

Curriculum Units by Fellows of the Yale-New Haven Teachers Institute 1996 Volume I: Multiculturalism and the Law

The Impact of Culture on U.S. Law

Curriculum Unit 96.01.08 by Marcella Monk Flake

As a teacher in the Talented and Gifted Program, I have worked to develop a curriculum that deals with race relations and prejudice reduction. Through Constitutional Law, I have been able to expose students to the "growing pains" experienced by America as it tried to deal with its diverse groups of people. We have examined The Dred Scott Decision, Plessy v Ferguson, Korematsu v United States and other Supreme Court cases that dealt with racism.

Because our student population is very racially and ethnically diverse, I would like to take the unit a step further and investigate the role of culture in U.S. Law. I would like to present students with the challenge of deciding if present day immigrants have the right to bring with them their cultural practices, and if those practices should supersede U.S. Laws.

Contrary to the myth of America as "the great melting pot", our increasingly pluralistic society places great demands on our present judicial system. We have not blended into a single culture, but we bear evidence of may intact cultural and religious practices that are quite different from, and in some cases, unacceptable to "mainstream" U.S.A.

Today many U.S. citizens born and raised in the United States find themselves trying to define U.S. culture. Although a pluralistic religious community existed in the Colonial Period, there was a general consensus that this would be a country founded on Christian beliefs. The protestant culture influenced the formation and execution of the laws. It was primary in the common or public schools, provided an agenda for social reform, and served as the basis for forming denominational colleges during that period. During the 1830's, this Protestant domination became challenged, and that continuous challenging leaves us grappling with what we deem culturally acceptable or unacceptable.

In the 1830's, approximately 600,000 catholics arrived in the United States. During the 1840's, 1,700,000 more arrived while an additional 2,600,000 arrived in the 1850's. By 1880, there were approximately 6,259,000 Catholics in the U.S. Nearly half of them were Irish, about 1/4 were from Germany, 1/6 from England, Wales and Scotland. The rest were mainly from eastern Europe and Italy.

The immigration of the Jewish population in large numbers began in the 1880's. In the 1830's, Jewish people made up less than one tenth of a percent of the American population. By the mid 1920's, the number of Jews in America had jumped to 4 million. The American culture and legal system found itself faced with further changes to accommodate and incorporate the more diverse, Catholic, Protestant and Jewish Citizenship. With

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this coming together, America witnessed the emergence of a Judeo-Christian consensus.

As new immigrants with new faiths have come to our shores, we have found ourselves changing to further include our more recent citizens. In 1934, there was only one mosque and less than 20,000 Muslims in this country. In 1988, there were over 600 mosques or temples and more than 4 million Muslims in the U.S.

Although Hinduism is a family religion and most worship takes place in the home, it has been estimated that there were approximately 150,000 Hindus in the United States in 1940. In 1990, this number grew to about three quarters of a million. In 1909, there were approximately 3,000 Buddhists in America. In 1988, there were an estimated 600,000 Buddhists in the U.S.

U.S. culture and law continued to reflect the emergence of other "new religions" embraced by young Americans during the 1970's. Among these religions are Transcendental Meditation, the Hare Krishna Movement, Zen Buddhism, and the Unification Church. (the Moonies) Perhaps the greatest influence and challenge to America and its laws was the growing number of Americans who did not have any religious practices and objected strongly to the Judeo-Christian assertion of right and wrong. In the late 1980's, these new "secularists" made up approximately 11 percent of the U.S. population. Their views are seen to be "humanist" and they support what they feel are laws that are for the good of mankind, not laws based on a Judeo-Christian ethic.

While we are struggling to define our culture and devising and revising laws to meet continuing challenges from various groups within, we must make an attempt to show tolerance for the many cultural practices that have come into the U.S. via its most recent immigrants. In an attempt to foster greater justice and to show acceptance of varying immigrant customs and practices, some argue for a "Cultural Defense." Because of their culture, many immigrants find themselves in conflict with the legal system in the U.S. This cultural defense asserts that many immigrants and ethnic Americans experience legal and social problems as a direct result of their "different" cultural practices.

Because many immigrants are faced with laws and practices so different from what they are accustomed to, many find themselves on the wrong side of the law. In my unit, I briefly explore cultural and/or religious practices from Cuba, Japan, Southeast Asia (Hmong), Hawaii, Cambodia, Vietnam and Africa that raise legal questions when practiced in the United States.

In an effort to better understand a culture, one must examine the influence of religion, written and unwritten laws. In my unit, I present traditional cultural and/or religious practices of several ethnic groups now living in the United States. This view into their practices and beliefs, should help one ascertain the need for a "cultural defense." However unorthodox many of the practices may seem to mainstream America, many of these practices are alive and well within our country. Because of them, some recent immigrants may find themselves in direct conflict with the United States legal system.

In this unit, I also present conflicts that arise when religious cultures clash with U.S. Law. I present cases that deal with the religious cultures of the Amish, Catholics and Protestants. These cases, though centered around religion, address the issue of parental rights.

Through the use of this unit, students will participate in mock trials, simulations, town meetings and various role-playing activities. I will also use divergent art and writing activities, to allow students the opportunity to creatively express their knowledge of the subject matter.

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The Hmong of Southeast Asia:

The Hmong of Southeast Asia, call themselves "The Free People." They have maintained a simple life and cultural practices that have remained virtually intact for thousands of years. There are approximately 5 million Hmong living in southern China. Other Hmong live in Laos, Burma, Thailand, and Vietnam. Presently there are over 100,000 Hmong people living in the United States.

Most Hmong outside of the U.S. have chosen to live simple lives in the mountains. They have become known as warriors because of their unwillingness to bow to stronger powers. During the 19th century, they fled China to escape a harsh ruler. They opposed taxes imposed upon them by French rulers in Southeast Asia, and served as guerrilla fighters for the Allies in WWII. The Hmong practice several religions, Animism, Shamanism, Confucianism, Buddhism and Christianity.

The Animists believe that there is life after death. Although many Hmong believe that one will practice his/her religion in one's life after death, they believe the purpose of their worship is to state their intention to live good lives to their loved ones who have already passed away.

Shamanism is part of Hmong Animism. A Shaman is believed to be one who possesses certain powers from heaven to cure sickness and to eliminate ghosts and other spirits.

Confucianism contains three major theories adhered to by the Hmong:

- (I) It is believed that humans are the center of nature and that heaven and earth were created for the benefit of human beings.
- (2) Humans are classified in three groups, and their importance is in this order, the group, the family, and the individual.
- (3) Human nature is divided into three categories; aggressive, restrained and passive.

Marriage:

In the Hmong culture, there are three ways one may acquire a wife; through pre-arranged marriage, eloping or capture. Marriage, in this culture, presents a special problem in the context of U.S. law because of age. Within the Hmong culture, the desired age of marriage for a girl, is between the ages of 14 and 18 years.

A young girl living within the U.S. may find that her parents have accepted a bride's price for her marriage to an older man. The girl is expected to accept this arrangement, leave school and become a wife and mother. She would then become a part of her husband's clan, and live in a multi-generational home inclusive of his parents and perhaps other siblings.

A couple may also become husband and wife by simply living together. Lastly, a young girl may become a bride by being captured by a suitor. If a man sees a girl that he would like to have as his wife, he may confront her and make his intentions known. The young girl, without her parents' approval or knowledge, may accept his proposal of marriage. Although the female is usually underage by U.S. standards, the suitor then takes the young girl to his home where they begin to live together as husband and wife. She becomes a part of his

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family's clan. They have 24-48 hours to contact her family notifying them of the marriage or "capture" of their daughter.

Cultural Conflict:

There are many cultural and religious practices that may be problematic for recent immigrants to the U.S. In California, two Cambodian refugees, both in their thirties were charged with cruelty to animals after killing a German Shepherd for food. The killing and eating of dog meat was a common practice in their country and they did not know that it was prohibited in the U.S. The judge dismissed all charges against them. He ruled that it was not illegal for them to kill the animal for food as long as the animal was not killed in an inhumane way. The judge supported his position by paralleling their behavior with the common occurrences in slaughterhouses.

A Vietnamese folk remedy for headaches, has been the impetus for the investigation of many Vietnamese parents. To rid one of a headache, the serrated edge of a coin is used to massage the shoulders and back. This practice leaves bruises that are quite visible.

A teacher, noticing bruises on a Vietnamese child, reported the family to social services. Because social workers are obligated to investigate any charges of child abuse, charges were made against the child's family. When the prosecutor learned of the folk remedy used, the charges were dropped.

The Miami suburb of Hialeah was involved in a legal battle over the rights of a religious group to sacrifice animals as part of their worship. This ancient religion called Santeria, originated in Africa and is still practiced in Nigeria. This religion, requiring the sacrifice of chickens, pigeons, ducks, doves, turtles, sheep and goats, was brought to the U.S. in the 1960's by Cuban refugees.

The church ministers argued that if the state of Florida allowed the killing of animals for sport and food, that it should not ban animal killing for religious purposes. The worshippers viewed this ban as a government infringement, because religious expression was basically the only unacceptable reason for killing animals. The ministers also argued that Santeria should become institutionalized like other faiths so those who practiced it, could become a part of the U.S. mainstream.

In the Samoan culture, there is a forgiveness ritual called an "ifonga". A Samoan immigrant living in Hawaii was stabbed to death outside of his home by a fellow Samoan. The assailant, Tonny Williams, was placed in jail and charged with murder. William's family responded to these events by performing an ancient ceremony called an ifonga.

During the ifonga, the family of the assailant, the Williams family, asked forgiveness of the family of the victim, the Foutuuas, by having two high priests place gifts of fine mats, food, handicrafts and money at their home. The Foutuuas accepted, and gave a gift to the Williams family. In accepting their gifts, the Foutuuas agreed that they would not testify in court. Without their testimony, Tonny Williams would receive a ten year prison sentence rather than a life sentence. As a result of this ceremony both families have a good relationship.

Although the ifonga restricted the judicial system, the families involved did not view it as a way of beating the legal system. While it is not uniformly accepted, courts in California and Hawaii are looking for ways to integrate the ifonga into the justice system.

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Japan:

In Japan, the resolution of disputes are quite clear and can present problems for Japanese immigrants in the United States.

- 1. First and foremost, the social unit or relationships are more important than individuals. Disputes show disharmony and should be avoided at all costs.
- 2. Girl is the guide for all social behavior. Although it is unwritten, it shows the obligation of one person to another.
- 3. One should possess "ninjo" or warm-heartedness when dealing with people. Carrying out one's obligations and duties should never be seen as burdensome.
- 4. When resolving a dispute, not matter how severe, one must always work to preserve the relationship. Having someone win and someone lose, would damage the relationship.

Several cases involving Japanese Americans show the dilemma of culture versus the law. In the Yamanaka Case, neighbors were asked to baby-sit a couple's three year old son, Yasuyuki. The neighbors took the child with them to the beach where he drowned.

The Yamanakas sued their neighbor for negligence, and were awarded \$24,100 in damages. After their victory in court, the Yamanakas received hundreds of telephone calls denouncing their behavior. Others in their culture were not only appalled by the fact that they accepted monetary compensation from their neighbor, but also for taking the neighbor to court at all. The family could not stand under the social pressure. In less than a month, they went back to court to return the money and to drop the case.

The case of Fumiko Kimura is perhaps one of the most distressing cases thus far. Mrs. Kimura, who lived in Los Angeles, received a phone call from a Japanese-American woman who claimed to have had a long term affair with Mrs. Kimura's husband. The "other woman" wanted to end the relationship by telling Mrs. Kimura all about it.

The call was made on January 20. On January 29, Mrs. Kimura walked into the ocean carrying her two children, a six month old daughter and a four year old son. While trying to drown herself and the children, she was spotted by two teenagers who jumped in to rescue them. Mrs. Kimura lived, but both of her children died.

When arrested, Mrs. Kimura explained about the phone call and how her husband's infidelity had brought shame upon the family. The shame was particularly placed on her, because in her culture she had failed as a wife. In the Japanese culture, an honorable way of ridding the family of such shame, is by committing a form of parent-child suicide called "oyako-shinjo".

Because the Japanese culture views the children as extensions of the mother, the children also had to die. To allow the children to live; would have placed them in a terrible situation within their culture. The children would have been ostracized and the targets of constant harassment, contempt and ridicule. Mrs. Kimura faces the death penalty if she is convicted on the two counts of first-degree murder under California law.

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Religion and Education:

One of the earliest challenges of religious rights of families versus state authority over children, came in 1925 in Pierce v. Society of Sisters. The Oregon Compulsory Education Act required parents to send their children, ages eight to sixteen, to public schools only. This authority of the state versus the right of parents to select a nonpublic school, whether military or religious, was litigated in this landmark case. The courts found in favor of the parents' right to send their children to a religious school. The court saw this as the parents' fundamental right to direct the upbringing of their children and to choose between public and nonpublic education. This choice was deemed a Fourteenth Amendment right.

In 1972, almost fifty years later, the power of the states was once again challenged in Wisconsin v. Yoder. Wisconsin law compels children to attend school until age sixteen. Yoder and other members of the Amish community refused to send their 14 and 15 year old children beyond the eighth grade. Yoder and others were found to be in violation of the law and were fined \$5.00 each.

The parents saw this ruling and the compulsory school attendance law, as a violation of their First and Fourteenth Amendment rights. Yoder sincerely argued that he and the others risked not only censure from their community, but possibly the salvation of their children and themselves if the children continued to attend school. It was found that the compulsory education requirement interfered with the free exercise of their religious beliefs. The ruling was overturned, and Yoder became a decision that greatly affected the rights of parents regarding the education of their children.

In New York, many parents expressed a desire to have their children receive religious instruction during the school day. Although their children were in public schools, parents felt that religion should also be a part of their daily instruction. A New York statute allowing release time for public school students to attend religious classes held off school property, was challenged. An earlier case, Illinois ex rel McCollum v. Board of Education, was found to be unconstitutional. Religious classes were held in the schools, and funding came from the school district.

However, Zorach v. Clauson (1952) was held constitutional. The court found that there was no coercion to get students to attend these religious classes. The courts found that the statute did not prohibit the free exercise of religion, nor was it seen as a means of establishing religion. Unlike Illinois ex rel McCollum v. Board of Education, 1948, no public school facilities or funds were used for religious instruction. The religious community involved, financed everything, including the applications for participation.

Lesson Plan 1:

Objective Students will demonstrate knowledge of U.S. marriage laws as they pertain to minors. Students will present an argument for or against the alteration of these laws to accommodate marital practices of the Hmong culture.

Student Information:

Formal Requirements for Marriage in the U.S.

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There are three requirements that must be met in order to have a valid marriage.

- 1) Both parties involved must consent to become married. Both parties involved must not only consent, but must also be competent in understanding the nature of the act of marriage.
- 2) There must be solemnization of the marriage. Generally, states require blood tests and a marriage license. The license usually becomes valid three days after it has been issued and expires after 180 days.

Common Law Marriage:

Common law or informal marriage, in some states, is a valid marriage entered into without formal solemnization. (blood test, marriage license, or public ceremony) In common law marriages, the two parties live together as husband and wife and express an intent to be married. Because there are no records of common law marriages, it is sometimes difficult to prove that an exchange of vows or intent were exchanged. Because of this, legislatures in many states seek to abolish this form of marriage.

Age Requirements:

- 1) At age 18, people are allowed to marry freely.
- 2) Parties age 17, may marry if they obtain parental consent.
- 3) In some states, a court order is necessary to authorize the marriage of parties less that 17 years old.

Effect of Non-Compliance:

If there has been disregard for the age requirements, then the parties involved are in non-compliance. If one or both of the parties are underage, the marriage is not legal or it may be voidable. The marriage becomes validated when the underage person or persons become 18, and show an intent to ratify the marriage. Depending upon the age of the parties involved, statutory rape laws may apply.

Hmong Marriage Customs:

Below are several unwritten marriage customs practiced by the Hmong who live in Laos.

- 1) The minimum age of marriage without parental consent is 14 to 18 years of age.
- 2) If one or both of the parties is younger than 14, consent must be given by the parents or quardians.
- 3) In Laos, men may have more than one wife at a time, but women may only have one husband.
- 4) A man or boy may take a girl or woman home to live with him. This form of marriage is called
- zij pojniam or "capture". This is not kidnapping, because the female must give her consent. The

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groom and his family have 24-48 hours to make the bride's family aware of the "capture."

- 5) The parents and clan leaders of the groom must go to the house of the bride to make all marriage arrangements. Also, the groom's family is responsible for all of the wedding costs.
- 6) Parents, relatives and leaders of the wedding issue a certificate of marriage and announce to everyone that the couple is now married.
- 7) In the eyes of the community, the husband and wife are married for life. The wife is under the reasonable control of her husband, and no one is to interfere with thei *r* marital affairs.
- 8) If there are marital problems, the couple should turn to their parents and clan leaders for help. They are viewed as authorities on matters concerning marriage.
- 9) It is the responsibility of the man to take care of his wife and children.

Activity Students will participate in a town hearing in which proponents and opponents of the Hmong community marriage practices come together to debate the right of parents to encourage the early marriage of their daughters.

The town meeting will be presided over by Judge Flake, who sees this as a fact finding meeting. She is interested in hearing what everyone has to say, especially the parties involved. She will allow protest signs in the town meeting hall.

All students will receive a copy of the information for role-play. This will give students a point of reference when presenting their argument for or against the ban on Hmong practices.

The classroom will be set up auditorium style. Every member in the class will carry a sign with a graphic and slogan they designed for the hearing. Each sign should take a clear stand for or against a ban.

All interested parties will be allowed to speak and Judge Flake will decide for or against a ban based on the arguments presented.

Procedure:

- 1) The teacher will copy and distribute the information on U.S. and Hmong marriage customs to students.
- 2) The teacher will assign students to various roles, and distribute role-play information particular to each character.
- 3) Students who do not have a specific role, will serve as proponents and opponents of a Hmong marriage practice ban. *Please note: The teacher may have to designate certain students to opposing sides to ensure a balance.

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4) Students will use art and creative writing skills to produce signs and slogans for and against standard U.S. marriage laws and / or against Hmong marriage practices.

Role-Play Information:

(Hmong Mother #1)

You are the mother of a 14 year old girl. A Hmong man, age 22, wishes to marry this daughter. You and your family are very proud, and have negotiated a bride's price for her. You are happy that your daughter will not be found among the many women who at age 18, are still without a husband to care for them. The clan and family of the groom will be visiting shortly to finalize the arrangements. You can hardly wait! It seems like only yesterday when you too were a young bride at 15 years of age. Your daughter has done well.

(Hmong Mother #2)

You are very happy that your son has decided to many. It was wise for him to select a young bride so it will be easier to train her in the ways of your clan. You are anxiously awaiting the day that she will arrive in your home. She and your son will sleep in the small room near the kitchen. It will be nice having another pair of hand to help with the household chores. Quite frankly, it will be nice having a new daughter.

(Hmong Father # 1)

You and your wife are pleased with the plans set forth by the groom's clan. Ishri, your 14 year old daughter, has done well. You hope she has not been ruined by the American culture that you have tried desperately to protect her from.

(Hmong Father #2)

You, like Ishri's father, have tried to raise your children in the ways of your people. You are glad that your son is prepared to take a wife. He is hard-working and will make a good husband. He will provide well for his new bride and their children. You are a little concerned because you have heard that she may have some career ambitions. You hope she's not too "Americanized" or there may be trouble.

(Ishiri) Age 14

You have just been told by your parents that the very handsome cousin of Ishi, your best friend, would like to marry you. You have grown up in a traditional Hmong home where parents are always respected and the need to preserve the culture is enforced. Although your mother and sister both married at early ages, you're not sure that's what you want to do. You have watched some of the mothers of your non-Hmong friends who have pursued careers outside of the home. From your perspective, there are pros and cons to their life choices just as there are for your mother. These women look prosperous, drive nice cars and go on expensive vacations. They have their own money and they don't appear to feel inferior to their men. On the other hand, many of them have unhappy marriages, their children are raised by strangers from the time they are infants. They don't have the love and security of an extended family whose goal is to see the family remain strong. You are

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an exceptional student and you love children. You've toyed with the idea of becoming a pediatrician. Your mom says that love for children will make you a better wife and mother.

(Isho) Age 22

Your parents have spoken to you extensively about a need for a wife. They feel that if you wait much longer, you will have to pay a greater bride's price for a girl as young as Ishiri. You spotted her on several occasions, and decided that you would like to have her as your bride. Your first cousin Ishi, is her best friend. She has told you of her intelligence and love for children and traditional values. She has also warned you that she is a dreamer who is torn between the values she has learned at home and those she has learned from her "other" friends. You really want a traditional life. You like knowing that your role is clearly defined as the breadwinner and head of the family. You feel a strong family unit may be destroyed if the roles for husbands and wives are not traditional.

(Ishi) Age 15

You are excited about the marriage between your cousin, Isho, and your best friend, Ishiri. You can't wait until someone has asked for your hand in marriage, after all, you are 15. When the two of them marry, you will have a chance to spend more time together, because you will be in the same clan. Your only worry is that Ishiri may be too American. Her parents have not been as strict as yours on some issues, and Ishiri has been allowed to become friendly with many outsiders. She sometimes talks of high school and college. She's even mentioned perhaps becoming a doctor. Overall, you think things will work out all right.

(Judge Flake)

A case has been brought against the parents of Ishiri. School officials were notified that she would be withdrawing from school to become a wife. Social services became involved, and the case has come before you. You have angry members of the Hmong community who feel that U.S. courts should not meddle in their cultural affairs, while there are child protection and women's rights agencies calling for laws against marriage customs that restrict the social educational, and economic advancement of young girls and women.

(Attorney Williams) Attorney for the Hmong

Given all the information presented, you must make an appeal for the rights of the Hmong community to peacefully exist in the U.S. with their culture intact. You must present evidence showing that women in this culture are not harmed, and that it is through the "arrogant eyes" of non-community members that injustice and exploitation of women and young girls is seen.

(Attorney Wamer) Attorney for the State

You are appalled by the practice of the Hmong community. You feel the lives of young women are being sacrificed to preserve the traditions of an antiquated culture. You must describe the ill effects of these marriage customs and argue for a ban of these practices.

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Lesson Plan 2:

Objective Students will compare and contrast three or more cases that show cultural conflict. Students will use visual art, creative writing skills, poetry and/or prose to demonstrate learning.

Procedure

- 1. The teacher will arrange students into diverse groups. (limit 4 per group)
- 2. The teacher will distribute summaries of the cultural conflict cases presented in this unit.
- 3. Students will read and discuss the cases with members of their groups.
- 4. Students will design and produce a large group newspaper, inclusive of name of newspaper, date of publication, editor, contributing writers, staff reporters, etc.
- 5. Students will write poems, news articles or editorials expressing their views about these cultural/law issues.
- 6. Visual artists may draw political cartoons or ads to express their views.

The end result of this activity should be a visually attractive, replica of a local newspaper. All articles, ads, name of paper, etc. should relate to the cases presented.

Lesson Plan 3:

Objective Students will use music and writing skills to discuss legal/cultural conflict in America in the form of a protest song.

Procedure

- 1. Students may work in small groups. (limit 4 per group)
- 2. Students must choose one or more cases from the unit.
- 3. Students will select a melody from a song familiar to all members of the group.
- 4. Students will write lyrics that express cultural conflict as presented in one or more of the cases.
- 5. Students may also choose rap as an alternative form of expression.
- 6. Students will perform their music for the class.

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This book peers into institutionalized racism, and challenges teachers to develop curriculum that reflects a more anti-racist and multicultural approach to education.

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This book includes reproducible texts and worksheets that explore the drafting of the U.S. Constitution as well as present day laws and Constitutional Amendments.

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A clear presentation of land mark decisions that forever changed U.S. Law and the Constitution.

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This book helps students identify and address social issues they would like to become involved with. There are practical steps on a variety of issues from writing editorials, to working to change laws.

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Using the calendar, the author presents 365 ways to develop an appreciation for various cultures. Many of the activities include art, writing and music.

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