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We the People and Other Constitutional Tales: Teaching Constitutional Meaning through Narrative

Paula Abrams *

“The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.”¹

Imagine teaching *Brown v. Board of Education*², the landmark constitutional law case striking down segregated education, simply by reference to constitutional doctrine, omitting any substantive discussion of slavery and segregation in America. In *Brown*, the Court overruled the 1896 precedent *Plessy v. Ferguson*,³ which held that the Fourteenth Amendment equal protection guarantee did not preclude segregation based on race. The Court in *Brown* argued that the importance of education in modern society precluded turning the “clock back” to 1896. Instead, the Court concluded it “must consider public education in the light of its full development and its present place in American life....”⁴ A purely doctrinal examination of *Brown*, however much it explored the Supreme Court’s repudiation of “separate but equal” or its elucidation of the meaning of the Fourteenth Amendment, would seem strikingly incomplete. Indeed, the Court’s opinion in *Brown*, short on law and long on social justice, fairly compels consideration not just of precedent, but also of the social and political mechanisms of segregation. One can even

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¹ Oliver Wendell Holmes, Jr., *The Common Law*

² 347 U.S. 483 (1954).

³ 163 U.S. 537 (1896).

⁴ *Id.* at 492-93.

argue that an understanding of the profound history that shaped the case is essential to appreciating the Court's interpretation of equal protection norms. Most legal educators recognize the importance of external narrative to an accurate analysis of *Brown* and incorporate some history of slavery and segregation into their discussions. But what about other landmark decisions which are studied devoid of social and historical context? Traditional legal education through the casebook method typically omits any substantial consideration of the external historical events that give rise to landmark cases. This omission may ultimately serve to distort the doctrinal complexity of major cases.

All legal cases tell stories. A narrative enfolds from the initial dispute, winds through the litigation and culminates in an appellate decision. This legal narrative is not linear: facts generate conflict; legal process reshapes that conflict; and appellate analysis distills both facts and process into formal principle. Thus while a case can be viewed as one narrative, it is important to recognize that this narrative is multi-dimensional, comprised of several distinct yet related stories. Of these various stories, the appellate decision offers the most formalized narrative. Appellate opinions typically incorporate only minimal facts and little information about events external to the litigation because their primary function is to reconcile key facts with legal doctrine. Traditional legal education, by focusing primarily on the extraction of legal doctrine from appellate opinions, also ignores external narratives, narratives which may be essential to understanding how significant decisions reflect and impact society.

This article examines a particular type of narrative – the story surrounding a landmark constitutional case, including the social and political struggles giving rise to the

case and the litigation that brings the dispute to the Supreme Court.⁵ It argues that the incorporation of this contextual narrative into constitutional analysis ensures a more accurate understanding of constitutional meaning. This thesis is essentially an argument in support of constitutional historicism – the conclusion that constitutional decisionmaking is influenced by the social and political dynamics of the times.⁶ The paper demonstrates the significance of constitutional historicism by examining five stories describing an important U.S. Supreme Court case, *Pierce v. Society of Sisters*.⁷ These stories illuminate the impact of contextual narrative upon constitutional meaning. Like most landmark constitutional cases, *Pierce* is a product of its time; it should not be analyzed as if it exists in a realm inhabited only by precedent. The paper unmoors *Pierce* from its conventional legal treatment in constitutional canon and legal education to reveal the marked difference between a highly formalized legal analysis and the multi-faceted legal, political, and social comprehension gained through contextual narrative. The examination of *Pierce* will begin with the traditional legal education model and progressively expand that model to illustrate how the understanding of constitutional meaning changes with the addition of narrative.

⁵ There is a growing body of legal commentary addressing the significance of social and political context to understanding the development of law, particularly constitutional law. For example, Reva Siegel argues that an understanding of the social movements surrounding the development of constitutional case law can lead to new interpretations of constitutional rights. She posits that the socio-political dynamics responsible both for the introduction of the Equal Rights Amendment and the ERA's failure influenced the Supreme Court to develop equal protection doctrine prohibiting sex discrimination. See Riva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de Facto ERA*, 94 Cal. L. Rev. 1323 (2006).

⁶ Jack Balkin and Sanford Levinson argue that traditional mechanisms of legal reasoning do not always sufficiently recognize the influence that historical, social, and political trends have on constitutional interpretation; they argue that “legal historicism,” legal study that encompasses these trends, should be used to more fully understand constitutional decision-making. By extension, they refer to those forms of legal study that examine constitutional decisionmaking as the product of political, social, and historical forces as “constitutional historicism.” Jack M. Balkin and Sanford Levinson, *Legal Historicism and Academics, The Roles of Law Professors in the Wake of Bush v. Gore*, 90 Geo. L.J. 173 (2001).

⁷ 268 U.S. 510 (1925).

Landmark constitutional cases generally tell stories that differ markedly from private party litigation. These cases often extend beyond the human drama of private disputes to touch the most significant political and social issues of their day. Constitutional cases take on landmark status not simply because they involve transformative legal analysis but also because they resolve pressing public controversies. They spring from the unique historical circumstances that bring them to the Court and illustrate the rich complexity of the interaction between constitutional law and social movements. But appellate opinions in constitutional cases may unfold as the most minimalist narratives of all. Many involve facial challenges to a statute or regulation where discussion of facts and context is abbreviated because it contributes little to formal legal examination. With these decisions, one may examine doctrine but be left with the unsatisfactory feeling that doctrinal analysis does not fully explain the case.

Narrative, as defined in this article, is an important, and enormously overlooked, aspect of constitutional understanding. An examination of the complex external forces attending significant constitutional cases offers valuable insights that complement doctrinal analysis. Narrative can elucidate circumstances that have been overlooked in the formalized articulation of constitutional norms. It can provide not only a more nuanced understanding of the conflict but in some instances an altered interpretation of the constitutional resolution. Narrative can also serve a corrective function, particularly with older cases like *Pierce* where actual knowledge of the socio-political history disappears. Over time, the constitutional meaning of a case takes on a life of its own, the final narrative dimension in a complex set of overlapping stories. The trajectory of a case, and

its place in constitutional canon, may stray substantially from its original meaning.⁸ The incorporation of narrative helps protect against the doctrinal distortion that can occur when a case is interpreted only by reference to a formalized norm.

Current constitutional theory rarely acknowledges the impact of social and political events on constitutional interpretation. This in part stems from a perception that the principle of judicial independence would be compromised by recognition of the impact of socio-political context upon constitutional meaning. While courts have an obligation to interpret the constitution from a judicial rather than a political perspective, constitutional cases do not arise in political and social vacuums. The historical milieu in which a case arises may very well affect the court's understanding of constitutional principles. From a jurisprudential perspective, historical context is a critical aspect of constitutional analysis because it illuminates how events impel the court into new insights about basic constitutional guarantees.

There certainly are notable exceptions where both the Court and legal analysts acknowledge the significance of socio-political context to constitutional interpretation. The most obvious example of this recognition is the use of the Framers' intent as a legitimate tool of constitutional interpretation. More recently, the Court has examined historical practices for the purpose of determining whether certain interests are protected as liberties under the Due Process Clause of the Fourteenth Amendment. In fact, the Court's test for protecting these liberty interests – whether the right in question is so

⁸ The German philosopher Hans-Georg Gadamer argues that interpretation of texts is not fixed, in fact it is an "infinite process" that is "never finished." To Gadamer, it is incomplete to understand a text only historically because the historical context is inevitably in tension with present experience and perspective. Thus meaning changes not only through understanding historical context but also by recognizing that time produces new meaning. See Hans-Georg Gadamer, *The Elevation of the Historicity of Understanding to the Status of Hermeneutical Principle*, in *The Critical Tradition* (David H. Richter, 3rd Ed., New York Bedford/St. Martin's Press, 2006).

deeply ingrained in the traditions of the country as to be deemed fundamental – is a testament to the importance of historical narrative. In legal education too, there are some cases where mere doctrinal extraction from an appellate opinion is considered insufficient. *Marbury v. Madison*, the foundational precedent establishing the authority for the federal judiciary to review the constitutionality of legislative and certain executive acts, is considered by many the most important decision in American constitutional law and it is often the first case taught in a constitutional law course.⁹ A student’s comprehension of the Court’s analysis of the Constitution and the Judiciary Act of 1789 is greatly enhanced when the case is discussed in the context of the political battle raging between the Federalists and the Jeffersonians for control of the government and the judiciary. *Brown v. Board of Education*, described earlier, is a paradigmatic example of a foundational constitutional case which can be fully understood only if social context is included with doctrinal analysis. One can argue that the brief *Brown* opinion, striking for its minimalist legal analysis, and based substantially on sociological data demonstrating the harm caused to children by segregated schooling, is the most significant example of a landmark opinion that does make social context part of constitutional interpretation. The Court overruled *Plessy* primarily because it concluded that an evolved understanding of the impact of segregation transformed the constitutional meaning of equal protection of the law. But the opinion offers little insight into the sweeping historical struggle that culminated in the Court’s conclusion that separate is inherently unequal. Without the inclusion of contextual narrative, comprehension of the Court’s dramatic doctrinal shift diminishes.

⁹ 5 U.S. 137 (Cranch) 1803.

Pierce v. Society of Sisters is another example of a case that cannot be fully understood by reading the few paragraphs written by the Court to resolve the dispute. In fact, the emphatic language used by the Court in its very brief opinion leaves one with the conviction that there is far more to the case than can be discerned from doctrinal analysis. If we examine the decision, and its conventional treatment in most casebooks, we can see how the addition of contextual narrative actually alters the meaning of the case.

Pierce arose out of an initiative passed in Oregon in 1922 which would have required all children to attend public school. In 1925, the Supreme Court found the Oregon law unconstitutional. The Court held that the law violated the constitutionally protected right of parents to control the upbringing and education of their children. The U.S. Constitution says nothing, of course, about parental rights. The Court held that parental rights are protected as “liberty” interests under the Due Process Clause of the Fourteenth Amendment. This reduction of *Pierce* to its constitutional holding becomes the starting point for evaluating the impact of narrative on constitutional meaning. The formalist doctrinal description of *Pierce* constitutes the first story of the case. Five stories are presented. Each story is factually accurate. Each story is incomplete. With the addition of levels of contextual narrative, other stories evolve, culminating in an understanding of *Pierce* that is not only more comprehensive but is doctrinally distinct from the formulation in the first story.

Story #1. Doctrinal Minimalism. Constitutional doctrine can be taught simply as a collection of legal norms. This “black letter law” approach emphasizes law as rules and tends to minimize analysis of the development of law. Even in classes where

doctrinal development is stressed, some cases will be taught in the minimalist mode because time constraints limit the number of cases that can be considered in depth.

The doctrinal minimalist approach to *Pierce* focuses exclusively on the Court's holding that parental rights are protected as liberty interests under the Fourteenth Amendment. The pivotal language quoted from the opinion to support the minimalist approach is the Court's pronouncement that "...we think it entirely plain that the act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."¹⁰ The key doctrinal point for the minimalist is the Court's recognition of parental rights as constitutionally protected interests. Parental rights take their place on a short list of unenumerated rights identified and protected by the Court. No attention is given to the historical context for the Oregon law. Little, if any, attention is given to the purported justifications for the law. Certainly, the identification of unenumerated rights protected by the Court is important. But the minimalist approach, by unhinging the holding from the social and political context of *Pierce*, fails to illuminate a broader constitutional principle fundamental to the case.

Story #2. Legal History Minimalism. Most constitutional law casebooks organize cases by subject matter. Within that subject matter, some legal history may be included. For example, many constitutional law casebooks trace the Court's early struggles with Commerce Clause doctrine before presenting the modern cases. Similarly, most casebooks devote some coverage to the development of political speech doctrine under the First Amendment. This doctrinal history provides important insights into how constitutional interpretation may evolve over time. It offers students an analytical depth beyond the mere extraction of rules, allowing them to better understand the interpretive

¹⁰ 268 U.S. 510, 534 (1925).

challenges faced by the Court. But with many landmark cases, a thorough understanding of doctrine, and doctrinal evolution, requires consideration of the broader social context in which doctrinal changes occur. For example, students may learn, as a matter of doctrinal development, that prior to the 1930's, the Court held that the federal Commerce Clause power generally did not extend to the regulation of "local" activities within a state but that by the mid-1930's the Court reversed itself, upholding federal legislation regulating local activities formerly found immune from federal control.¹¹ Students gain little from studying this dramatic doctrinal flip, other than collecting opposed rules, unless they also learn about the forces brought to bear on the Court from the industrialization of the country, the Great Depression, and the political branches of government. The selective incorporation of socio-political context into the teaching of landmark constitutional cases suggests there is some recognition of the relevance of this information. Yet there has been little overt acknowledgment by constitutional law analysts or educators of the significance of social context to understanding constitutional meaning.

Any attempt to place *Pierce* in even a minimalist legal history context reveals a doctrinal complexity to the case not disclosed by the black letter law approach of Story #1. Although *Pierce* is best known for its constitutional recognition of parental rights, the case was decided during the *Lochner* era, roughly designated as the first three decades of the twentieth century, when the Court aggressively protected economic interests under the same liberty clause of the Fourteenth Amendment relied upon in *Pierce*. Story #2

¹¹ See *U.S. v. Darby*, 312 U.S. 100 (1941), (upholding legislation prohibiting the interstate shipment of goods produced by employees paid below a prescribed minimum wage); *Wickard v. Filburn*, 317 U.S. 111 (1942), (upholding Congress's ability to regulate the production of wheat grown primarily for home consumption and not shipped across interstate boundaries).

unfolds by examining *Pierce* in its legal history context. The *Lochner* era has been virtually demonized by subsequent precedent and legal analysts as a time when the Court strayed from principled constitutional analysis and blatantly substituted personal value judgments for objective interpretation.¹² During this time, a deeply conservative Court reacted with hostility to a dramatically new social order by upholding challenges to an unprecedented wave of progressive economic and labor legislation promulgated by the state and federal governments. The Court generously employed “liberty of contract” to protect the free market order from regulation.

Pierce is one of only two constitutional cases during this era decided on the basis of “personal” rather than economic liberty. Notably, the challenges raised in the case offered the Court the opportunity to rest its decision on economic liberty. But the Court chose to recognize parental rights instead. Thus from a legal history perspective, it is important to consider the decision in light of its place in the *Lochner* era. *Pierce* becomes part of a larger doctrinal picture, that of a Court highly unreceptive to intrusive governmental regulation of any sort. In this doctrinal landscape, the Court’s protection of parental rights *per se* becomes less significant than its pervasive anti-statist philosophy. Thus even a cursory incorporation of historical context suggests *Pierce* addresses both a broader and more subtle constitutional principle than revealed by Story #1.

Story #3. Doctrinal Maximalism. Any in-depth treatment of *Pierce* is likely to focus on its place in the canon of cases protecting privacy and other unenumerated personal liberty interests. The Court’s foray into unenumerated rights remains one of the

¹² *But see* David E. Bernstein, *Lochner Era Revisionism, Revised: Lochner and the Origins of Fundamental Rights Constitutionalism*, 92 *Geo. L.J.* 1, 2003. Bernstein argues that *Lochner*-era Justices were not motivated by personal value judgments against economic regulations, but by the belief that freedom of contract was a fundamental right protected by the Due Process Clause of the Fourteenth Amendment.

most controversial areas of constitutional law and most casebooks devote substantial coverage to the question of whether the Court's protection of these rights is legitimate constitutional interpretation.

The importance of *Pierce* as precedent emerges when the case is examined in the broader doctrinal landscape of unenumerated rights. *Pierce* is the first case to rely fully on constitutional grounds to insulate intimate family and personal choices from legislative intrusion. As such, it is considered one of the foundational cases supporting the right of privacy. In addition, *Pierce's* recognition of parental rights exemplify the type of personal and family based fundamental interests currently given judicial recognition as liberty interests under the Due Process Clause of the Fourteenth Amendment.

The problem with the wholly doctrinal approach, even the deeper look of Story #3, is that it overly formalizes the case by seeking to make *Pierce* fit into one doctrinal niche. Pigeonholing *Pierce* as simply a case about parental rights ignores the less obvious analytical concerns of the Court. Consider, for example, the most famous passage in the opinion:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public school teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.¹³

The significance of the Court's language in this passage is unlikely to be appreciated without the addition of historical context. The Court's opinion powerfully rejects the state's authority to "standardize" its children, and insists that "the child is not

¹³ 268 U.S. at 535.

the mere creature of the state.” This language, in the key passage in the opinion, strongly suggests that the *Pierce* opinion speaks to more complex concerns than the parental rights principle to which it is too often confined. And indeed, to fully comprehend *Pierce* one must understand why the Court described mandatory public education as an effort by the state to “standardize” children. But the Court makes no effort to elaborate on why it chose this tantalizing language and the reader cannot discern its import simply from the text. The purely doctrinal approach to *Pierce* of Story #3 thus poses the risk of distorting constitutional meaning.

Story #4. Litigation History. The litigation story of a landmark case, including the briefs and court hearings, offers insight into the doctrinal arguments that will shape the Court’s transformative decision. A different tale of *Pierce* emerges from a case study of the litigation. The Oregon law challenged in the case, requiring all children to attend public school, is frequently described as “anti-Catholic” legislation. The law, while impacting all private schools, both secular and religious, would have disproportionately burdened the Catholic school system, which was the largest private school network in Oregon (and throughout the country). The primary plaintiff in the case, the Society of the Sisters of the Holy Names of Jesus and Mary, operated the majority of the Catholic schools in Oregon. The National Catholic Welfare Conference agreed to fund the Supreme Court litigation because it deemed the case so significant.

The Oregon law clearly posed a threat to religious education but the plaintiffs chose not to build their case around a religious liberty claim. The Supreme Court had not yet applied the First Amendment protections of religious liberty to state, as compared to federal, legislation. So although the plaintiffs invited the Court to apply the First

Amendment to the states and entertain a religious liberty claim, they focused their case on parental rights. The plaintiffs believed that the conservative, antistatist Court would respond favorably to an argument that parental prerogative should prevail against efforts by the state to monopolize education. Religious intolerance remained a pervasive subtext of the litigation however. The Court was well aware of the anti-Catholic history of the law because charges of religious bigotry surfaced repeatedly in the briefs and oral arguments.

The most pervasive litigation theme is revealed obliquely through the key passage in the opinion criticizing the state for efforts to “standardize” its children through mandatory public education. The doctrinal approach of Story #3 failed to explain the significance of this language but an examination of the litigation history in Story #4 begins to expose fully *Pierce’s* doctrinal complexities. During the 1920’s, the Court, and the country, were alarmed by the spread of communism and concerned that radicalism threatened the stability of the country. The parties in *Pierce* asked the Court to evaluate compulsory public schooling in light of the national security of the country. Both sides argued that the fate of American democracy could hang on the Court’s decision. Oregon claimed mandatory public schooling was necessary to facilitate the assimilation of immigrants. More specifically, Oregon argued that unassimilated immigrants posed a national security risk. Immigrants were heavily represented in Bolshevik, socialist, and communist groups and the state argued in its brief that if the Court found the Oregon law unconstitutional, “...it is not only a possibility but almost a certainty that within a few

years the great centers of population in our country will be dotted with elementary schools which instead of being red on the outside will be red on the inside.”¹⁴

The plaintiffs, no less than the state, pushed the Court to evaluate compulsory public education in light of the communist menace confronting democracy in the early 1920’s. They insisted that compulsory public education was an attribute, not of democracy, but of tyranny, where the state, not parents, controlled the upbringing and training of its children. The plaintiffs argued that “[i]t need, therefore, not excite our wonder that today no country holds parenthood in so slight esteem as did Plato or the Spartans – except Soviet Russia.” They argued to the Court that in Soviet Russia “children do belong to the state” and that “[i]n final analysis, it is submitted, the enactment in suit is in consonance only with the communistic and Bolshevistic ideals now obtaining in Russia, and not with those of free government and American conceptions of liberty.”¹⁵

Thus the language in the Court’s opinion takes on new meaning when filtered through the lens of the parties’ preoccupation with communism. It was widely perceived that communism threatened liberty by “standardizing” education and the individual. The Court, by employing similar language of standardization, along with the pointed remark that the child is “not the mere creature of the state,” intended to demarcate a fundamental constitutional line, a point at which the exercise of state power is no longer consistent with American democratic principles. In rejecting compulsory public education, the Court selected language that implicated a far more comprehensive constitutional principle

¹⁴ Brief of Appellant, The Governor of the State of Oregon, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Reprinted in OREGON SCHOOL CASES, COMPLETE RECORD 102-03 (The Belvedere Press, Inc. 1925).

¹⁵ Brief on Behalf of Appellee, The Society of the Sisters of the Holy Names of Jesus and Mary, OREGON SCHOOL CASES, *supra* note 14, at 275.

than the protection of parental rights. The strongly antistatist message of *Pierce* becomes apparent only through the addition of historical context.

Story #5 *Pierce* Redux. So what is the real story of *Pierce*? Stories 1-4 offer varying doctrinal insights and legal history perspectives. While each of these stories is accurate, each alone fails to capture the essence of the case. In fact, Stories 1-4 provide only a glimpse into the fascinating legal and political landscape that is at the core of *Pierce*. Story #4, by exploring the litigation in greater depth, comes closest to capturing the true heart of the case. But Story #4, because it is limited to the litigation chronicle, incorporates very little of the external influences shaping the conflict that brought *Pierce* to the Court. Story #5 extends beyond doctrine and litigation to focus on the social movements impacting the *Pierce* case. Story #5 demonstrates that widening the lens through which we view major cases may be essential, not only to an enriched understanding, but also to a more precise articulation of doctrine.

The origins of the compulsory public education law can be traced to the nativist groups that flourished in the post-war years. These groups, along with patriotic societies, convinced many Americans that whatever was foreign was anti-American. Immigrants and non-Protestants were linked with subversive politics. The large influx of immigrants to the United States during this period aggravated fear of a foreign-imported leftist revolution and incited hostility to immigrants. Nativists demanded the government take action to assure that immigrants assimilated quickly into American society. Private schools, particularly those established by Catholic and German Lutheran immigrants, came under suspicion by those who feared these schools failed to instill proper American values. Nativist groups, including the Ku Klux Klan, supported a nationwide campaign

for compulsory public schooling to control the assimilation of immigrants. The Oregon case was widely viewed as a test case to determine the fate of similar legislation proposed in other states.

The Oregon initiative was pushed by the Ku Klux Klan, which became a powerful political force in the state during the early 1920's. The Klan's anti-Catholic sentiments were well known in Oregon but the Klan also successfully solicited moderates who were attracted to the group's 100% Americanism platform. Thus the compulsory public education law cannot be dismissed as the simple product of religious bigotry.

The Oregon battle over compulsory public education brought into conflict two deeply held American traditions. Oregonians, politically populist and progressive, embraced public education as anti-elitist and many believed that mandatory public schooling would provide the class-leveling essential to successful democracy. Opponents of the measure sought to convince voters that the measure jeopardized fundamental American liberties such as parental rights and religious freedom. Opponents also played the radicalism card, insisting that compulsory public education only existed in communist or autocratic regimes. In the end, these arguments failed to convince voters anxious to "Americanize" immigrants and fearful that private religious schools failed to inculcate patriotism. Oregon Progressives joined hands with the Klan to pass the first compulsory public education law in the country.

These themes of intolerance, assimilation, and national security provide the social and political context for the Court's consideration of the Oregon law. The Taft Court had already shown its willingness to protect unenumerated economic liberties against the perceived intrusions of an overbearing state. The plaintiffs offered a conservative Court a

persuasive argument on behalf of parental rights, rights that carried a substantial common law pedigree. The Court's constitutional recognition of parental rights, the conventional doctrinal lynchpin of *Pierce*, while important, is only a part of the constitutional meaning of the case. Indeed, parental rights serve primarily as a vehicle for the Court's deeply anti-statist constitutional perspective. The Court's conclusion that state monopoly of education is inconsistent with basic democratic principles imparts a far more comprehensive message about individual liberty and state power than can generally be gleaned from the doctrinal reduction of *Pierce* to a case about parental rights. This analytical dimension truly emerges only upon an examination of the social and political dynamics giving rise to *Pierce*. The inclusion of this narrative subtly, but definitively, affects the ultimate constitutional meaning of the case.

The richness, and significance, of the *Pierce* stories attest to the role of contextual narrative in deciphering constitutional meaning. These diverse narratives illuminate the limitations of the traditional legal teaching mode, including the doctrinal distortion that can occur from an overemphasis on distilling precedent. The *Pierce* case, in particular, offers a powerful example of the impact of contextual narrative because the Court's brief opinion discloses little of the complex constitutional, social, and political values at stake. Not all constitutional opinions present such enigmas however. Many decisions, particularly more modern ones, develop the factual context in substantially greater detail than in *Pierce*. But even in opinions where the facts are thoroughly developed, little, if any, attention is devoted to the socio-political dynamics driving the case. As the *Pierce* narrative demonstrates, this context may be critical to doctrinal accuracy. Recognition of the value of historical context to constitutional analysis is likely to occur however only if

there is a willingness to look outside the traditional constitutional law paradigm and acknowledge that a major constitutional opinion is a historical moment comprised of more than doctrinal transformation. Constitutional change occurs because of circumstances that push the Court to consider constitutional principles in a new light. Historical context analysis, by revealing these circumstances, elucidates constitutional meaning; law and history should not be viewed as separate and mutually exclusive spheres.

Teaching to the Tale. The addition of contextual narrative to constitutional analysis can benefit educators with diverse pedagogical goals. A historically informed inquiry most obviously furthers constitutional analysis grounded in historicism. For the historicist, contextual narrative is essential to understanding how constitutional decisionmaking is impacted by socio-political influences. But contextual narrative also serves those educators who emphasize normative analysis and use appellate opinions primarily to critique the Court's interpretation of the Constitution. As the *Pierce* narrative demonstrates, historical context advances normative analysis by providing more nuanced insights into constitutional meaning.

The traditional pedagogy embodied in the casebook method incorporates few, if any, of the contextual narratives surrounding major decisions. The constitutional law educator thus faces a somewhat daunting task in researching and compiling contextual narratives. Given the dearth of teaching materials, it may be unrealistic even for a motivated educator to dramatically transform the educational experience through narratives. But it is possible to begin to teach students their significance.

There are several ways narratives can reasonably be included without re-crafting an entire course. One is to have the students read a lengthy study of one major case, typically at the beginning of the semester. Supplemental materials developing the historical context of landmark cases are increasingly available in the form of articles, book chapters, and books. This approach gives students an in-depth look at one case and brings alive the importance of historical context to constitutional meaning. This lesson can be revisited as students work through other cases. Analysis of most major cases should incorporate some historical context introduced through supplemental materials or through lecture. For those who prefer not to assign a long text to start the course, the same result can be achieved with short supplemental materials and lecture accompanying case discussion. Another approach is to assign one or two students to each landmark case and have them undertake very limited research on the case so they can contribute relevant historical context to the discussion. Students enjoy this method as long as they understand they are not being assigned a major research project. In seminars, students can be assigned more extensive research and be asked to develop a historical narrative for a major case.

Regardless of whether students or professor will provide the narrative context, it is effective to start the analysis of the case by asking the students to explain the decision in the narrowest context possible. For example, in regards to the *Pierce* case, students should start with a doctrinal minimalist analysis that explains the Oregon law, the litigants, the issue presented and the holding. Once the basics are clear, introduce the narrative context through lecture or student presentations. Ask the students to analyze

how the addition of socio-political context and litigation strategy enhances or changes their understanding of the case.

Whatever method and extent used to incorporate historical narrative, the important lesson for students is that socio-political context does have a role in deciphering constitutional meaning. This lesson alone challenges the traditional constitutional law paradigm. But a historically informed analysis also has pedagogical significance beyond enriching the interpretation of any one particular case. It gives students a valuable perspective for understanding that constitutional norms are not necessarily fixed, but may, chameleon-like, reflect the unique political and social environment that produces a landmark constitutional case.