

Examining the Constitutional Issues of Chicago's Gang Congregation Ordinance

Overview

After a brief introductory discussion about possible community responses to gang-related violence, students read about how the Chicago City Council passed a controversial ordinance to suppress gang activity and how each branch of government was involved in shaping that policy. Next, they participate in a Civil Conversation on the reading. In this structured discussion method, under the guidance of a facilitator (the teacher), participants are encouraged to engage intellectually with challenging materials, gain insight about their own point of view, and strive for a shared understanding of issues. Finally, students debrief the Civil Conversation process, as well as the policy issues raised by the case of *City of Chicago v. Morales*.

Standards and Topics

- CCSS.ELA-LITERACY.SL.9-10.1.A: Come to discussions prepared having read and researched material under study; explicitly draw on that preparation by referring to evidence from texts and other research on the topic or issue to stimulate a thoughtful, well-reasoned exchange of ideas.
- CCSS.ELA-LITERACY.SL.9-10.1.C: Propel conversations by posing and responding to questions that relate the current discussion to broader themes or larger ideas; actively incorporate others into the discussion; and clarify, verify, or challenge ideas and conclusions.
- CCSS.ELA-LITERACY.SL.9-10.1.D: Respond thoughtfully to diverse perspectives, summarize points of agreement and disagreement, and, when warranted, qualify or justify their own views and understanding and make new connections in light of the evidence and reasoning presented.

Topics: Due process, constitutional issues and crime, policymaking in the three branches of government

Objectives

Students will be able to:

- Explore and critically evaluate competing arguments raised in the case of *City of Chicago v. Morales*.
- Explain how each branch of government relates to the law-making and public policy.
- Participate in Civil Conversation, which will enable them to:
 - a. Gain a deeper understanding of a controversial issue.
 - b. Use close reading skills to analyze a text.
 - c. Present text-based claims.
 - d. Develop speaking, listening, and analytical skills.
 - e. Identify common ground among differing views.

Materials

Handout A: Chicago’s Gang Congregation Ordinance (one per student)

Handout B: Civil Conversation Guide (one per student)

Procedure

I. Focus Discussion

- A. Hold a brief discussion by asking students: What are some of the ways that communities respond to increased criminal activity? What tools are available to citizens who are concerned about violence taking place in their communities? *(Accept reasoned responses, such as: organize community meetings or hearings with elected officials and/or law enforcement, call for changes or improvements to laws, call on community organizations (schools, religious institutions, etc.) to help bring people together, provide support for people who have been affected by violence, etc.)*
- B. Tell students that today they will learn more about how one city government attempted to deal with increased gang violence, and how that led to a major policy debate and constitutional challenge.
- C. Optional: If you feel that your students would benefit from a quick review of the three branches of government, especially how they relate to law-making, you can refer to the following definitions/examples.

Legislative. This branch makes laws and students probably will have little difficulty grasping this and coming up with examples.

Executive. This branch enforces the law. It can be involved in making policy by deciding how to enforce the law.

Judicial. This branch interprets the law. But this branch also makes policy (judicial policymaking is often controversial). Consider these examples:

- A Colorado judge has a sentencing policy for young people convicted of playing their music too loud while driving around the city. Instead of imposing a fine, he sentences them to one hour of listening to his music. He claims to no longer see repeat offenders.
- The *Miranda* rule was created by the Supreme Court in a confession case. The rule sets forth requirements that police must follow before questioning a criminal suspect. It is a policy to make sure police comply with the Fifth Amendment.

II. Reading: Chicago’s Gang Congregation Ordinance

- A. Briefly provide students with an overview of the purpose and rationale of the Civil Conversation activity. Use the Overview above to help you.

Give each student a copy of **Handout A: Chicago’s Gang Congregation Ordinance**.

- B. Civil Conversation Guide

Distribute a copy of **Handout B: Civil Conversation Guide** to each student to complete as they read. (Each student should fill in his/her own guide.)

III. Activity: Civil Conversation

- A. Divide the class into groups of 3–4 students. You may want to have each group select a leader who will get the discussion started, ensure the group stays on-task, and finishes on time.
- B. Determine how much time the groups have to complete the discussion. (You will know what’s best for your students, depending on the length of the reading and how experienced your students are in student-directed discussion.)
 1. **Time:** Conversations for classroom purposes should have a time limit, generally ranging from 15 to 45 minutes and an additional five minutes to reflect on the effectiveness of the conversations. The reflection time is an opportunity to ask any students who have not spoken to comment on the things they have heard. Ask them who said something that gave them a new insight that they agreed or disagreed with.
 2. **Small Groups:** This discussion strategy is designed to ensure the participation of every student. Groups of 3-4 students are ideal. If you are scaffolding text for various reading levels, group together students who will use the same text.
- C. Review the rules of a Civil Conversation (listed under Step 3 on the Guide) and direct the groups to follow the instructions on the Guide to get started.
- D. Let groups know you will be circulating to listen in on their conversations and that each person in a group is expected to participate. The goal is for everyone to contribute equally to the conversation.
- E. If necessary, remind groups of the time and urge them to move to the next steps.

IV. Assessment/Closure

- A. After the groups have completed their discussions, debrief the activity by having the class reflect on the effectiveness of the conversation:
 1. What did you learn from the Civil Conversation?
 2. What common ground did you find with other members of the group?
 3. Ask all participants to suggest ways in which the conversation could be improved. If appropriate, have students add the suggestions to their list of conversation rules.
- B. If you want to also debrief the content of the Civil Conversation, you might ask students:
 1. Can you think of other examples of policymaking in different branches of government? (national and local)
 2. Why should citizens know about policymaking in the three branches of government? Think of when knowing which branch might be associated with a particular policy would come in handy.
- C. For assessment, look for the following on each student’s Civil Conversation Guide Guide:
 - Step 2 – A, B: Basic understanding of text.
 - Step 2 – C, D: Text-based arguments.

Step 2 – E: Appropriate and compelling questions about the text.

Step 4 – A: Level of participation (should be “about the same as others”).

Step 4 – B: Answer is appropriately related to topic/issue presented in text.

Step 4 – C, D: Specificity/text-based.

- D. For additional assessment, you may want to collect the article/text students used to assess the annotations they made in terms of connections to prior knowledge/experience, questions they had while reading, and comments they made.

Chicago's Gang Congregation Ordinance

In the United States, particularly in urban areas, criminal gangs pose a great danger. They often try to take over parts of a city, battling other gangs in turf wars, and terrorizing residents. Like other major cities, Chicago has had much experience with gangs. In the 1990s, more than 100 criminal gangs roamed its streets. In an eight-year period, Chicago gangs committed more than 60,000 crimes, including 20,000 violent crimes and 894 homicides.

In 1992, the Chicago City Council's Committee on Fire and Police conducted public hearings on the issue of dealing with the city's gangs. Many local residents testified about the terror they felt on city streets. One woman said, "When I walk out my door, these guys are out there . . . They watch you . . . They know where you live. They know what time you leave, what time you come home. I am afraid of them." Another resident said, "I have never had the terror that I feel every day when I walk down the streets of Chicago. . . . I have had my windows broken out. I have had guns pulled on me. I have been threatened. I get intimidated on a daily basis. . . ."

From the hearings, the City Council concluded that gangs exercised control over identifiable areas of the city by loitering in those areas and intimidating law-abiding from entering those areas. As a result, city officials concluded that the loitering of gang members in the streets "creates a justifiable fear for the safety of persons and property in the area."

In June of 1992, the City Council responded to safety concerns by passing the Gang Congregation Ordinance, and the mayor signed it into law. For someone to violate this law, four things must happen:

- First, a police officer must reasonably believe that a street gang member is present in a group of two or more.
- Second, the people must be "loitering," which the law defines as staying "in any one place with no apparent purpose."
- Third, the officer must issue an order for the group to disperse.
- Fourth, the people must disobey the order.

If convicted, an offender could face up to six months in jail, a fine up to \$500, and up to 120 hours of community service.

Within two months of the ordinance's passage, the Chicago Police Department issued General Order 92-4, containing guidelines on how it was going to enforce the law. The purpose of the guidelines was "to ensure that the anti-gang loitering ordinance is not enforced in an arbitrary or discriminatory way." The guidelines limited enforcement to "designated areas;" though not made public, these "designated areas" were identified by



(Wikimedia Commons)

police as places where gangs had a “demonstrable effect on the activities of law-abiding persons.”

They further allowed only officers in the Gang Crime Section and other specific officers to make arrests under the ordinance. They also spelled out criteria for identifying gang members.

The ordinance was in effect from August 1992 to December 1995. During that period, police issued over 89,000 dispersal orders and arrested over 42,000 people for violating the law.

Many of these people were put on trial. Thirteen trials were held. In each trial, lawyers for the defendants challenged the constitutionality of the ordinance. Eleven judges ruled that the ordinance was unconstitutional, and the prosecutors appealed. Two trial judges, however, upheld the law, and the ensuing trials convicted some defendants. These defendants appealed their convictions.

The Illinois Appellate Court ruled that the ordinance was unconstitutional. The court made its decision in December 1995, and police stopped enforcing the ordinance.

The City of Chicago appealed to the Illinois Supreme Court. This court also ruled that the law was unconstitutional. According to the court, the law was too vague. First, ordinary, law-abiding citizens are unable to know what conduct the law prohibits. Second, the law gives police “absolute discretion” to decide who is or is not a loiterer. In other words, police are authorized to enforce the law in an arbitrary way. The City of Chicago appealed to the U.S. Supreme Court. The U.S. Supreme Court decided to hear the case.

The City of Chicago argued that the law was not vague. First, ordinary citizens would know when the law has been violated once police gave an order to disperse. Second, police did not have too much discretion in applying the law. General Order 92-4 did not permit police to give an order to disperse to people who were already moving or who had an apparent purpose. (Remember, “loitering” describes people who are somewhere without an apparent purpose.) Also, police could only arrest those who disobeyed the dispersal order. Finally, police could not order dispersal unless the police reasonably believed that at least one loiterer was a gang member.

In 1999, the U.S. Supreme Court issued its opinion in *City of Chicago v. Morales*. (Jesus Morales was one of the defendants in the case. The name of the party appealing the case is always listed first.) The court agreed with the Illinois Supreme Court and found Chicago’s Gang Congregation Ordinance to be unconstitutional.

The court ruled that the law violated the 14th Amendment’s due process clause, which, among other things, requires fair notice. The court said that the meaning of staying “in any one place with no apparent purpose” was unclear. “[T]he purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law. . . . Although it is true that a loiterer is not subject to criminal sanctions unless he or she disobeys a dispersal order, the loitering is the conduct that the ordinance is designed to prohibit. If the loitering is in fact harmless and innocent, the dispersal order itself is an unjustified impairment of liberty.”

The court also ruled that the ordinance did, in fact, give police too much discretion in applying the law. An officer’s decision that someone had “no apparent purpose” was “inherently subjective,” meaning it was totally up to the officer on the scene. The court warned that this gives the police too much power: “Presumably an officer would have

discretion to treat some purposes – perhaps a purpose to engage in idle conversation . . . – as too frivolous to be apparent if he suspected a different ulterior [criminal] motive.”

Following the court’s decision in *Chicago v. Morales*, the city council passed a revised ordinance. In the revised version, enforcement was limited to “hot spots” identified by police and neighborhood residents. Also, police must use an objective standard to identify gang loitering:

Gang loitering means remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

In April 2018, residents of Chicago’s West Side testified before the city council again. They demanded a stronger ordinance. They cited increased drug sales and prostitution on the streets. Frequent gun violence and homicides led one woman to testify that life on Chicago’s West Side is like “living in a war zone.”

A spokesperson for the American Civil Liberties Union warned local officials against strengthening the ordinance. “We saw the effects of a broad, sweeping loitering ordinance in the late 1990s,” he wrote in an email to a local newspaper, “mass arrests of young men of color, many of whom were guilty of nothing more than being in their own neighborhoods.”

Writing & Discussion

1. Consider how each branch of government was involved in this policy.
 - Legislative branch: List the actions and which legislative body carried them out.
 - Executive branch: List the actions and which body in the executive branch carried them out.
 - Judicial branch: List the actions and which levels and/or bodies of the judicial branch carried them out.
2. Are gang ordinances an effective policy for addressing urban crime? Why or why not?

CIVIL CONVERSATION GUIDE

Name: _____

Class: _____

Title of Reading: _____

Step 1: Read.

- A. Read through the entire selection without stopping to think about any particular section.
- B. Re-read the selection and annotate (“talk to”) the text:
 - Underline the main/most important points. You can comment on these points in the margins.
 - Circle words or phrases that are unknown or confusing to you.
 - Write down any questions you have in the margin labeling them with a “?”.
 - Draw an ➡ in the margin next to text that connects to something you know from outside the text. Note what the connection is, such as a news item or personal experience.

Step 2: Think about the reading to prepare for the discussion.

A. This reading is about...	B. The MAIN POINTS are:
C. In the reading, I agree with:	D. In the reading, I disagree with:

E. What are two questions about this reading that you think could be discussed? (The best questions for discussion are ones that have no simple answer and that can use the text as evidence.)

1.

2.

Step 3: Discuss and listen.

RULES FOR CIVIL CONVERSATION

1. Everyone in your group should participate in the conversation.
2. Listen carefully to what others are saying.
3. Ask clarifying questions if you do not understand a point raised.
4. Be respectful of what others are saying.
5. Refer to the text to support your ideas.

You will have _____ minutes to discuss. Your goal is to engage with each other and the text to gain insight about your own point of view while finding a shared understanding of the issue.

At the end of the reading, you will likely find at least one discussion question. Use that question to get started. If time permits, you can also discuss questions you came up with in Section E above.

If the reading does not provide discussion questions, choose questions to discuss from Section E.

Step 4: After your conversation...

A. Compared to others in your group, did you speak? ___ Less than, ___ About the same as, ___ More than others.

B. Note some of the ways you added to the discussion.

C. What evidence did you use from the text to add to the discussion? Why was this evidence helpful?

D. What did you learn about the topic from the Civil Conversation? (Be sure to reference the text!)