



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute  
1982 Volume III: The Constitution in American History

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## Introduction

The curriculum units that follow this introduction emerged from a seminar that considered a variety of topics in American Constitutional Law. The seminar proceeded on three levels. First, it attempted to describe several important ideas in American Constitutional Law. Second, it attempted to relate these ideas to the historical contexts in which they developed. Finally, it attempted to relate these ideas to major problems in contemporary American Life.

The seminar used primary sources throughout. The text of the Constitution, excerpts from debates and contemporaneous literature and selections from United States Supreme Court cases made up the weekly assignments. The fellows purchased “Constitutional Law, Cases and Materials” by Gerald Gunther. The Gunther casebook contains enormous quantities of original source selections. It is the most widely used casebook in Constitutional Law at American law schools.

The seminar sessions focused on four problem areas. The first was the problem of judicial review. To what extent and with what safeguards should courts have the power to declare acts of a legislature “unconstitutional”? What is problematic about the exercise of this power? These classic questions about the structure of American government and the special role of courts within it began our studies. The fellows read and discussed *Marbury v. Madison*, the case establishing the power of judicial review and read *Ex Parte McCardle*, a classic case concerning the power of Congress to limit the power of the Court by limiting its jurisdiction. The seminar also discussed analogous current attempts to limit the role of the Courts in controversial areas such as abortion rights and busing by limiting the Court’s jurisdiction.

The seminar next considered the role of the Court and Constitution in achieving or reaching for racial equality. The readings included *Brown v. Board of Education* (I and II) and selections from a series of later cases including *Milliken v. Bradley*. The seminar sessions included discussion of the basic principle of racial equality and of the more difficult questions of the most effective and proper remedy for conditions of discrimination.

The third topic considered by the seminar was that of the Constitutional place of family relations—especially the relation between parent and child. We discussed the power of the state to impose compulsory education upon children in the context of the case of *Wisconsin v. Yoder*, a successful protest by Amish parents against compulsory education beyond the eighth grade.

The final topic discussed in the seminar was that of freedom of expression. A brief survey of the many problems in this area was assayed. Discussion centered upon the expression of revolutionary or allegedly disloyal opinions and upon the public criticism of public officials.

Although consideration of the selected topics in Constitutional Law was a major objective of the seminar, a co-equal objective was the introduction of primary case materials as potential teaching tools. A fair amount of time was spent considering the nature of such materials and their difficulties. Several of the units which follow have, in fact, attempted to introduce such materials into the classroom. It is, of course, true that the peculiar style and often technical language of court opinions impose special difficulties for students, especially for those who are not good readers. The advantages that flow from such materials, however, may be retained by simplifying or simulating cases for those students who cannot easily assimilate the originals. The advantages of case materials are important. The principal advantage is the opportunity to consider general principles in the compelling contexts of practical decisions. Case materials are materials that flow from real situations—dramatic or mundane—of real people who have to make decisions that count. Yet these decisions become a kind of “law’s and have general implications as principles,

The practical implications of theory and principle and the theoretical implications of practice are thus the invaluable lessons learned from cases. The units that follow do not all treat the substantive subject matter that was discussed in the seminar sessions. But all of the units in one way or another display the interaction of theory and practice that characterize the case method. It has been my pleasure to work with the authors and to introduce these units to the reader.

Robert M. Cover

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