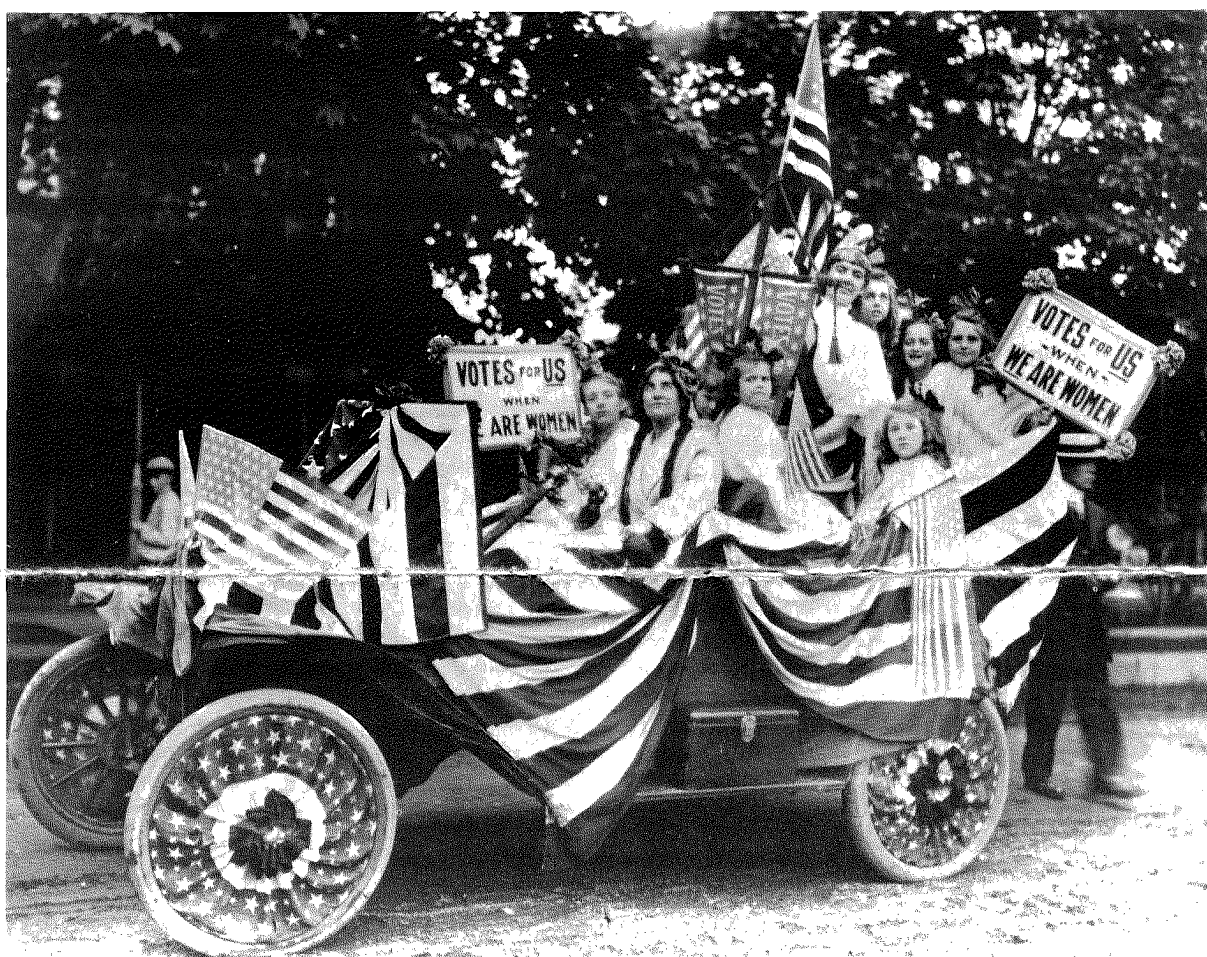


ART TO ZOO

News for Schools from the Smithsonian Institution, Office of Elementary and Secondary Education, Washington, D.C. 20560

September 1987

The Constitution Lives! How it Protects Your Rights Today



Children in a 1913 parade in favor of giving women the right to vote. Seven years later, the Nineteenth Amendment added this right to the Constitution.

"It's not fair!" Every child has said this—and every parent and teacher has experienced how very difficult it is sometimes to be fair.

This issue of ART TO ZOO uses the notion of fairness to introduce children to the United States Constitution—in particular, to introduce them to the rights that the Constitution guarantees to individuals.

Underlying these rights—as they are interpreted today by the Supreme Court—is the idea that it is fair for *all* individuals to have the same basic rights.

Of course, limits to these rights sometimes have to be set—but ideally, this happens only to keep the rights of one person from interfering with the rights of others—or with the needs of the group as a whole.

Most families base their rules on a similar notion of fairness. Because of this, it is possible to take a classroom approach that moves gradually from the children's everyday rights as members of a family, to Americans' constitutional rights as citizens of this country.

To create this bridge from the familiar to the unfamiliar requires several steps that build closely on each other. For this reason, the Lesson Plan given here is longer than usual for ART TO ZOO—and we urge you more strongly than usual to carry out all its steps (over a number of days).

Two further comments. First, our notions of fairness are quite different now from when the Founding Fathers wrote the Constitution. Our focus here is on *today's* Constitution and on *today's* Supreme Court.

Second, this issue of ART TO ZOO is not a treatise on constitutional law. Rather it is an introduction to the protections that the Constitution gives to individuals. Our aim is not to explain nuances, but to get children thinking about the basic issues. For this rea-

son, we have not hesitated to include generalizations that may help them focus on the key questions. We encourage you, and any of your students who wish to explore the subject further, to follow up the activities described in this issue by picking a specific protection and learning about it in more detail. The books cited in the Bibliography provide leads that can help you get started.

Teacher's Background

The Constitution and the Rights of Individuals

The Constitution that the Founding Fathers signed contained very few protections for individuals. The framers felt that since state constitutions already included bills of rights there was no need to provide such a list of protections in the document they were drafting.

Many Americans did not agree, however, and several states ratified the Constitution only on the understanding that a bill of rights would be added as soon as possible. Accordingly, in September 1791, Congress approved the first ten amendments to the Constitution, which we call the Bill of Rights.

Here is a very brief summary of some of the most important protections for individuals that the Bill of Rights and other parts of the Constitution contain. (For your convenience in using this Background to introduce these protections to your students, the rights have been divided into the three categories suggested in Step 2 of the Lesson Plan.)

continued on page 4

Lesson Plan

Step 1: Everyday Rights, Everyday Rules

• **Rights.** Begin by having the class discuss what is meant when a person says, "I have the *right* to do this." What is a right? Are the children's rights the same no matter where they are? For example, what rights do they have at home?* On the chalkboard, make a list of their answers. With your guidance, they should come up with items along these general lines:

food	private space
clothing	fair treatment compared
shelter	with other family
care when sick	members
education	fair division of work
love	fun times
help with problems	quiet place to do homework
private property	freedom from being teased

Don't worry if their answers overlap—or if very general rights are mixed with very narrowly defined ones, or legally required rights with ones specific to an individual family. The point of making the list is simply to encourage the children to begin thinking about rights in a way that makes them familiar and real. Emphasize that rights vary somewhat from family to family.

• **Limits.** When the class has finished the list, ask: do these rights mean that you can eat up any food in the house? that you can buy any piece of clothing you want? that you can demand *all* of your parents' attention? that you can declare the whole house to be your own private space?

Of course not . . . but *why* not?

. . . Because other individuals in your family have rights too. *Most often, limits are set to your rights when they begin to intrude on the rights of others or of the group as a whole.*

For example, you can eat all you want of a dish that is being served at dinner—if you're the only person who likes that food. Otherwise, you'll probably have to share. You can listen to music—as long as it isn't so loud that it disturbs someone else. You can show off your ice-skating to your mother, but she also needs time to admire your brother's skating.

Ask the children for more examples of instances when one family member's rights must be balanced against those of other family members.

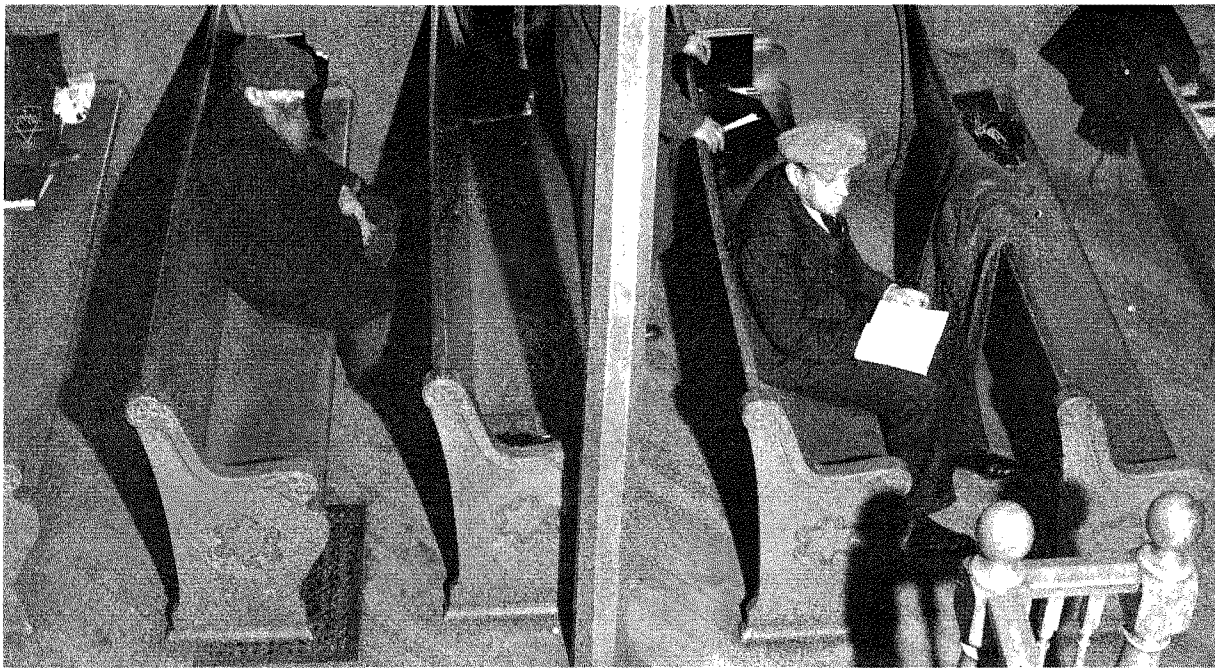
• **Rules.** Then point out that what is often used to set the limits on a right is a rule. A good rule sets fair limits, so each individual in the family can have his fair share of rights.

For example, there might be a rule that favorite foods have to be shared evenly. Or that you must turn down your music if someone asks you to.

To help your students become more aware of this important connection between rights and rules, pass out three small cards (or strips of paper) to each class member. Tell each child to pick three rights from the list on the board, and copy one on each card. Then, on the flip side of the card, have them write down a rule that helps make sure that everyone in the family can enjoy that right. (Tell the children that if someone

continued on page 2

*This Lesson Plan discussion of kids' rights at home focuses on their *informal* rights—what their family agrees its members are entitled to. You may want to mention that later, when the children read the Pull-Out Page (which should be done after the Lesson Plan), they will learn more about their *legal* rights.



Jack Delano/Library of Congress

A small weekday service in a Connecticut synagogue in 1940. The First Amendment gives these Jews—and members of all religions—the right to worship as they please.



Library of Congress

Shoes and clothes of young members of a poor mid-western farming family in 1936. Some say that the test of the Constitution is how well it protects those who have no power.

continued from page 1

has trouble thinking of a rule to go with the right he has picked, he should just change to a different right.)

Then have all the kids mix their completed cards together in a box. Draw some examples, and discuss them with the class.

Step 2: Constitutional Rights

• **Three clusters of rights.** Now tell the children that they are going to look at the rights of a *much* bigger group of people than their families. This big group is the people living in the whole United States. Their rights are written down in our Constitution.* Just as your rights at home say what is due to you as a member of your family, so people's constitutional rights say what is due to them as citizens of this country.

To introduce these rights to your students without overwhelming them, simply say that the rights that the Constitution sets forth cluster around three areas of people's lives. (These areas overlap somewhat, but will help the children remember the main points of focus.) The Constitution says that individuals in this country have the right to:

- express their ideas
- be treated fairly by the police and courts
- have the laws apply to them the same way they would apply to anyone else

Write these three areas on the chalkboard and draw on "The Constitution and the Rights of Individuals" in the Teacher's Background to give the children an idea of what each of these areas includes. How much detail you provide will depend on your class. As you explain each area, give the children plenty of examples, and then guide them in producing examples of their own.

• **What constitutional right is being violated?** When the children have a good general grasp of what these three areas involve, they are ready to begin recognizing them in concrete situations. To give them a chance to do this, use the list of situations that follows, or make up examples of your own. (Answers to each sample situation follow it, in parentheses. The first answer indicates which of the three categories is involved; the second answer identifies the right more

specifically, in case you want to give your students a more detailed explanation.)

Begin by writing the first situation on the board. Help the children understand which kind of right is involved. Continue the same way through the list, until you are confident that the kids have grasped what they are to do. Then have them carry on individually. (If you wish to make the activity easier, you can go through *all* the situations as a class discussion.)

Be sure to point out, more than once, that these are *illegal* situations—situations that the Constitution classifies as unfair. In each situation, a representative of the government is breaking the law by denying someone a constitutional right.

Here are the situations:

—A man is sentenced to death for stealing an orange. (police and courts/cruel and unusual punishment**)

—A state medical school turns down an applicant because she is a woman. (equal treatment/sexual discrimination)

—A city bans all meetings by Communists. (expression of ideas/freedom of assembly and freedom of speech)

—In wartime, a man is required to join the army, even though his religion forbids people to be soldiers. (expression of ideas/freedom of religion)

—A prisoner cannot find out why he is being kept in jail. (police and courts)

—Election officials make all black people take a special exam: they can vote only if they pass the exam. (equal treatment/racial equality)

—On the spur of the moment, the police search all the houses on your block, just because there have been thefts in the neighborhood. (police and courts/search and seizure)

—A court refuses to provide a free lawyer for a poor man accused of robbery. (police and courts/right to legal counsel; *also* equal treatment/equal treatment of the poor)

—The mayor of a town threatens to close down the local newspaper if it publishes a story accusing her of wrongdoing. (expression of ideas/freedom of the press)

—Your mother is arrested for passing out fliers criticizing U.S. involvement in Central America. (expression of ideas/freedom of speech)

—A city gives permits to Protestant, Catholic, and Jewish groups to give religious talks in the public park, but it refuses a permit to a Muslim group. (expression of ideas/freedom of religion; *also* equal treatment)

Step 3: Making Rules and Rights Work Fairly in Everyday Situations

Now point out to the children that in everyday life—at home, for example—even though everyone may agree in principle about what rights family members have, they often disagree about what is fair in real situations.

Let's think about an example. Here is a case to read to the class.

• Sample case

A fair division of work is an important right in Lisa's family. Her contribution to family chores is to do the before-dinner dishes every other day (her brother Tim does them on the days she doesn't). She is supposed to have the dishwashing finished by six o'clock, when her parents come home from work and start fixing dinner.

One evening her parents come in at the regular time and find the dishes not washed. Lisa is in the living room reading.

Her parents get mad at her. Lisa defends herself by saying. . .

Ask the children to supply some possible excuses. Write their answers on the chalkboard. Make sure that the list they develop includes both solid and flimsy excuses. Here are some typical ones:

- I didn't realize how late it was.
- I have an exam tomorrow.
- I hurt my wrist in gym.
- Tim had friends over and they used a lot of dishes. It's not fair that I should have to do them.
- Tim forgets to do the dishes a lot when it's *his* turn.
- I was just about to start.
- You told me to pick up the cleaning, so I got home late.
- I was tired.
- I forgot.
- Grandma phoned long distance. I just got off the phone.
- Isn't it Tim's night?
- I really got wrapped up in this book.
- I thought you said I didn't have to do chores if I was sick; I feel like I might be coming down with a cold.
- The dog licked some of them, and I wasn't sure if that meant I was supposed to wash them some special way.
- We're out of detergent.

When the children have produced enough sample excuses ask them who finally decides what will be done in situations like these?

Most often, at home, it is an adult—usually a parent—who acts as *judge*.

Then ask the children: if you were Lisa's parents, what are some reasons (from the list) that you would accept—and some that you would not? Have each child take a moment to choose a couple of reasons that seem definitely solid, and a couple that seem definitely flimsy.

Then have the kids discuss and compare their answers.

Suggest that to decide whether a reason is good or not it helps to ask, *what else could Lisa have done?* If there was no better way she could have handled the situation, then her excuse was probably a good one.

Help the children see that **good reasons** are very often based on other rights. For example, if Lisa really hurt her wrist badly, then it needs to be cared for: Lisa's right to be taken care of when she is sick makes her excuse solid. In the same way, if she has an exam the next day, her right to an education must be taken into account. (But not if she had all weekend to study but chose to play with her friends instead. In that case, why should her family be inconvenienced because she was lazy?)

Flimsy excuses are at the other end of the scale. They take away other people's rights without any real gain, and are just a way to cover up laziness or sloppy planning. "I didn't realize how late it was," "Tim forgets to do the dishes a lot when it's *his* turn," and "Isn't it Tim's night?" are examples. They are non-reasons.

Cartoons of fair and unfair decisions. To conclude this step, ask the children, as homework, to choose one of the excuses on the list and make it the title—and subject—of two single-picture cartoons.

The first cartoon shows Lisa's parents making what the cartoonist feels is a *fair* decision based on the excuse; the other cartoon shows them making an *unfair*

The Fourteenth Amendment

The promise of equal treatment became part of the Constitution after the Civil War, when the Fourteenth Amendment was added to protect the rights of black Americans.

Up to that time, the Constitution had limited the power of the *federal* government only. When a *state* government infringed on an individual's rights, the Constitution offered no recourse.

The Fourteenth Amendment changed that. It forbids *states* to "deny any person . . . the equal protection of the laws" (this is called the *equal protection clause*). The Fourteenth Amendment also says that no state shall "deprive any person of life, liberty, or property without due process of law" (this is called the *due process clause*).

The Fourteenth Amendment should have vastly increased the power of the Supreme Court to protect individuals' rights. But in the late 19th century, the Court interpreted the Fourteenth Amendment so narrowly that it could not serve this purpose. In those years, the Court used the amendment to protect property rather than people.

This situation started changing in the 1920s, as the Court began using the Fourteenth Amendment to protect individuals from unfair state action—at first, by striking down state laws that took away people's First Amendment freedoms.

Gradually, in the half-century that followed, the Court established through its decisions that the Fourteenth Amendment meant that the Constitution forbids the *states* (as well as the federal government) from infringing on all the individual freedoms spelled out in the Bill of Rights.

*You will probably want to mention that these rights make up only a small part of the Constitution and are mostly in the amendments. (The rest of the Constitution consists of rules describing how the government is to be organized.)

**All terms that might be unclear are explained in "The Constitution and the Rights of Individuals," in the Teacher's Background.

one. Both cartoons should show (1) the parents saying how they have decided to deal with the situation, and (2) what Lisa (and Tim too, if the cartoonist wishes) is thinking about the parents' decision.

Remind the children that a cartoon balloon that shows what someone is saying looks like this:



and one that shows what someone is thinking looks like this:



Step 4: Making the Constitution Work Fairly in Real Situations—the Supreme Court

How did Lisa probably feel when her parents made a decision she thought was unfair? Was there anything she could do about it?

When you think an everyday “judge” like your parents has been unfair, there’s probably nothing you can do about it. But when you take a case to court, and you think the judge there has reached an unfair decision, there *is* something you can do: you can appeal your case to a higher court, to get a different judge’s opinion.

Our court system is complicated, but the highest court of all—the one that has the final say about whether a person’s constitutional rights have been violated, or whether a law violates the Constitution—is the Supreme Court. Use the information in “The Supreme Court” in the Teacher’s Background to give your students as much information about the Court as you consider suitable.

Emphasize the parallel between what the Supreme Court justices have to think about and what Lisa’s parents had to think about: with each new case, both the justices and the parents have to weigh *individual rights* against *group needs*. Both also have to think about the effects their decision may have on similar situations in the future.

Remind the children that this harks back to what they looked at right at the very beginning, when they saw how, in families, limits are usually set at the point where the individual’s rights begin to interfere with the rights of other people in the group. (Remember the favorite food and the loud music—and the rules that were created to make sure that *everyone* could enjoy himself?)

Tell the children that they are now going to look in more detail at *what is involved in deciding how far it is fair for one’s person’s constitutional rights to go*.

Take the *right of free speech* as an example. The individual’s freedom of speech is guaranteed in the Constitution. . . . But aren’t there times when, if someone said exactly what he wanted, other people might be very seriously hurt—so seriously that *their right to be safe becomes more important than his right to say what he wants*?

• **Fair or unfair?** Sometimes an agent of the government thinks this is the case, and stops an individual from doing what he wants. This action may be fair or unfair—which is often very difficult to decide.

To give the children a chance to practice thinking about the fair limits of constitutional rights, break the class into groups of about six people. Tell the children to imagine that they are government officials (each group is in a different city) who are meeting to decide whether they should stop the individuals in the following situations from speaking freely:

—A political candidate has been driving a sound truck through residential neighborhoods around eleven in the evening, because she knows that most people are home at that time.

—A company is continuing to run advertisements for its hair-grower, even though laboratory tests have proven it doesn’t work.

—A group of public school students have announced that they plan to hold a silent political protest during school hours. (*Be sure to include this example, because it is the basis of Step 5.*)

—A racist group has applied for a permit to hold a rally in the public park.

—A man stands on the same streetcorner every day urging people to steal from stores.

—A rich woman has been buying radio advertising time to tell lies about people she doesn’t like.

Tell the groups to discuss the situations one by one, and then to vote on whether the government should stop the individuals in these situations from freely expressing themselves.

Suggest some questions for the children to think about that can help them decide: what kind of harm might result from free speech in this case? how likely is the harm? how many people might be harmed? how seriously? is the harm likely to be temporary or permanent? might some good be done, as well as harm?

Emphasize that the “officials” are concerned, as they vote, that the people whose freedom they interfere

Tinker v. Des Moines Independent Community School District

In December 1965 the principals of the Des Moines public school system heard that a group of students were planning to wear black armbands to school to protest U.S. involvement in the Vietnam war. The principals met to discuss what to do. They decided that students who wore armbands would be asked to take them off; students who refused to would be suspended until they were willing to return to school without armbands.

On December 16, John and Mary Beth Tinker and Christopher Eckhardt, who ranged in age from 13 to 16 years, came to school wearing armbands; refused to take them off, and were sent home. They stayed home for as long as they had planned to protest—until after New Year’s Day.

Through their fathers, the young people filed suit in the district court. They asked the court to forbid the school to keep using the armband rule. They also asked for a small sum of money to make up for the wrong they thought had been done to them. The court decided that the school had acted reasonably: it had tried to keep school

with may take them to court for denying their right to free speech. But they also know that if other people are harmed, *those* people too might take them to court for not responding to a known danger. The children, as “officials,” do not want to be found guilty and be in trouble—so they are as careful as possible to be fair. That way, they hope, a judge would agree with their decision.

When all the groups have finished voting, bring the whole class together and have them compare the different groups’ decisions—and, in cases where they disagree—their reasoning.

Step 5: Tinker v. Des Moines Independent Community School District—An Actual Supreme Court Case

Tell the class that one of the cases they just discussed as “government officials” really happened—and the officials *did* stop the individuals, and the individuals *did* take the case to court.

It was the student protesters. They lost, appealed, and their case was finally heard by the Supreme Court.

• **Learning about the case.** First, draw on the box on this page (“*Tinker v. Des Moines Independent Community School District*”) to describe the case to your class—but do *not* tell the outcome.

Here are some questions that you can use to help the children understand the facts involved, and their significance:

—**Which individuals’ rights may have been violated?** (Those of the three young people who wore armbands: John and Mary Beth Tinker, and Christopher Eckhardt.)

—**What right may have been violated?** (Their right to free speech. Wearing armbands is considered *symbolic* free speech, which just means that they used a symbol, the armbands, instead of words, to express their opinions.)

—**What stopped them from expressing themselves freely?** (The rule that the school principals made: children who come to school with armbands on, and refuse to take them off, will be suspended.)

—**What group was involved?** (The schools, including their student body as a whole.)

—**What were the principals afraid would happen if kids came to school with armbands?** (That normal school routines and discipline would be disturbed.)

—**In what other ways might the principals have dealt with the situation?** (Tried to limit the protest to

discipline from being disturbed. The teenagers had lost their case.

They then appealed, but the court of appeals was divided, so the decision was not changed.

Finally the youngsters appealed to the United States Supreme Court. The case was argued there in November 1968, and a decision was handed down three months later.

The Court voted 7 to 2 in favor of the children. The Court said that the children were protected by their right to free speech as given in the First Amendment, and by the due process clause of the Fourteenth Amendment.* Their behavior did not disturb school discipline or take away other people’s rights.

The case established that students and teachers have First Amendment rights at school (within the limits of the special needs of that environment).

*See “The Fourteenth Amendment,” on page 2.

one day? Banned the protest but held an assembly on the war, giving both sides a chance to express their views? Discussed their concerns with the students who planned to protest, and with their parents, as soon as the plans became known? Consulted with teachers and student representatives before making a decision?)

—**What actual harm did the protest cause?** (Virtually none. One math class was sidetracked into a discussion of the war, and a few low-key comments—both pro and con—were made by other students.)

—**What harm might the protest have caused?** (Loud arguments? Fights? Interruptions of schoolwork? Counter-demonstrations?)

—**What future effects might a decision in favor of the children have?** (More protests? Louder protests? A breakdown of school discipline? Children who are more politically knowledgeable? Children who will become more responsible citizens in the future?)

—**What future effects might a decision in favor of the school have?** (Fewer demonstrations? An angrier, louder demonstration? Political apathy?)

When the children have discussed these questions, sum up the two sides of the case by writing them on the chalkboard, like this:

the individuals’ right to free speech	is being weighed against	the group’s right to an undisturbed education
---------------------------------------	--------------------------	---

• **Sorting out the arguments.** Tell the children that, in February of 1969, the Court handed down its decision. The opinions were divided 7 to 2. At the end of the activity, the children will find out which side won.

Meanwhile, have them imagine that they are the Supreme Court justices who voted in favor of the protesters. Ask them to pick, from the list provided here, the arguments that back up their point of view. (The arguments, listed directly below, are already sorted for your convenience; of course, when you present them to the children, you should mix the two sides together.)

Then have them imagine that they are the justices who decided in favor of the school: what arguments might they have used to back up their decision?

Finally, have the children vote for the side they think should win the case. To conclude, tell them what the real-life outcome was: 7 justices voted in favor of the children, and 2 in favor of the schools.

Arguments for the children’s side:



—Children are people, and people have the right to free speech under our Constitution.

—Silently wearing armbands doesn’t interrupt school activities.

—The schools allowed some students to wear *other* political symbols. For example, children wearing buttons with slogans were allowed to attend classes.

—Learning about real political issues is an important part of education.

—Children learn to respect our government by seeing that it protects our freedom in real situations.

—When people have freedom of speech, there is always *some* risk that their opinions will start trouble. But we must take that risk—or we aren’t free.

—Our school system is not designed to produce people who all think the same way.

Arguments for the schools’ side:



—People have a constitutional right of free speech—but this does *not* mean that they may say *whatever* they want, *whenever* and *wherever* they want.

—Discussing political issues is not part of the curriculum.

—The school principals are responsible for running the schools. This means they should be free to make whatever decisions they think are necessary.

—Once even a small disturbance starts it can easily get out of hand.

—Children don’t know enough yet to have well-thought-out political opinions.

—Because of the armbands, one math class turned into a discussion of the Vietnam war. Other classes might have. This kind of interruption is unfair to the children who want to be studying.

continued from page 1

• **Expression of Ideas.** These protections, which are in the First Amendment, include:

- freedom of speech
- freedom of the press
- freedom of religion
- freedom of assembly

They guarantee people's right to believe what they want and to express these beliefs. These rights are regarded as fundamental because they form the basis of democracy: they make it possible for people to disagree with the government without fear of retribution, and to try to bring about change without resorting to violence.

• **Fair Treatment by Police and Courts.** Many rights in this area are given in the Bill of Rights (Amendments 4 through 8). These protections have been further defined by a number of Supreme Court decisions in recent decades.

(When a particular phrase is associated with these rights, it is given here in parentheses after the description of the right.)

—A person will not be subject to unreasonable searches and seizures. This means the police need to have a good reason to search someone's person or house, and have to get a search warrant from an impartial magistrate first. (*search and seizure*)

—A person cannot be tried twice for the same crime. (*double jeopardy*)

—A person has the right to a speedy and public trial by an impartial jury in criminal cases.

—A person has the right to be told what he is accused of.

—A person has the right to a lawyer in criminal cases.

—A person cannot be forced to testify against himself. (Pleading the Fifth Amendment protects a person from *self-incrimination*.)

Originally, this protection against self-incrimination applied only during trial. But that didn't help a person who, while he was being held *before* his trial, confessed or otherwise incriminated himself. To protect people at this earlier stage, the Supreme Court in its 1966 *Miranda* decision established that before being questioned by the police, a person in custody must be told that he has the right to remain silent and that anything he says may be used against him. He must also be informed that he has the right to have a lawyer present while he is being questioned, and that if he wants a lawyer but cannot afford one, the court is *required to provide one*.

—A person has the right to confront witnesses testifying against him, and also to require witnesses who can testify in his favor to appear in court.

—Neither excessive bail, excessive fines, nor cruel and unusual punishment may be inflicted on a person. (*cruel and unusual punishment*)

—A person's property cannot be taken for public use without the person's being fairly compensated.

• **Equal Treatment.** This right is based on the Fourteenth Amendment's promise that people will be equally protected under the law. This amendment* is the basis for protecting members of special groups (different races, ages, sexes, and income levels, for example) from being unfairly treated compared to other people.

Spelling out exactly what constitutes equal treatment in actual situations can become complex. For your students' purposes, it will be enough to grasp in a general way the kinds of issues involved.

Here are a few examples of protections intended to ensure that members of different groups receive equal treatment:

—In the famous 1954 *Brown* decision, the Supreme Court protected the right of black children to receive the same education as white children, by declaring racial segregation in public schools unconstitutional.

—The Supreme Court implicitly upheld the Equal Pay Act of 1963, which requires that men and women receive the same pay for the same work.

—The Supreme Court held in 1963 that since every person charged with a serious crime has the right to an attorney, poor people in this situation have the right to a court-appointed lawyer.**

—In the 1974 case of *Lau v. Nichols*, the Supreme Court ruled that a public school system had to provide non-English-speaking students with language training.

The Supreme Court

The Supreme Court is the highest court in the United States. It hears cases involving constitutional issues and has the power to declare laws unconstitutional. As they consider a case, Supreme Court justices have to think very carefully not only about its constitutional implications, but also about the long-term impact that any decision they hand down is likely to have.

The nine justices who make up the Court are ap-

pointed by the President, with the consent of the Senate. They are appointed for life. The current chief justice is William H. Rehnquist, who was appointed to the Court by President Nixon, and then later made chief justice by President Reagan.

The Supreme Court can hear only a small fraction of the cases that are presented to it. In 1984, for example, it heard only 175 cases out of just over 5,000 presented for review.

What role should the Court play? Views differ on how active the Supreme Court should be. Some people think that the Court has authority only to see that the Constitution, as originally written, is not being violated. Others believe that the Court should take an active role in influencing the law—that it should act as a kind of conscience for the country by choosing to hear cases whose outcome may move us in the direction of greater justice.

Bibliography

Books for Teachers

Bowen, Catherine Drinker. *Miracle at Philadelphia*. Boston: Atlantic-Little, Brown, 1986.

Charren, Peggy, and Carol Hulsizer, eds. *Television, Children, and the Constitutional Bicentennial*. Cambridge, Mass.: Action for Children's Television, 1986.

Findlay, Bruce, and Esther Findlay. *Your Rugged Constitution*. Stanford: Stanford University Press, 1969.

Friendly, Fred W., and Martha J.H. Elliott. *The Constitution: That Delicate Balance*. New York: Random House, 1984.

Witt, Elder, ed. *The Supreme Court and Individual Rights*. Washington, D.C.: Congressional Quarterly, 1980. [new edition in preparation]

• An excellent source of bibliographic and other information is the American Bar Association, Special Committee on Youth Education for Citizenship, 750 N. Lake Shore Drive, Chicago, IL 60611

Books for Children

Fincher, E.B. *The Bill of Rights*. New York: Franklin Watts, 1978.

Fritz, Jean. *Shhh. We're Writing the Constitution*. New York: Putnam, 1987.

Goode, Stephen. *The Controversial Court: Supreme Court Influences on American Life*. New York: Julian Messner, 1982.

Lewis, Anthony. *The Supreme Court and How It Works*. New York: Random House, 1966.

Sgroi, Peter. *Blue Jeans and Black Robes: Teenagers and the Supreme Court*. New York: Julian Messner, 1979.

Note to Teachers

The Pull Out Page of ART TO ZOO is intended to be reproduced for your students. You are encouraged to photocopy it or to make a master for use with other duplication methods. Cut the English and Spanish versions apart along the dotted line and fold each to make an 8½ × 11-inch booklet.

Other portions of ART TO ZOO may be reproduced as needed for classroom use.

ART TO ZOO

is a publication of the
Office of Elementary and Secondary Education
Smithsonian Institution, Washington, D.C. 20560
Write to this address if you want your school to be placed,
free of charge, on the ART TO ZOO mailing list.

Editor: Betsy Eisendrath (202) 357-2404

Regular Contributors:

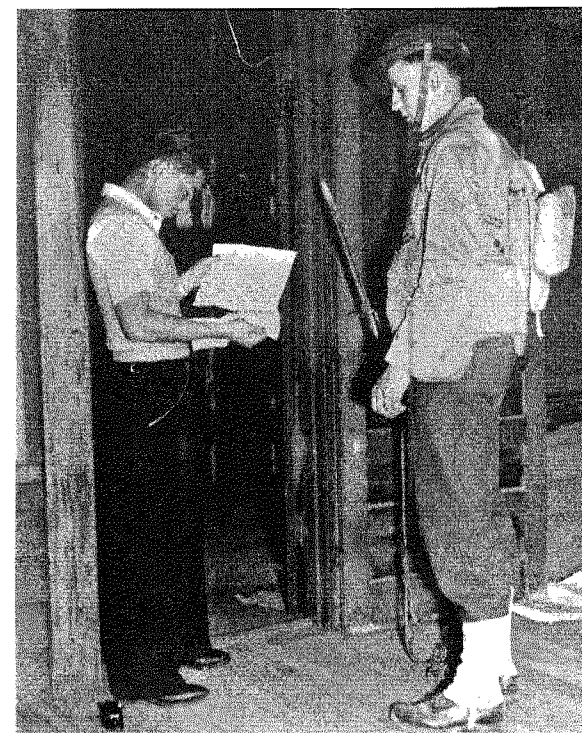
THE ANACOSTIA NEIGHBORHOOD MUSEUM
THE ARTHUR M. SACKLER GALLERY
THE CHESAPEAKE BAY CENTER FOR ENVIRONMENTAL STUDIES
THE COOPER-HEWITT MUSEUM
THE FREER GALLERY OF ART
THE HIRSHHORN MUSEUM AND SCULPTURE GARDEN
THE NATIONAL MUSEUM OF AFRICAN ART
THE NATIONAL AIR AND SPACE MUSEUM
THE NATIONAL MUSEUM OF AMERICAN ART
and THE RENWICK GALLERY
THE NATIONAL MUSEUM OF AMERICAN HISTORY
THE NATIONAL MUSEUM OF NATURAL HISTORY
THE NATIONAL PORTRAIT GALLERY
THE NATIONAL ZOOLOGICAL PARK

Smithsonian Institution Press

Associate Editor: Michelle K. Smith

Designer: Joan Wolbier

A More Perfect Union: Japanese-Americans and the U.S. Constitution



Courtesy National Japanese American Historical Society

What would you think if a soldier knocked on your door and ordered you to move into a government camp? That is what is happening in this picture: it is 1942, and the soldier is bringing an evacuation notice to a Japanese-American in California. During World War II, almost 120,000 men, women, and children of Japanese ancestry were forced to leave their homes and move into detention camps built by the U.S. government. Two-thirds of these people were American citizens. The protections guaranteed them by the Bill of Rights had simply vanished. How could this have happened? Could it happen again?

A new Smithsonian exhibition, "A More Perfect Union: Japanese-Americans and the U.S. Constitution," looks at the constitutional process through the experiences of these people. The show asks how we make up our minds about constitutional issues . . . and how we change them. The exhibition, which opens October 1, 1987, at the *National Museum of American History*, can provide a vivid case study for your students.

Teaching the Constitution

On May 16, 1987, the Smithsonian's Office of Elementary and Secondary Education sponsored "Teaching the Constitution," a one-day symposium for educators.

A 76-page conference summary is now available, free of charge. It contains condensations of the talks, a teacher's resource list, and a bibliography.

To obtain your copy, write: TEACHING THE CONSTITUTION, Office of Elementary and Secondary Education, Arts and Industries Bldg., Room 1163, Washington, DC 20560.

ART TO ZOO brings news from the Smithsonian Institution to teachers of grades three through eight. The purpose is to help you use museums, parks, libraries, zoos, and many other resources within your community to open up learning opportunities for your students.

Our reason for producing a publication dedicated to *promoting the use of community resources among students and teachers nationally* stems from a fundamental belief, shared by all of us here at the Smithsonian, in the *power of objects*. Working as we do with a vast collection of national treasures that literally contain the spectrum from "art" to "zoo," we believe that objects (be they works of art, natural history specimens, historical artifacts, or live animals) have a tremendous power to educate. We maintain that it is equally important for students to learn to use objects as research tools as it is for them to learn to use words and numbers—and you can find objects close at hand, by drawing on the resources of your own community.

Our idea, then, in producing ART TO ZOO is to share with you—and you with us—methods of working with students and objects that Smithsonian staff members have found successful.

Special thanks to the following people for their help in preparing this issue of ART TO ZOO:

Tom Crouch and Lonn Taylor, National Museum of American History, Smithsonian Institution

Josiah O. Hatch, Gibson, Dunn and Crutcher

Thanks also to Clare Cuddy, Teresa Grana, and Jan Majewski, Office of Elementary and Secondary Education, Smithsonian Institution, and to Martin Sternin.

*A brief description of the history and significance of this extremely important part of the Constitution is given in the box, "The Fourteenth Amendment," on page 2.

**Your students can read an account of the case that triggered this decision, *Gideon v. Wainwright*, in *The Supreme Court and How It Works*, cited in the children's bibliography on page 4 of this issue of ART TO ZOO.

PULL-OUT PAGE

ART TO ZOO September 1987
News for Schools from the Smithsonian Institution



What Rights Do I Have? Kids, Laws, and the Constitution

“It’s a free country!”

. . . So how can people boss you around? Aren’t you protected from this by the Constitution? Aren’t grown-ups who limit your freedom violating your constitutional rights?

Not usually. As a child, you don’t have all the same legal rights that the Constitution guarantees to adults. You are certainly a person . . . and yet the law sees you differently than it sees an adult person.

Here is the thinking behind the difference:

A newborn baby will die if older people don’t supply what it needs. A kindergarten-aged child couldn’t survive long on his own either. It takes years and years for people to learn all the skills they need to get along and to have enough knowledge to make wise choices.

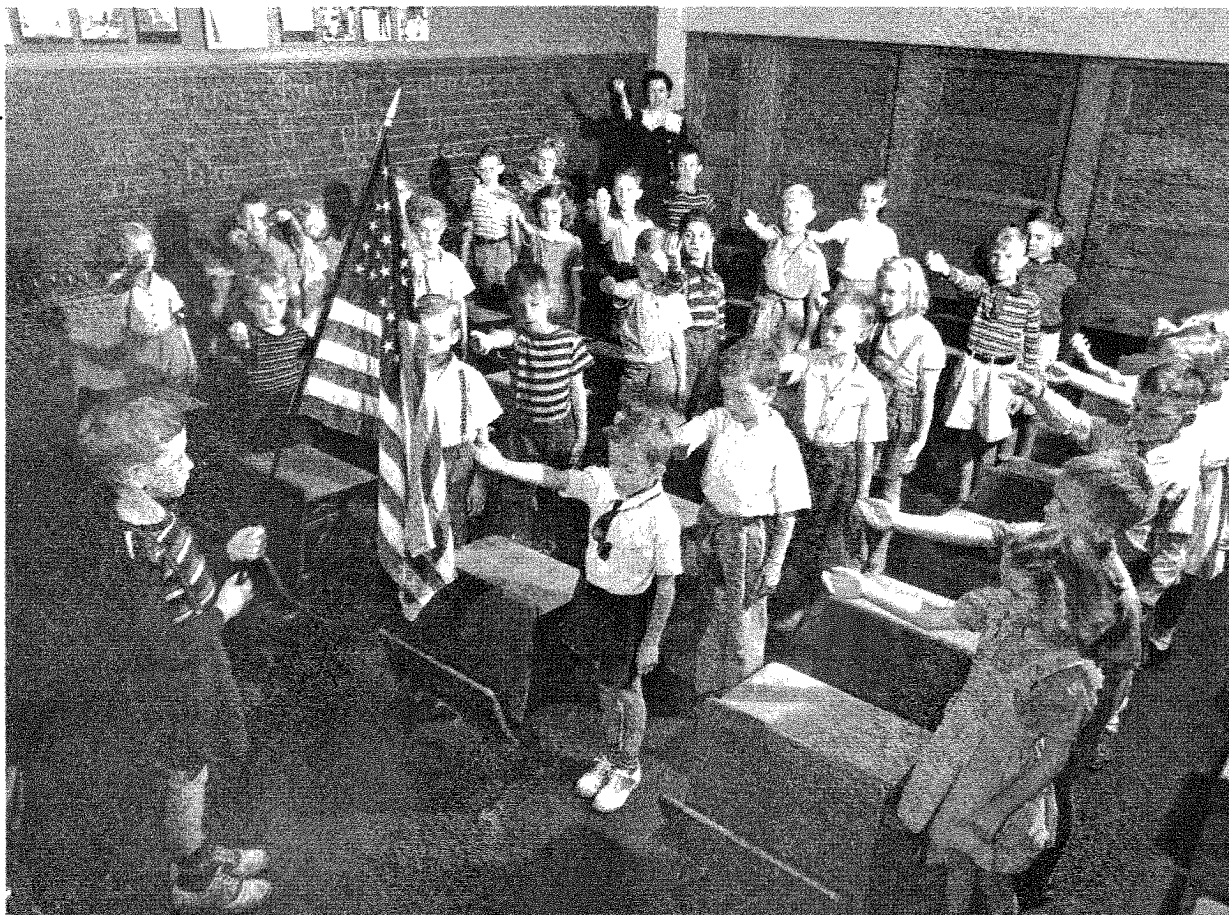
If you were babysitting for a toddler, you wouldn’t feel you were unfairly limiting her freedom if you stopped her from running in front of

a speeding truck! For the same reason, the law gives people like parents, teachers, and judges the right to step in and decide what kids in their care may do—in the belief that these grown-ups will decide what is best for the children.

The danger is, of course, that there are times when grown-ups *don’t* make the best decision: a teacher, for example, may not understand the needs of a student; or a judge may be forced to handle so many cases that she doesn’t have time to learn all the facts she should know.

To help kids when this happens—to protect them from bad protection—the Supreme Court, in a number of cases over the past twenty years or so, has thought about whether some of the rights that the Constitution gives to adults should be extended to children too.

To learn what the justices decided, read what follows, especially the sections on your rights at school and in court. You may be surprised at



Ralph Andursky/Library of Congress

Children in New York state begin their school day by saluting the flag, March 1943. Three months after this picture was taken, the Supreme Court said that it was against the Constitution for schools to force kids to salute the flag. (Flag salutes violate some kids' religious beliefs.)

some rights you have—and at some you don't have!

Remember, as you read, that most of the laws that affect your everyday life are *state* laws. And remember the connection between them and the Constitution: the Constitution limits how much of people's freedom the laws may take away.

Your Basic Rights

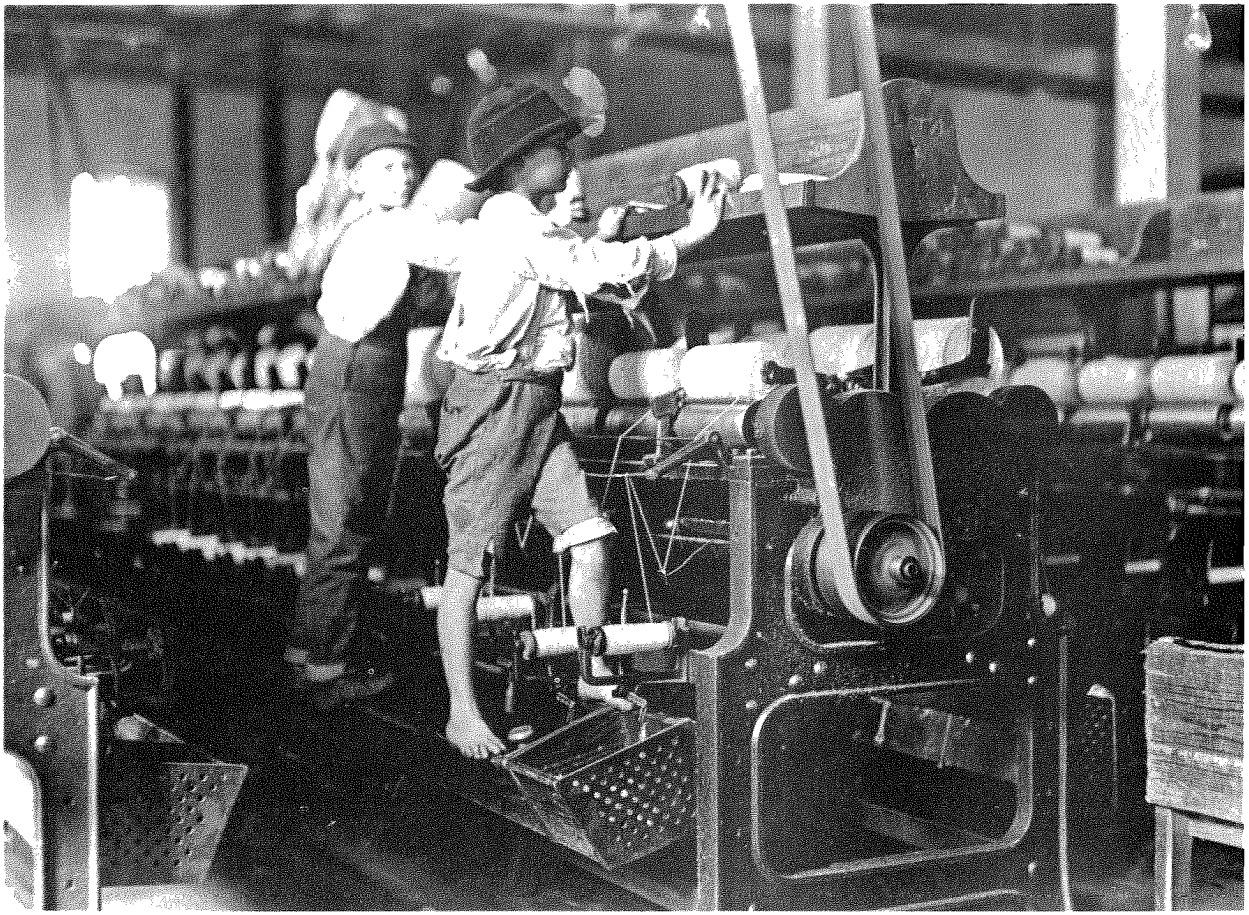
- *Do my parents have to take care of me?* Yes, the laws say that they (or whoever has custody of you) has to give you food, shelter, clothing, medical care, and education. (Adults are not guaranteed any of these things; they have to provide for themselves.)

- *Are any grown-ups allowed to hurt me?* State laws all agree that no one may cause you *serious* injury on purpose. This does not forbid your parents from giving you a light spanking; but it does forbid them from, for example, beating you so hard that you break a bone, or from sex-

ually abusing you. If anyone tries to hurt you in such ways, you have the legal right to get help.

Anyone (including you) may report child abuse—to the police or to the county department of social welfare. In all states, doctors, nurses, and mental health workers must report suspected child abuse. In many places people who work with kids in school must also report such cases.

- *Do I have the right to set my own rules at home?* No, it is your parents—as the people responsible for you—who have the right to do this. They are allowed to set your bedtime, make you do reasonable household chores, decide whether you may own a dog, tell you what time you have to be home, and so on . . . and punish you (within reason) if you disobey. The Constitution doesn't limit what your parents can do, because the Constitution only limits the *government*—and your parents are neither the federal government nor a state government. They are just private individuals, so they may set any rule they want, as long as it doesn't break a law.



Lewis Hine/Library of Congress

Children working in a factory near the turn of the century, when a workday could be as long as 16 hours. Around this time, more and more states began passing child labor laws. These laws limited the hours kids could work, and said employers were not allowed to hire kids for dangerous jobs.

Your Rights at School

A public school is an agent of the state, so how far it can go in limiting your rights is a constitutional question. The Supreme Court has ruled on a number of cases involving your rights at school.

- ***Do I have the right of free speech at school?***

Yes, as long as your speaking out doesn't get in the way of school activities or school discipline. This was what the *Tinker* case was about. But what exactly counts as interference is not sure.

- ***Does my school have the right to physically punish me?*** Yes, the Court held in 1977 that paddling children at school was not a violation of their constitutional rights—it was not “cruel and unusual punishment.” The school has to give you a hearing, but may do so *after* you have been punished.

- ***Do I have any rights if I am suspended from school?*** Yes, before your school may sus-

pend you, you have the right to be told what you are accused of. You also have the right to a hearing that gives you a chance to tell your side of the story.

- ***Do school authorities have the right to search me?*** Yes, they may search you or your possessions (your desk or locker, for example) without a search warrant—as long as they have a good reason for thinking the search may uncover evidence that a rule is being broken.

- ***Are school dress codes constitutional?*** The courts have not agreed about whether you have a constitutional right to decide for yourself how you want to dress or wear your hair—and the Supreme Court has not ruled on this issue.

Your Rights if You Work

- ***Do I have the right to work?*** Older children may hold certain kinds of part-time jobs. Child labor laws vary from state to state, but all states



Library of Congress

Colorado judge Ben Lindsey listens to what two boys have to say, back in the early days of juvenile courts.

Juvenile courts—courts especially for kids—were first set up in the United States around the turn of the century. A juvenile court judge was supposed to learn about a kid's whole background, to figure out what had led him into trouble—and what was the best way to help him.

Juvenile courts were much more informal than adult courts. The public was not allowed in, to keep secret the names of kids who were in trouble with the law.

limit the hours you may work, and forbid employers from hiring you to do dangerous or unhealthy jobs.

• *Do I have the right to keep the money I earn?* No, you don't have the *right* to keep it—although very likely your parents *let* you keep it. By law, the person responsible for a child is allowed to keep the child's earnings.

Your Rights in Court

• *If I was accused of committing a crime and was brought before a juvenile court, what are some of the rights I would have?*

—You would have the right to be told what you were accused of.

—You would have the right to a lawyer—and the court would have to supply you with a free lawyer if you couldn't afford to hire one.

—You would have the right to question witnesses giving evidence against you.

—You would have the right to call witnesses who could give evidence in your favor, and they would have to appear in court.

—You would have the right to keep quiet if you thought answering questions could harm your case.

For many years, children in juvenile courts did not have these rights (which the Constitution guarantees to adults). But in 1967 the Supreme Court ruled that kids too should have these protections.

Think About It

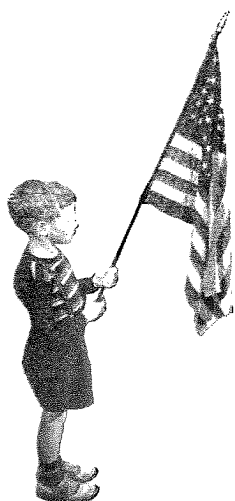
Do these rights that kids have now strike a fair balance between children's need for protection and their need for freedom? What changes in their rights would be an improvement?

Our laws change—within the guidelines set by the Constitution—so maybe the changes you think *should* happen *will* happen in the years to come.

PULL-OUT PAGE



ARTE A ZOOLOGICO Septiembre 1987
Noticias para las escuelas, de parte del
Instituto Smithsonian



¿Que Derechos Tengo? Los Niños, las Leyes, y la Constitucion

Traducido por Dr. Ricardo Inestroza

“¡Es un País Libre!”

¿ . . . Así que porqué te da órdenes la gente?
¿No estás protegido contra ésto por la Constitución?
¿No están violando tus derechos constitucionales
los adultos que limitan tu libertad?

Usualmente no. Siendo niño, tu no tienes todos
los mismos derechos legales que la Constitución
garantiza a los adultos. Tu eres ciertamente una
persona también . . . pero la ley te ve de manera
diferente de la que ve a un adulto.

A continuación está la lógica de esta diferencia:

Un bebé moriría si los adultos no lo proveen
con lo que necesita. Un niño de edad de
kindergarten no podría sobrevivir mucho tiempo
por si solo tampoco. Se necesitan años y años
para que la gente aprenda las habilidades que
necesita para convivir y tener suficiente
conocimiento para hacer las decisiones correctas.

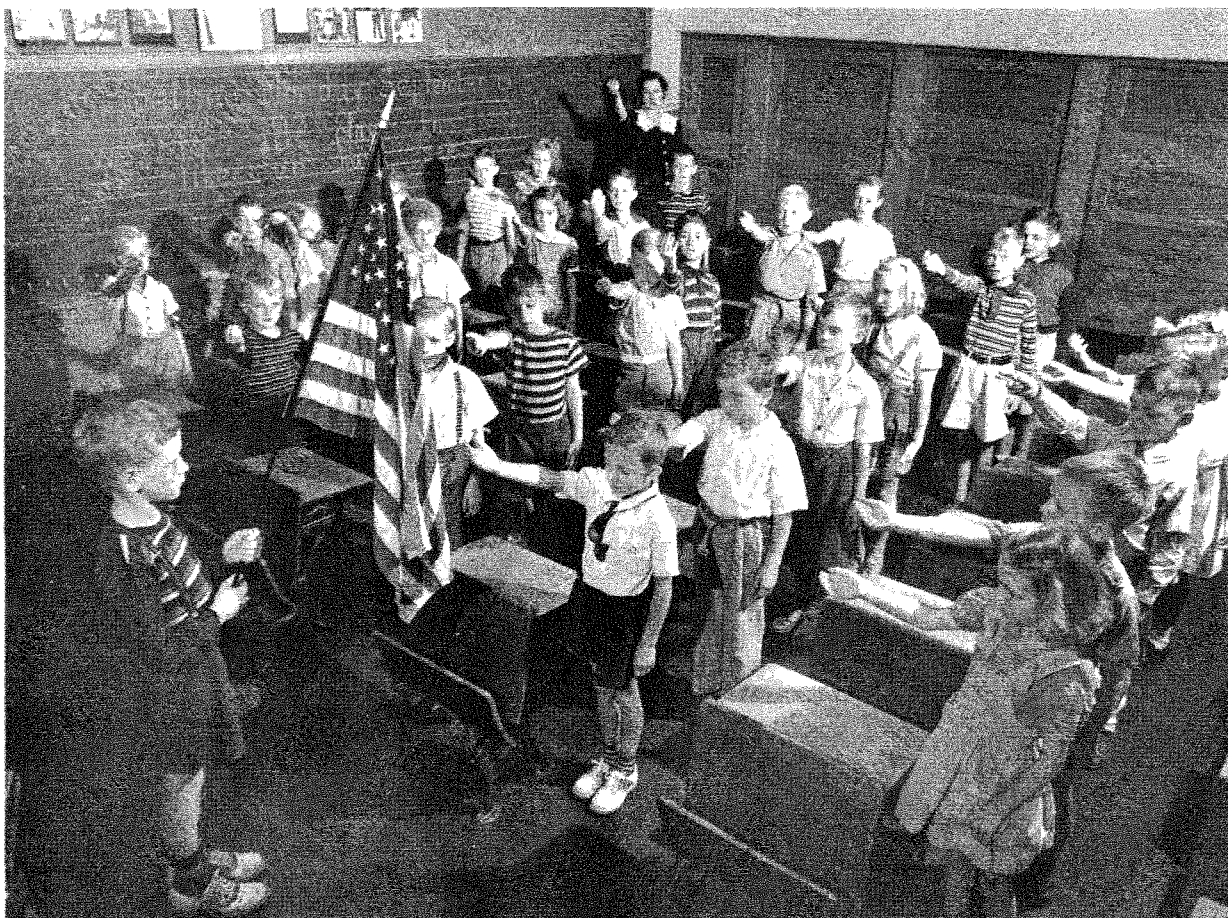
Si tu estuvieras cuidando a una niñita, ¿tu no
creerías que estarías limitando su libertad si la

detuvieras para que no corra enfrente de un camión
en marcha! Por la misma razón la ley le da el
derecho a gente como los jueces, tus padres, y
tus maestros para que decidan lo que pueden hacer
los niños bajo su cuidado—con la expectativa
que estos adultos decidirán lo mejor para los niños.

El peligro está, por supuesto, que a veces los
adultos no toman decisiones correctas: un maestro,
por ejemplo, tal vez no entienda las necesidades
de un estudiante; o una juez tiene que decidir
tantos casos que ella no tiene el tiempo de aprender
todos los hechos que debería saber.

Para ayudar a los niños cuando esto pasa—
para protegerlos de nuestra posible mala
protección—la Corte Suprema, en varios casos,
en aproximadamente los últimos veinte años, ha
pensado que algunos de los derechos que la
Constitución les da a los adultos deben ser dados
a los niños también.

Para aprender lo que los jueces han decidido,



Ralph Andursky/pABiblioteca del Congreso

Los niños en el estado de Nueva York comienzan su día escolar saludando la bandera, marzo de 1943. Tres meses después de que se tomó esta fotografía, la Corte Suprema dictaminó que era anticonstitucional que las escuelas obligaran a los niños a saludar la bandera. (Los saludos a la bandera están en contra de las creencias religiosas de algunos niños)

lee lo que sigue, especialmente las secciones sobre tus derechos en la escuela y en la corte. Tal vez te sorprenda algunos de los derechos que tienes— ¡y algunos de los que no tienes!

Recuerda mientras lees, que la mayoría de la leyes que afectan tu vida diaria son leyes *estatales*. Y recuerda la conexión entre ellas y la Constitución: la Constitución limita cuanta libertad las leyes estatales pueden quitarle a la gente.

Tus Derechos Basicos

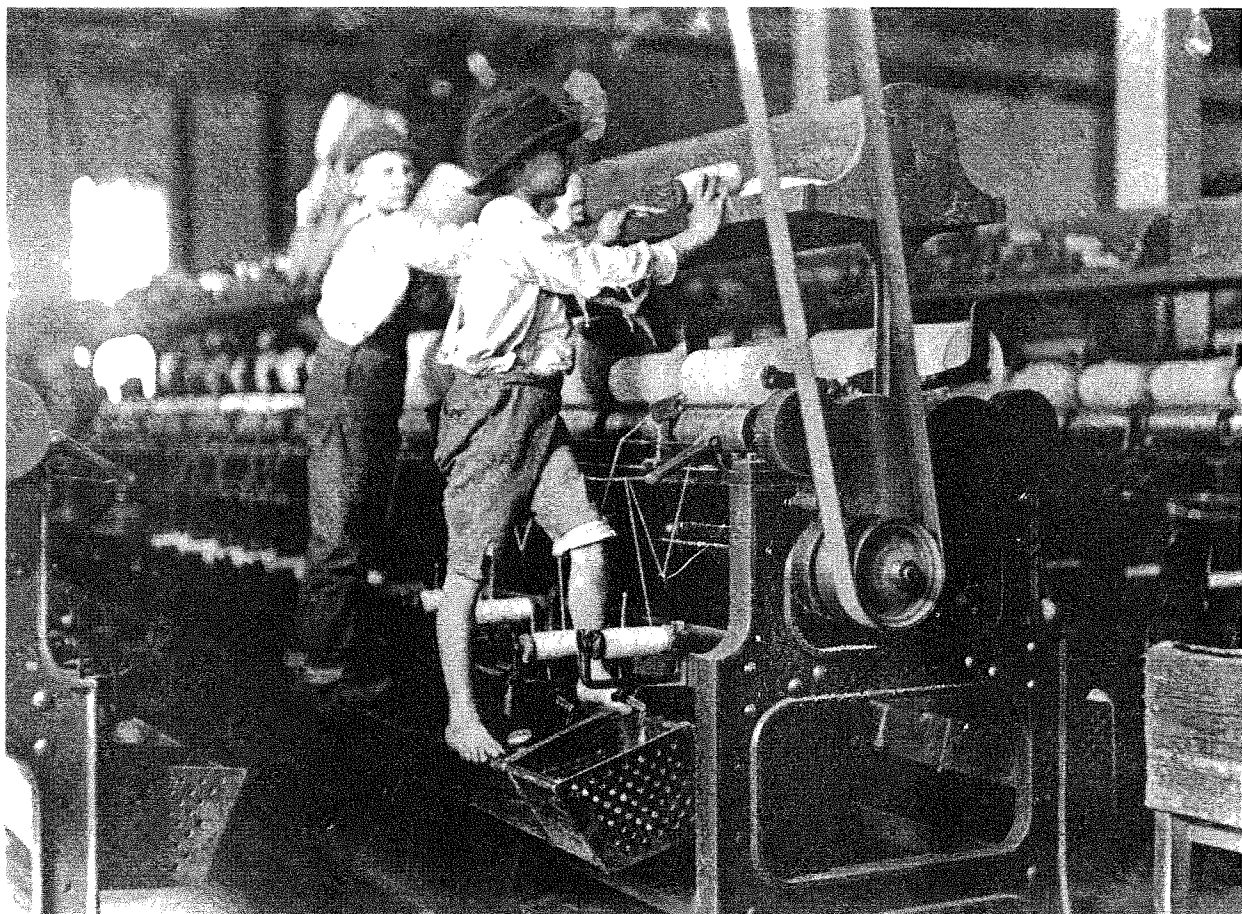
- *¿Tienen que cuidarme mis padres?* Sí, las leyes dicen que ellos (o quien tenga custodia tuya) tienen que darte comida, albergue, ropa, cuidado médico, y educación. (A los adultos no se les garantiza ninguna de estas cosas; ellos tienen que proveerse de esto ellos mismos.)

- *¿Es permitido que ciertos adultos me hagan daño?* Todas las leyes estatales expresan que uno no puede causar serio daño a otra persona deliberadamente. Esto no prohíbe que tus padres te

peguen levemente; pero si les prohíbe que, por ejemplo, te peguen con tal fuerza que te quiebren un hueso, a que te abusen sexualmente. Si alguien trata de hacerte daño en esas formas, tu tienes el derecho legal de que se te ayude.

Cualquiera (inclusive tu) puede reportar el abuso de un niño—a la policía o al departamento de bienestar del condado. En todos los estados, los doctores, enfermeras, y los que trabajan en el campo de la salud mental deben reportar si sospechan el abuso de niños. En muchos lugares, la gente que trabaja con niños en las escuelas debe también reportar tales casos.

- *¿Tengo el derecho de decidir mis propias normas en mi casa?* No, son tus padres, como responsables de tu persona, quienes tienen el derecho de hacer esto. Ellos tienen el derecho de decirte a que hora debes acostarte, tus responsabilidades para ayudar en la casa, decidir si puedes tener un perro, decirte a que hora debes llegar a casa, y otras normas . . . y castigarte (moderadamente) si desobedeces. La Constitución no limita



Lewis Hine/Biblioteca del Congreso

Niños trabajando en una fábrica a principios de este siglo, cuando se trabajaba hasta dieciséis horas por día. En ese tiempo mas y mas estados comenzaron a pasar leyes sobre el trabajo hecho por niños. Estas leyes limitaron las horas que los niños podían trabajar y prohibieron los trabajos peligrosos para los niños.

lo que pueden hacer tus padres porque la Constitución solo limita al *gobierno*—y tus padres no son ni el gobierno federal ni el estatal. Tus padres son individuos que pueden exigir que se cumpla cualquier norma, siempre y cuando no viole ninguna ley.

Tus Derechos en la Escuela

Una escuela pública es un agente del estado, así que cuanto limita tus derechos es una cuestión constitucional. La Corte Suprema ha pasado varias leyes que conciernen tus derechos en la escuela.

● *¿Tengo el derecho de libertad de expresión?* Sí, si cuando hablas no interfieres con las actividades y la disciplina de la escuela. De esto trató el caso *Tinker*. En realidad, lo que cuenta como interferencia no es muy claro.

● *¿Tiene la escuela el derecho de castigarme físicamente?* Sí, la Corte dictaminó en 1977 que castigar con una regla no es una violación de los

derechos constitucionales—no se consideró esto como “castigo cruel”. La escuela tiene que oír tus quejas en una reunión, pero lo puede hacer *después* de que te hayan castigado.

● *¿Tengo derechos si me expulsan de la escuela?* Sí, antes de que la escuela te expulse tienes el derecho de que te digan de que se te acusa. También tienes el derecho de que te oigan en una reunión para que tengas la oportunidad de contar tu versión de lo que pasó.

● *¿Tienen las autoridades de la escuela el derecho de registrarme?* Sí, las autoridades de la escuela pueden registrarte a ti y tus pertenencias (tu pupitre o guardalibros, por ejemplo) sin permiso especial—mientras ellos tengan razones “válidas” para pensar que registrando puedan descubrir evidencia de que una norma no está siendo cumplida.

● *¿Son constitucionales los códigos de vestimenta en la escuela?* Las cortes no han pasado ninguna ley que diga algo sobre un derecho constitucional respecto a como te vistes o te peinas—y la Corte Suprema no ha dicho nada sobre esto.



Biblioteca del Congreso

El juez de Colorado Ben Lindsey escucha lo que dicen dos niños en las primeras épocas de las cortes de menores.

Las cortes de menores—cortes especiales para niños—fueron establecidas a principios de este siglo en los Estados Unidos. Su propósito era ayudar en vez de castigar a los niños en problemas. Anteriormente, los niños eran juzgados en las cortes para adultos. Un juez de una corte de menores estaba supuesto a saber con detalles los antecedentes del niño para averiguar que lo había inducido al problema—y también cual era la mejor manera de ayudarlo.

Las cortes de menores eran mucho mas informales que las cortes de adultos. Al público no se le permitía entrar para mantener en secreto los nombres de los niños que tenían problemas con la ley.

Tus Derechos en el Trabajo

- *¿Tengo el derecho de trabajar?* Los niños de mayor edad pueden tener ciertos trabajos de tiempo parcial. Las leyes sobre esto varían de un estado a otro, pero todos los estados limitan el número de horas que los niños pueden trabajar, y prohíben que se empleen niños para hacer trabajos peligrosos o posiblemente dañinos para su salud.

- *¿Tengo el derecho de quedarme con el dinero que gano?* No, tu no tienes este *derecho*—pero muy probablemente tus padres te *lo permiten*. Por ley, la persona responsable por un niño puede quedarse con el dinero que el niño gana.

Tus Derechos en la Corte

- *Si yo fuera acusado de cometer un crimen y fuera llevado a una corte de menores, ¿cuales son algunos de los derechos que tendría?*

—Tienes el derecho de ser informado de lo que se te acusa.

—Tienes el derecho de tener un abogado—y la corte te asignaría uno gratis si no puedes pagar

por los servicios de un abogado.

—Tienes el derecho de interrogar testigos que den evidencia en tu contra.

—Tienes el derecho de llamar testigos que puedan dar evidencia en tu favor y ellos tendrían que ir a la corte.

—Tienes el derecho de no decir nada si crees que al contestar preguntas puede ser contraproducente a tu caso.

Por muchos años, los niños en las cortes de menores no tenían estos derechos (derechos que la constitución garantiza a los adultos). Pero en 1977 la Corte Suprema dictaminó que los niños también deberían tener estos derechos.

Piensa sobre lo Siguiente

¿Son justos los derechos que los niños tienen actualmente respecto a su protección y su necesidad de libertad? ¿Qué cambios en sus derechos constituiría una mejoría?

Nuestras leyes cambian—dentro de los límites descritos en la Constitución—Así que tal vez los cambios que tu crees que *deberían* ocurrir *van a ocurrir* en los próximos años.