of work ethic. (2)

The president of Merchants Woolen Company, Charles Harding stated: "There is a certain class of labor in mills where there is not as much muscular exercise required as a child would put forth in play, and a child can do it about as well as a grown person...There is such thing as too much education for working people sometimes. I have seen cases where young people are spoiled for labor by...too much refinement." (3)

The social reformers focused on welfare of the child and the abolishment of child labor. The first organized group was formed in 1904 it was known as The National Child Labor Committee (NCLC). This committee consisted of politicians, social workers and citizens who contested child labor. Two of the most renowned reformers were Jane Addams and Lewis Hine.

Jane Addams played a prominent part in the formation of the National Progressive Movement. In 1912, when Theodore Roosevelt ran for President of the United States, Addams emphatically declared her support for his progressive ideas. As a pioneer of the progressive movement, Jane Addams campaigned for new laws to support the rights of children. As the founder of Hull House in Chicago, Illinois she was able to provide a platform where children and others could come to seek assistance from the dreadful environment which surrounding them each day. Jane believed that they way to change the social atmosphere in the United States was to lobby the government for laws that would promote better education for children.

In 1907 the NCLC was granted a charter from Congress. A year later the committee hired Lewis Hine. He was a

teacher who was hired to research the ills of the child labor industry. For several years following, Hine traveled and photographed pictures of the exploitation of children in the work force. Later these pictures were published and seen by many. The impact the pictures had on America was unspeakable. The pictures unfolded a story that demonstrated violations against children in the most revolting way. It was truly astounding.

Two years later the Bureau of Labor Statistics found that contradictory to past reports, more children were employed in the Southern states than up North. Many of these children were receiving an insignificant amount of education. If children attended

school then they would lose their jobs, children at that time children did not want to face the punishment they would receive from their families.

As a result of this and the backlash of Hine's pictures, states started to pass laws restricting the age at which children could work. Nonetheless, The Supreme Court was not taking a stand on this issue.

It was not until 1916, that we see the involvement of the Supreme Court. During this year Congress passed the first child labor bill, Keating-Owen Act. This act banned the sale of any article produced by child labor (factory, cannery, and mine) and it regulated the number of hours a child could work. The Keating-Owen Act was passed in 1916 under the Woodrow Wilson's administration. Many progressives and republicans

embraced his efforts. Two years later the Supreme Court declared the Keating-Owen Act unconstitutional. The Supreme Court stated that on legal grounds Congress was using its power to go beyond its right to regulate interstate trade.

After the abolishment of the first child labor bill, the Keating-Owen Act there was a significant amount of tension that existed between the Congress and the Supreme Court.

Did the power rest in the Congress or did the Supreme Court act as a superior being?

Hammer v. Dagenhart 247 U.S. 251

Argued April 15, 1918 and decided on June 3, 1918 was the next case in the forefront of child labor laws. This case was filed initially in North Carolina in the United States District Court. It was brought to the court by a father, Roland Dagenhart filing on behalf of his two sons Reuben and John who were employed on a cotton mill in Charlotte, North Carolina. Both of them were under sixteen years of age. Dagenhart's law suit claimed that Congress had violated his sons' freedom to work.

In response to Dagenhart's claim, the United States District Court filed a response that stated the Dagenhart's bill directly violated child labor laws that dealt with commerce from state to state as addressed two years prior by the Keating-Owen Act.

The first decision upheld by the District Court stated that the bill was unconstitutional. The District Court stated that Congress had violated numerous laws according to the Constitution. The violations were as follows the Commerce Clause, the Fifth Amendment and the Tenth Amendment to the Constitution.

According to the District Court, Congress claims violated the Commerce Act which is found in Article 1, Section 8 clause 3 which states “the congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” (4)

Secondly, they saw a breach of the Tenth Amendment which asserts “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” (5)

The court’s last reservation claimed that Congress had violated the Fifth Amendment according to due process. Which clearly states, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” (6)

Many reformers and others were disheartened by the decision. As a result, John Davis and attorney, W.C. Hammer appealed the former decision therefore seeking assistance from the United States Supreme Court. Congress felt that they had a strong backing and compelling evidence based on the Constitution to support their claim. One of their key claims was that Congress has the power to regulate goods created by child labor because there was no one rule that blanketed all the states.

The Supreme Court was faced with answering the underlying question, does Congress have the right to police goods that are sold between states that were constructed by children under sixteen years old?

During this legal proceeding there were nine justices in total, four of whom were Democrats and the five remaining were Republicans. The names of these Justices were Edward D. White, Joseph McKenna, Oliver W. Holmes Jr., Mahlon Pitney, James C. McReynolds, Louis Brandeis, John Clarke, Willis Van Devanter and William R. Day.

The final decision of the Supreme Court was given by William R. Day. The Court saw this act as unconstitutional. The decision recognized by the court stated Congress had stepped outside of their boundaries and that Congress misconstrued the interpretation of the Commerce Clause which was upheld in the Keating-Owen Act. The Supreme Court argued that in spite of children working in factories and canners to produce goods that are exchanged between the states does not technically fit the confines of commerce. In view of that fact the Congress has the power to regulate trade but in this case, commerce is not the question when talking about the actual trade process because it does not involve the physical harm of children.

Open to various interpretations the Commerce Clause can be argued that commerce is defined not by the manufacturing, the making of products locally but by the shipment, the actual transportation of the manufactured goods which are shipped interstate. As stated in the previous case of *Gibbons v. Ogden* the power to regulate commerce is the power “to prescribe the rule by which commerce is governed” 7

To support their decision, Justice Day refers back to prior court cases such as *Lackawanna & Western R.R. Co. v. Yurkonis*, *Kidd v. Pearson* and *New York v. Miln*. All three of these cases were focused around the Commerce Clause. In *Lackawanna & Western R.R. Co.* the court established that coal mining is not defined under the terms of commerce. In the later two cases the same commerce clause cannot be redefined to include the regulation of goods made by child labor as identified by individual states.

Regardless of Justice Day and the majority of the ruling there was a dissenting opinion. This difference of opinion came from Justice Holmes, Justice McKenna, Justice Brandeis and Justice Clarke all of whom concurred. Holmes argued that Congress acted on the basis that it has the right under the Constitution to disallow certain goods to be traded also known as prohibition. Hence, prohibition includes the use of child labor as represented by the Keating-Owen Act. Also, he disputed that according to the Constitution the Congress falls under the umbrella of being protected by the federal government to monitor commerce as identified in Article 1, Section 8 of the Constitution.

The Aftermath

Soon after the court's decision on June 3, 1918 many people felt puzzled. They wondered why the court did not find Hammer v. Dagenhart a moral dilemma. They believed it was the court's job to uphold the integrity and ethical standards upon which the United States was founded.

Later that year in December of 1918 another bill was presented on behalf of child labor. This bill was another endeavor to regulate child labor by enforcing a tax of 10% to industries employing children under the age of sixteen. Soon after, this bill was also struck down by the Supreme Court stating that it was unconstitutional.

Around the 1920's the country had won World War I and America felt hopeful about the economy but too many individuals were wrong. The country's debt rose to enormous heights. In 1929, the American stock market crashed causing the great depression. During the depression millions of people lost their jobs but children still worked.

In 1932, President D. Roosevelt initiated the New Deal. The New Deal was Roosevelt's idea of getting America back on track economically. In 1933, The National Recovery Act was passed. This act assisted with child labor laws because it outlawed all child labor. Just like the others this act was overturned by the Supreme Court.

Almost twenty years after Hammer v. Dagenhart, hard work, pain, suffering and even death the question still remained did the child labor movement progress? It was through assistance from political supporters and labor unions that made the vision reality.

In 1933, Congress made another attempt to assist efforts for child labor during the depression. This Act was known as the National Industrial Recovery Act. This act set age limits and working conditions. During this time one could see a significant decline in the number of children working. Just like prior attempts in 1935 the Supreme Court ruled the National Industrial Recovery Act unconstitutional.

In 1938, the Fair Labor Standards Act also known as Federal Wage and Hour Law was finally recognized by the United States federal government. This Act made it mandatory for employers to give children minimum wage of twenty-five cents an hour and a maximum amount of work hours. Additionally, it set age limits and limited certain jobs that children could obtain. Once this Act was upheld children soon began to stop working and received their education.

It was not until 1941, U.S. v. Darby, upheld the Fair Labor Standards Act and reversed the case of Hammer v. Dagenhart.

As a result of the many laws that were deemed as unconstitutional, children today can look back at history and be thankful for the road that was paved on their behalf. As it remains the Fair Labor Standards Act still exist and is recognized by highest ranking judicial body which for so long refused to establish them- the United States Supreme Court.

Although the United States has made momentous advancements to the child labor laws over the last fifty years, child labor still exist. The fight still persists. As stated by the International Labor Organization the number of working children are increasing daily. Sad but true children are still being exploited in sweatshops making pennies a day to city streets. So it is our job to remember the past and push for laws for the future.

Terms to Know

Child labor

C

Child labor: the exploitation of children who worked in factories, mines and farms.

Cities: places that are largely populated in an urban area were people flocked to get better jobs and better living conditions.

Congress: the legislature of the United States government

F

Freedom: the act of being free

Factory system: system which workers and machines are brought together to produce goods

I

Industrialization: was the uprising of machines in industries

L

Labor: the ability to work

Laborer: a person hired to work

Laws: legal document which sets rules for a body of people

Lewis Hine: a reformer who photographed working conditions of child labor during 1900's.

M

Mass Production: method of manufacturing large amounts of goods

Muckrakers: journalists who uncovered the horrible working conditions children faced on a daily basis.

N

National Child Labor Committee: a group formed in 1904 to eliminate child labor.

P

Productivity: the amount of goods a worker can produce in an allotted amount of time

Progressives: reformers who fought for progress in all forms socially, economically and politically.

R

Reformers: people who fought for changes

Rural: living in a country area

S

Social reformers: reformers that assisted the poor by fighting for health care and better housing.

Supreme Court: highest federal court in the United States that has final jurisdiction over any other court.

U

Unconstitutional: not supported by the Constitutional

Urbanization: movement of millions of people from rural location to cities

Lesson Plans

Below you will find several lessons that have been designed to integrate the Language Arts Curriculum, Social Studies Curriculum and the Arts. The concentration for the lessons below will be based on the Child Labor in America during the 1900's. These lessons will use multi-intelligences to increase the mastery learning of all the students.

Open your eyes what do you see?

Lesson #1

Many years ago, one of the most famous social reforms, Lewis Hine took extraordinary photographs of children working in industries under horrific conditions. It is now your job to take your photographic eye and chose one of Hines's pictures and describe it in detail. What do you think it is saying? What does it represent about children working during that time? How do you think your picture influenced people during that time?

Objectives : Students will research a photograph as outlined above to make individual inference based on

visualization?

Materials : Computer lab, printer, a piece of notebook paper, pen/pencil, web site ([www. http://historyplace.com/unitedstates/childlabor/index.html](http://historyplace.com/unitedstates/childlabor/index.html)) or (http://www.archives.gov/digital_classroom/lessons/hine_photographs/hine_photographs.html)

Staffing needs : Teacher, paraprofessional (if needed) and computer specialist

Set-Up : Students will be instructed how to get to the specified web-site because it will be bookmarked by the computer specialist

Procedure :

1. Each student will individually go to the bookmarked website.
2. Student will read an abstract about Lewis Hine.
3. Student will choose a photograph taken by Lewis Hine and they will use visualization skills to make inferences
4. Students will record responses on paper
5. Students will write a brief summary based on individualized responses

Discussion : Teacher will review Lewis Hine by asking questions about him and his work.

Assessment : Students will write a brief summary about their individual photograph and they will share them with class the next day.

In the Coal Mines

Lesson #2

Objectives : Students will read the book, *Rebels in the Shadows* by

Robert T. Reilly so they can develop a mental picture of life in the coal mines in the 1900's while they develop and expand their fluency, vocabulary and comprehension skills of the text.

Materials : Book, *Rebel in the Shadows* by Robert T. Reilly, vocabulary notebook, pen/pencil, dictionary

Set-Up : Teacher will give a short description about book.

Background : Students will be given orally history about life on a coal mine during the early 1900's.

Staffing needs : Teacher, paraprofessional (if needed)

Lesson Procedure :

1. Teacher will start off reading in order to capture the students interest
2. Students can write down vocabulary words they do not know

3. Students will take turns reading orally

Discussion

Teacher will discuss reading with students in order to check for comprehension of material?

Extension Activity : Students will continue reading book for homework.

Make your vote count

Lesson # 3

Objective : Students will write a persuasive letter to the United States Supreme Court stating why child labor laws should be passed? Students must include what life is like without an education and the terrible working conditions that they face on a daily basis from their employer.

Materials : pen/pencil, notebook paper, example of letter

Staffing Needs : teacher, paraprofessional (if needed)

Set Induction : Students will be reminded to use formal letter writing skills, how to persuade their audience, give details, and elaborate.

Lesson Procedure :

1. Teacher will review formal letter writing skills
2. Students will brainstorm
3. Students will write persuasive letter
4. Students will edit letter
5. Students will produce a final copy

Upon completion students will read the next section of *Rebels in the Shadows* .

Does Child Labor Still Exist?

Lesson # 4

Objective: Students will discuss and research if child labor still exists?

Materials: computers, books, magazines, encyclopedias, paper, pen/pencil

Set- Up: Teacher will meet with Library media specialist to choose books, magazines and journal articles relevant to the topic beforehand.

Background : students will copy down key vocabulary terms relating to the assignment.

Enslaved, abduction, corruption

Staffing needs : teacher, paraprofessional (if needed), library media specialist

Set induction : Teacher will set the stage for the students by writing these questions on the blackboard; do you believe that slavery still exists in the world today? If so, where? What kind of labor do you think children do? Do you think children are happy living their life? Students share their answers with their classmates

Lesson Procedure :

1. Students will complete KWL chart about topic
2. Students will start research

Assessment

Students will comprise a 1 page paper stating if child labor still exist? If so, where? Do you think that it will ever change? What can you do to stop child labor?

Students must include a map of where the child labor still exists?

Can You Follow the Changes?

Lesson #5

Objective : Students will trace the child labor laws in the United States and create a time line and they will create an ad campaign to raise awareness of child labor that existed in United States during the 1900's.

Materials : textbook, computers, crayons, markers, construction paper, scissors, pen/pencils, glue and any other art supplies

Set-Up : Materials will be laid out for easy access prior to students' arrival

Background : Students will have good knowledge about the history of child labor laws so and they can use their books, peers and/or notes to assist them with their assignment.

Staffing Needs : Teacher, paraprofessional (if needed)

Set induction : Students will be refreshed with a brief history of child labor laws.

Procedure :

1. Students will get materials to make timeline (must be accurate)
2. Students will create their ad campaign (creative, colorful & persuasive)

Assessment :

Students will share in timeline and ad campaign with class to demonstrate a critical understanding of the material.

Homework : Students will continue to read *Rebels in the Shadows*.

Name: _____ Date: _____

Child Labor Laws

(figures available in print form)

Unscramble each of the clue words use your key terms list if needed. Copy the letters in the numbered cells to other cells with the same number.

Final assessment

Lesson #6

Objective : Students will assess their knowledge about child labor laws either one of two ways (skit or essay).

Materials : notebook paper, essay question

Set-Up : Students working on skit will meet with drama teacher in order to plan

Staffing Needs : Teacher, paraprofessional (if needed)

Procedure :

1. Students taking test will get essay question in class and they will have forty-five minutes to respond.
2. Students creating skit will develop their skit during drama class and they will share skit with the rest of the class grade will be based on (creativity, facts, voice (intonation))

Teacher Resources

Beers, Burton F. *World History Patterns of Civilization* . Prentice Hall, 1991. This comprehensive book for teachers was very helpful as a background resource.

Gourley, Catherine. *Good Girl Work* . The Millbrook Press, 1999. I used this book as a resource to get information on Jane Addams, the social reformer.

McCormick, Anita Louise. *The Industrial Revolution In American History* . Enslow Publishers, 1998. Easy to read chapters with great information.

Wellington, Harry H. *The Supreme Court and the Process of Adjudication Interpreting the Constitution* . Yale University Press, 1990. Good book to use as a resource for referring to the Constitution of the United States.

U.S Supreme Court Multimedia: Hammer v. Dagenhart

<http://www.oyez.org/oyez/resource/case/153/>

Child Labor In America 1908-1912

<http://www.historyplace.com/>

Child Labor Law at the Federal Level

<http://www.snolabor.org/laborlaw.htm>

Child Labor

<http://www.loc.gov/exhibits/treasures/trm032.html>

Images from The National Child Labor Committee Collection

<http://www.loc.gov/spcoll/169-2.html>

Keating-Owen Child Labor Law

http://college.hmco.com/history/readerscomp/gahff/html/ff_105400_keatingowenc.htm

Keating-Owen Child Labor Act of (1916)

<http://historicaldocuments.com/Keating-OwenChildLaborAct.htm>

The Disgrace of Child Labor

<http://www.snolabor.org/cartoon.htm>

History of Child Labor

<http://www.earlham.edu/~pols/globalprobs/children/Laila.html>

Child Labor in America

<http://memory.loc.gov/ammem/ndlpedu/lessons/98/labor/plan.html>

Child Labor Laws

<http://members.aol.com/ollie901/laborlaws.html>

Remembering Child Labor In America

Student Resources

Bartoletti, Susan Cambell. *Kids on Strike* . Houghton Mifflin, 1999. The author does a wonderful job capturing all of the jobs that children worked during that time. There were many great pictures by Lewis Hine included.

Freedman, Russell. *Kids At Work: Lewis Hine and the Crusade Against Child Labor* . Clarion Books, 1994. Freedman provides a wonderful portrayal of child labor in America during the early 1900s. It also shows Lewis Hine's work and his involvement as an activist.

Reilly, Robert T. *Rebels in the Shadows* . University of Pittsburg Press, 2000.

Great book for middle schoolers. Useful resource that discuss the living and working conditions in the coal mines during the late 1800's. The setting takes place in Pennsylvania.

Saller, Carol. *Working Children* . Carolrhoda Books, Inc., 1998. This is a good resource because it gives insight into the history of child labor reform during the 19th century.

Child Labor

<http://www.factmonster.com/ce6/bus/A0811850.html>

Child Labor In America 1908-1912

<http://www.historyplace.com/unitedstates/childlabor/>

Child labor in United States

www.ajkids.com

Child Labor in New York

<http://tenant.net/Community/LES/kleeck9.html>

Notes

1 Photographs of Lewis Hine: Documentation of Child Labor

<http://www.kentlaw.edu/ilhs/hine.htm>

2 The disgrace of Child Labor

<http://www.snolabor.org/cartoon.htm>

3 The disgrace of Child Labor

<http://www.snolabor.org/cartoon.htm>

4 Wellington, Harry H. *The Supreme Court and the Process of Adjudication Interpreting the Constitution* . Yale University Press, 1990.
Good book to use as a resource for referring to the Constitution of the United States. p. 163

5 Ibid, 173

6 Ibid, 172

7 Gibbons v. Ogden

<http://www.tourolaw.edu/patch/Gibbons/>

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