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Teaching American History
A More Perfect Union: The Origins and Development of the US
Constitution

Constitutional Empathy



Massachusetts Curriculum Framework Standards US I:

USI.7 Explain the roles of various founders at the Constitutional Convention.

Describe the major debates that occurred at the Convention and the “Great Compromise” that was reached. (H, C)

- A. the distribution of political power
- B. the rights of individuals
- C. the rights of states
- D. slavery

A. Benjamin Franklin

B. Alexander Hamilton

C. James Madison

D. George Washington

USI.8 Describe the debate over the ratification of the Constitution

USI.9 Explain the reasons for the passage of the Bill of Rights. (H, C)

Time Frame: 3-4 class periods (45 minutes each)- can be extended if needed

Sophomore Classes B week

Written for College Prep/Honors level (may be altered to be suitable for Tech-Prep students)

Objectives:

1. Students will be able to interpret and analyze primary source documents
2. Student will be able to improve visual literacy and oratorical skills
3. Students will be able to deduce the feelings of various founders at the Constitutional convention
4. Students will be able to describe the debates over Ratification
5. Students will be able to analyze a Supreme Court Case and make a ruling based on that analysis
6. Students will be able to synthesize information in order to better understand the concept of “original intent”

Background:

After spending a grueling summer in Philadelphia arguing, compromising, writing and finally “finishing” the new Constitution, only 40 of the original 55 delegates remained to sign the document on September 17, 1787. During the four-month session, the Founding Fathers discussed and debated, often heatedly, many issues that the Constitution addresses. When it went to the states for their ratification votes, the debates were intense. A $\frac{3}{4}$ majority [of the states] was needed to ratify. The Federalists led by James Madison, Alexander Hamilton and John Jay argued in favor of ratification, while Anti-federalists, George Mason, Patrick Henry, Luther Martin and Richard Henry Lee argued against ratification. After much contention, the Federalists won out, but not without a guarantee of a Bill of Rights. (Mulder)

Day One:

Materials:

5 Envelopes, each containing the following items

1 Die

12 Paper Clips

Copy of the following [rhymed] instructions:

It's time to play a little game.

No two groups will play the same.

What and how is up to you.

The group must choose what it will do.

Use the things that you find here.

It won't take long; you need not fear.

In six short minutes you'll share your fame

By telling how you played your game.

Procedure:

1. Arrange students into groups of 3-5 (depending on class size) [3 min]
2. Distribute 1 envelope (containing die, paper clips and instructions) to each group-reminding students that they are not to open the envelope until instructed to do so
3. Once all materials are handed out, instruct the students to open their envelopes and begin [5 min]
4. Circulate around the room asking students to remember how they are feeling while playing this game. If asked a question, simply tell students to follow the directions given.
5. After 6 minutes, ask the students to stop playing their game
6. Ask a spokesperson from each group to describe the game they devised, and how they felt as they played. Some of their remarks might include the following: we were confused, we thought it was dumb, we did not know what to do, or we were excited about getting to make it up as we went along.
7. List the responses on the chalkboard [5-7 min]

8. After all groups have reported, begin describing the Constitutional Convention:

In May of 1787, outstanding citizens from 12 states gathered in Philadelphia. They planned to be there only a little while. They had come to improve the Articles of Confederation and try to create more unity and cooperation among the states. Rhode Island sent no representatives. How did those men feel that May? (Read the responses the students offered in reference to their feelings toward the game.)

Today, you used 12 paper clips. They represent the patriots who came from the 12 states. The die represents luck and each day that rolled around from May 25 to September 17. You figured out how to play the game. They figured out how to write our Constitution. And while they went about the great task of writing the United States Constitution, they probably felt much the same as you did today.

Total time- about 20 minutes

Materials:

White board

Markers

Something for students to write with

Piece of white lined paper for each group

Procedure: approximately 20 minutes

1. Assign each group a state from among the following:
New York South Carolina Pennsylvania
Virginia Rhode Island
2. Give each group a bio sheet of each state giving the statistics of that state for the 1780's
<http://www.rilin.state.ri.us/studteaguide/RhodeIslandHistory/chapt3.html>- RI
<http://www.legis.state.pa.us/WU01/VC/visitor%5Finfo/pa%5Fhistory/pa%5Fhistory.htm> Pennsylvania
<http://www.dos.state.ny.us/kidsroom/nysfacts/hstry1.html> NY
<http://www.socialstudiesforkids.com/usstates/southcarolinahistory1.htm> SC
<http://www.socialstudiesforkids.com/usstates/virginiahistory2.htm> VI
3. Ask the students to come up with answers to the following questions, and have them write their answers on the piece of paper provided to them. Remind them that the point is to get as much power for your state as possible!
 - a. Who should be eligible to vote?
 - b. How should we decide how many representatives each state gets- a set number or based on population?
 - c. Should our government have 1 House to represent the people or 2?
 - d. Should we have a strong or weak national government?
 - e. What should we do, if anything, about slavery? The slave trade?
4. Once students have answered, ask for a spokesperson, different from the first activity, to read their answers aloud.
5. Once everyone has read, ask students if they noticed any trends? (bigger states vs. smaller states, North vs South)

Homework:

Students will read about the Great Compromise that was made at the convention and answer questions pertaining to the reading.

<http://www.cyberlearning-world.com/nhhs/amrev/begin.htm>

- 1) What two plans were combined to form the great compromise?
- 2) Who proposed the Great Compromise?
- 3) The Great Compromise is also known as the _____ Compromise.
- 4) How many Senators does each state have? Which states would this favor?
- 5) What is the number of members of the House of Representatives for each state based on? Which states would this favor?

Day 2

Materials:

US Constitution- specific parts of

Overhead or Smartboard
Kamen Readings
Paper and Something to write with

Procedure:

1. Go over homework from the night before. Discuss what the Compromise was, and which parts of it favored large/small states.
2. Explain to students that the Connecticut Compromise was only one compromise made in the drafting of the Constitution
3. Put a copy of the Constitution on the board. Read aloud to students.
4. Ask students what they heard concerning word choices or lack of words in particular areas. Point out the words Men, the non-use of the word Slave/Slavery
5. Ask students why they think the Constitution was written that way.
6. Ask students, as representatives of the states they were yesterday, what they think of the ending of the slave trade (externally).
7. Ask students if they would have agreed to this Constitution, as is, as a representative of their given state. Have them write down a response and explain why they feel that way.

Approximately 20 minutes

Procedure 2:

1. After students have turned in their explanations, have them work in pairs to dissect the Kamen readings.
2. Each pair will be given a letter written by one of the founders, concerning ratification of the Constitution
3. Ask students to highlight what they feel is important and underline what they don't understand
4. Have students write a synopsis of the letter- what was being said, what was the tone that was used, and what feelings did they get after reading the letter.
5. Have students report to class what they found

Approximately 20 minutes

Homework:

Have students write a response letter back to the sender of the letter they received. Students need to take into account who they are writing as (where they are from, their stance on ratification etc).

Letters may be handwritten or typed, but should follow the same format as the letter in which they read (similar greetings, etc)

Day 3:

Materials:

Federalist Papers

Anti-Federalist Papers

Procedure:

1. Separate Class into 2 groups on opposite sides of the room facing each other
2. Give one side of the room several Federalist papers and the other several Anti-Federalist Papers- see attached
3. Have the students divide the reading material so they can read the papers in pairs. Have them highlight important information and underline phrases they don't understand
4. Circulate the room and answer any relevant questions the students may have.
5. Have the students re-group and make a list of the 5-8 most important reasons for ratifying/not ratifying the Constitution

Approximately 15 minutes

6. Tell students that they are going to be able to debate (with the teacher as the mediator) over whether or not they should ratify the constitution.
7. Give the students each a card (from a deck of cards)- each student must express one idea, or make a retort of some kind. Once they do, they turn in their card. Not until all cards are turned in can a student speak for a second time (students may help each other in what to say).

Approximately 15 minutes

8. Explain to students that the debate over ratification got very heated and came close to not getting the needed majority.
9. Ask students why they think the remaining states finally decided to ratify... what could've happened?????

Homework:

Have students read the Bill of Rights to the Constitution. Students should answer the following questions based on what was done in class and the reading of the Bill of Rights-

1. What do you believe to be the strongest Federalist arguments against a Bill of Rights?
2. What is the best Anti-Federalist response in favor of a bill of rights?
3. In your opinion, which of the Amendments in the Bill of Rights is the most important and WHY?

**As an end of Unit Assessment:
Students will assume the role of a US Supreme Court Justice. They
will read the following case and put their verdict, with explanations
as to why, in writing.**

Is the Execution of a Juvenile "Cruel and Unusual Punishment"?

From Advanced Placement American Government:
A Guide for Teachers.

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William Wayne Thompson

v.

**State of Oklahoma
(Docket No. 86-6169)**

Issues

-May the court impose capital punishment for crimes committed when the defendant is under the age of eighteen?

-Were the photographs of the deceased body of Charles Keene admissible as evidence in this criminal proceeding?

Facts

In the early hours of January 23, 1983, four people abducted Charles Keene from a trailer in Amber, Oklahoma. They eventually transported him to the banks of the Washita River, murdered him, and threw his body in the river. A month later, the police arrested William Wayne Thompson for murder. Thompson was fifteen years, ten and one-half months old when Keene was killed. He was originally treated in the Oklahoma juvenile justice system. A hearing was held in juvenile court in March, 1983, to determine whether there was "prospective merit" to the charge of murder in the first degree. The hearing included two witnesses who testified that they heard Thompson admit that he had participated in killing Keene. At the conclusion of the hearing, the court made a finding of "prospective merit."

A second hearing was conducted in April, 1983, to determine whether Thompson was "amenable"

(responsible, answerable) to the juvenile justice system or whether he should be certified to stand trial as an adult. Following the hearing, the court referred to the statutory guidelines on amenability and ruled that Thompson should be certified to stand trial as an adult and be held accountable for his actions as if he were an adult. This order was later affirmed by the Oklahoma court of criminal appeals.

Thompson's case was eventually severed from the other defendants and he was tried alone in December, 1983. At the close of the evidence in the trial, the jury returned a verdict of guilty of murder in the first degree. The penalty phase hearing was then held to determine whether Thompson should receive the death penalty. After hearing additional witnesses, the jury found an aggravating circumstance — that the murder was especially heinous, atrocious, and cruel. It thus held that Thompson should be executed.

The Oklahoma court of criminal appeals affirmed the judgment and sentence. First, it considered the issue of admitting into evidence photographs of the body of the deceased; the body had been in the river for almost one month before it was recovered. The court found the photographs to be "ghastly," but it held it was harmless to admit them because of other strong evidence of Thompson's guilt. Second, the court found that sentencing a person to death who was fifteen years old at the time of the offense to did not constitute cruel and unusual punishment. The United States Supreme Court granted certiorari on both issues.

Arguments for William Wayne Thompson

Executing a person for a crime committed while he was fifteen years old can serve no valid purpose.

The death sentence is not proper retribution for the acts of a fifteen year old.

Juveniles are not as personally responsible for their conduct.

Using the death penalty in this case deviates from the court's teaching that the meaning of the Eighth Amendment must be drawn, "from the evolving standards of decency that mark the progress of a maturing society."

The fact he was to stand trial as an adult allowed the jury to avoid considering youth as a mitigating circumstance.

Circumstances of the case show the deceased was married to Thompson's sister and Thompson was aware that the deceased regularly abused her.

Oklahoma's Arguments

Chronological age is indeed a mitigating circumstance but should not be an absolute bar to imposing the death penalty.

Individualized consideration must be given to each defendant in a death penalty hearing.

No "bright line" age suggests itself and the court should not impose one.

Retribution and deterrence do apply in juvenile death penalty situations.

There is no proof that the death penalty is not a deterrent to juveniles.

Nineteen states at this time permit the execution under certain conditions of a person under sixteen.

Other Arguments

For William Wayne Thompson

Executing a person who was a child of fifteen at the time of the crime is cruel and unusual punishment.

The reliability of the sentencing in this case was undermined by admitting highly inflammatory

evidence that prejudiced Thompson's right to fair, full jury consideration of all mitigating circumstances, including age.

For Oklahoma

Setting a minimum age when imposing the death penalty is an inappropriate use of the court's power under the Constitution.

The admission into evidence of color photographs of the victim, which showed the points of entry of the two bullets did not render Thompson's trial or sentencing so fundamentally unfair as to deny due process.

Determining Factors

Amendment 8 - excessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Amendment 14 - Section 1: no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Today, fifteen of the thirty-six states which have a death penalty expressly exclude youths under sixteen, seventeen, or eighteen from their statute. Twelve other states established a minimum age limit through either their juvenile court waiver statutes or their statutes giving concurrent or exclusive jurisdiction to criminal courts for capital murders committed by offenders of a certain age or older. Six other states expressly require the sentencing body to consider the youth of the offender as a mitigating factor. On the other hand, only three states have no legislative provision for either establishing a minimum age for the death penalty or requiring that youth be considered as a mitigating circumstance. Thompson also cites international law in support of his argument.

Consider the following:

If you were a Supreme Court justice, how would you rule in this case? How would you interpret the Eighth and Fourteenth Amendments or previous court decisions?

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As a follow-up to the activity, the next day, teacher should ask students to volunteer their responses. After listening to several, ask the students to answer the following questions:

1. Do you think the founding fathers ever thought that the Constitution they created would last as long as it has?
2. Do you think they would agree with the way you ruled in the case?
3. Can you ever really be sure of either one of those answers? Why?
 - a. At the third question, teacher should bring up idea of “original intent” and how it plays a role in the decision making process of the Supreme Court

Sources Used [in order of appearance for ease of use by instructor]:

1. www.doe.mass.edu, Curriculum Frameworks, Social Studies
2. (Mulder, Janet. <http://score.rims.k12.ca.us/activity/ratification/>)
3. State historical websites:
 - *<http://www.rilin.state.ri.us/studteaguide/RhodeIslandHistory/chapt3.html>
 - *<http://www.legis.state.pa.us/WU01/VC/visitor%5Finfo/pa%5Fhistory/pa%5Fhistory.htm>
 - *<http://www.dos.state.ny.us/kidsroom/nysfacts/hstry1.html>
 - *<http://www.socialstudiesforkids.com/usstates/southcarolinahistory1.htm>
 - *<http://www.socialstudiesforkids.com/usstates/virginiahistory2.htm>
4. <http://www.cyberlearning-world.com/nhhs/amrev/begin.htm>
5. The US Constitution:
6. Kammen, Michael. *The Origins of the American Constitution: A Documentary History*. Penguin Books, NY, NY. 1986.
 - Part Two: Private Correspondence:
 - Readings: 11, 16, 17, 22, 25, 30, 34, 42
 - Part Three: Selected Federalist Papers:
 - Readings: 60, 63, 64, 70, 74, 78,
 - Part Four: Selected Anti-Federalist Papers
 - Readings: 81, 82, 83, 84
 - *all readings may be cut due to class size, time availability and student ability
7. Bill of Rights:
8. **Is the Execution of a Juvenile “Cruel and Unusual Punishment”****Advanced Placement, American Government © DAC. William Wayne Thompson v. State of Oklahoma (Docket No. 86-6169). Taken from a photocopy of a photocopy with no other information.**

