

Interpreting the Fourteenth Amendment— A Simulation Activity

For use in conjunction with “The Trial of Susan B. Anthony,” by Ann D. Gordon, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

Through simulations of a House of Representatives committee hearing and a jury deliberation, students will understand the debates over the meaning of the Fourteenth Amendment and the suffragists’ arguments in favor of a constitutional right to vote.

Essential Questions

- What were the “privileges” and “immunities” protected by the Fourteenth Amendment?
- Is the right to vote an essential privilege of citizens under a republican government?
- What restrictions on suffrage are permitted under the Constitution?
- What could the advocates of woman suffrage expect to achieve through the federal courts? What impact did the courts’ decisions have on the advocates’ strategy?

Legal Issues Raised by the Susan B. Anthony Trial

Susan B. Anthony and her attorneys used her criminal trial to present the federal courts with the assertion that the Fourteenth Amendment’s recognition of United States citizenship extended to women the right to vote.

Estimated Time Frame

Four to five 50-minute class periods.

Recommended Prep Work

Students will need background on the early years of the woman suffrage movement and the debates over the rights of citizenship as defined by the Fourteenth Amendment. Review “The Trial of Susan B. Anthony,” by Ann D. Gordon, particularly the narrative (pp. 1–8); and the first, second, third, sixth, and seventh of the “Legal Questions Before the Federal Courts” (pp. 15–16, 17–20). (*Note:* All page citations refer to the PDF version of the Anthony unit, available online at <http://www.fjc.gov>.)

Prepare copies of the following excerpts and documents:

1. The Trial of Susan B. Anthony: A Short Narrative (pp. 1–8)
2. Henry Selden’s trial arguments for the defendant (pp. 41–43)
3. Trial arguments of Richard Crowley, U.S. attorney (pp. 43–45)
4. Justice Ward Hunt’s decision (pp. 48–50)
5. Report on the petition of Victoria Woodhull (pp. 53–56)
6. Minority Report on the memorial of Victoria Woodhull (pp. 56–60)
7. Fourteenth and Fifteenth Amendments (excerpts) (pp. 50–51)
8. Memorial of Victoria C. Woodhull (attached below)

Description of the Activity

Activity Overview

Students will write scripts for and reenact a hearing before the House of Representatives Committee on the Judiciary and will also reenact a jury deliberation in the Susan B. Anthony trial.

Introduction

All students should read the “The Trial of Susan B. Anthony: A Short Narrative” as homework. Briefly review the facts of the Anthony trial. Explain that the votes of Anthony and the other women in Rochester were part of a national campaign to bring women to the polls and to test their arguments about the Fourteenth Amendment in the federal courts.

Simulation

1. Select one student to play the role of Victoria Woodhull. Divide the remainder of the class into three teams for the simulations: one team will represent the supporters of the majority report of the Committee on the Judiciary; one team will represent the supporters of the minority report of the Committee on the Judiciary; and one team will represent the jurors in a hypothetical jury deliberation in the trial of Susan B. Anthony.
2. Devote one class period to student research on their respective scripts. Each student should write a one-page summary of answers to the essential questions on the worksheet for their group and base their answers on specific passages in the historical documents.
3. A second class period should be devoted to group work on scripts for the reenactment. The teacher should draw attention to the essential questions listed on each group’s worksheet. Answers to these questions should be worked into the group’s script. The script for Groups One and Two should provide for a five-minute presentation of Woodhull’s arguments and ten-minute presentations by both the majority report supporters and the minority report supporters. The script for Group Three should provide for a

twenty-minute reenactment of the jury deliberation. Groups should submit their scripts for the teacher to review prior to the reenactment.

4. One class period should be dedicated to the simulations.

Debrief and Wrap-up

Following the simulations, the teacher should review the ways in which the simulations differed from the actual events described in “The Trial of Susan B. Anthony,” by Ann D. Gordon.

Each student should read the decision of Justice Ward Hunt and write a short paper describing how Hunt responded to the arguments put forth by the reports of the Committee on the Judiciary and the arguments presented by Selden and Crowley during the trial. Does the student agree with Justice Hunt’s conclusions?

The teacher should conclude with a brief summary of other court cases related to woman suffrage and the Supreme Court’s decision in the case of *Minor v. Happersett*, as described in “What was the impact of the case?” (pp. 18–20).

Assessment

- Analysis of the groups’ written scripts.
- Essays by individual students on Justice Hunt’s decision.

Alternative Modalities and Enrichment Activities

Review the Sixth Amendment. Was there a jury in Anthony’s trial? Were the jurors’ rights violated in the Anthony case? How did Hunt justify his directed verdict? Do you think that the “impartiality” of this jury might have been in question?

If time is limited, the class could conduct one of the two simulations.

Involving a Judge

Invite a judge to discuss how Justice Hunt might have charged the jury if Hunt had allowed them to deliberate on a verdict. The visiting judge can also discuss when it is permissible for a judge to dismiss criminal charges before a jury decides a case.

Standards Addressed

U.S. History Standards (Grades 5–12)

Era 5—Civil War and Reconstruction (1850–1877)

Standard 3C: The student understands the successes and failures of Reconstruction in the South, North, and West. Therefore the student is able to:

Evaluate Reconstruction ideals as a culminating expression of the mid-19th-century impulse of social democratization and perfectionism; and Analyze how the Civil War and Reconstruction changed men's and women's roles and status in the North, South, and West.

Standards in Historical Thinking

Standard 2: Historical Comprehension

- A. Identify the author or source of the historical document or narrative and assess its credibility.
- C. Identify the central question(s) the historical narrative addresses.
- D. Differentiate between historical facts and historical interpretations.

Standard 3: Historical Analysis and Interpretation

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.
- E. Distinguish between unsupported expressions of opinion and informed hypotheses grounded in historical evidence.

Standard 5: Historical Issues-Analysis and Decision-Making

- A. Identify issues and problems in the past and analyze the interests, values, perspectives, and points of view of those involved in the situation.
- D. Evaluate alternative courses of action, keeping in mind the information available at the time, in terms of ethical considerations, the interests of those affected by the decision, and the long- and short-term consequences of each.
- F. Evaluate the implementation of a decision by analyzing the interests it served; estimating the position, power, and priority of each player involved; assessing the ethical dimensions of the decision; and evaluating its costs and benefits from a variety of perspectives.

Worksheet for student playing the role of Victoria C. Woodhull

Assignment

One student will portray Victoria C. Woodhull and present the memorial to the Committee on the Judiciary.

Key Documents

- Memorial of Victoria C. Woodhull (attached below).
- Fourteenth and Fifteenth Amendments (excerpts) (pp. 50–51)

Essential Questions

1. What does Woodhull say is the legal basis of her United States citizenship?
2. Why does she cite the Fifteenth Amendment?
3. How, according to Woodhull, does the prohibition of woman suffrage violate the Constitution?
4. What is the significance of Article VI of the Constitution for Woodhull's claim?
5. What is Woodhull asking Congress to do? What does she say is the authority for Congress's action?

Worksheet for Group One

The majority report on the memorial of Victoria C. Woodhull,
Committee on the Judiciary, U.S. House of Representatives

Assignment

The students in Group One will develop statements in response to the memorial of Victoria C. Woodhull.

Key Documents

- Report on the petition of Victoria Woodhull (pp. 53–56)
- Fourteenth and Fifteenth Amendments (excerpts) (pp. 50–51)
- Memorial of Victoria C. Woodhull (attached below)

Essential Questions

According to the majority of Committee members:

1. Who has the constitutional authority to establish qualifications for voters?
2. What voting rights does the Constitution protect?
3. Why would it be unconstitutional for Congress to pass an act protecting women's right to vote?
4. Where should the woman suffrage supporters focus their efforts to win the right to vote? What do the Committee members think might be the outcome of such a focus?
5. How might Woodhull and her allies establish women's constitutional right to vote?

Worksheet for Group Two

The minority report on the memorial of Victoria C. Woodhull,
Committee on the Judiciary, U.S. House of Representatives

Assignment

The students in Group Two will develop statements in response to the Report of the Committee and in support of the memorial of Victoria Woodhull.

Key Documents

- Minority Report on the memorial of Victoria Woodhull (pp. 56–60)
- Report on the petition of Victoria Woodhull (pp. 53–56)
- Fourteenth and Fifteenth Amendments (excerpts) (pp. 50–51)
- Memorial of Victoria C. Woodhull (attached below)

Essential Questions

According to the signers of the minority report of the Committee on the Judiciary:

1. What change did the Fourteenth Amendment make in the rights of citizenship?
2. What authority established suffrage as a “fundamental right of citizenship”?
3. What comparisons can be made between the constitutional rights of women and the constitutional rights of African-Americans?
4. What do they mean when they say the Constitution was from the beginning, “right in theory, but wrong in practice”?
5. What authority does the Constitution grant the states for the regulation of voter qualifications? What are the limits of that state authority?

Worksheet for Group Three

Jury Deliberation in the Trial of Susan B. Anthony

Assignment

Group Three will develop a script for a jury deliberation on the attorneys' arguments related to Susan B. Anthony's assertion of a right to vote under the Fourteenth Amendment.

Key Documents

- Indictment of Susan B. Anthony, U.S. District Court for the Northern District of New York (pp. 39–40)
- Henry Selden's trial arguments for the defendant (pp. 41–43)
- Trial arguments of Richard Crowley, U.S. attorney (pp. 43–44)
- The Fourteenth and Fifteenth Amendments (excerpts) (pp. 50–51)

Essential Questions

According to Henry Selden:

1. What provision of the Fourteenth Amendment established Anthony's right to vote?
2. Why was the right to vote "pre-eminently the most important of all privileges and immunities" protected by the Fourteenth Amendment?
3. What distinguishes a republican government from tyranny?

According to Richard Crowley:

1. What fundamental rights are guaranteed to citizens?
2. What is the evidence that the framers of the Fourteenth Amendment did not intend to guarantee women the right to vote?
3. What limits did the Constitution impose on the states' authority to regulate voter qualifications?

Members of Group Three should include discussion of which arguments they find most convincing and whether or not the attorneys addressed the charges in the indictment.

Memorial of Victoria C. Woodhull Praying

The passage of a law carrying into execution the right vested by the Constitution in citizens of the United States to vote, without regard to sex.

December 21, 1870. Referred to the Committee on the Judiciary and ordered to be printed.

The memorial of Victoria C. Woodhull, to the honorable the Senate and House of Representatives of the United States in Congress assembled, respectfully sheweth: That she was born in the State of Ohio, and is above the age of twenty-one years; that she has resided during the past three years in the State of New York; that she is still a resident thereof, and that she is a citizen of the United States, as declared by the fourteenth article of amendments to the Constitution of the United States; that since the adoption of the fifteenth article of amendments to the Constitution, neither the State of New York nor any other State, nor any Territory, has passed any law to deny or abridge the right of any citizen of the United States to vote, as established by the said article, neither on account of sex nor otherwise; that nevertheless, the right to vote is denied to women, citizens of the United States by the operation of election laws in the several States and Territories, which were enacted prior to the adoption of the said fourteenth and fifteenth amendments, and which are inconsistent with the Constitution as thus amended, and therefore are void and of no effect; but which, being still enforced by the said States and Territories, renders the Constitution inoperative as regards the right of women citizens to vote. And whereas, Article VI, Section 2, declares “that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made and which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution and laws of any State to the contrary notwithstanding;” and whereas no distinction between citizens is made in the Constitution of the United States on account of *sex*, but the fourteenth article of amendments to it provides that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,” nor deny to any person within its jurisdiction the equal protection of the laws; and whereas Congress has power “to make laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States,” and to make or alter all regulations in relation to the times and manner of holding elections for Senators and Representatives, and especially to enforce, by appropriate legislation, the provisions of the said fourteenth article; and whereas the continuance of the enforcement of said local election laws, denying and abridging the right to vote to citizens on account of sex, is a grievance to your memorialist and to various other persons, citizens of the United States, being

women: Therefore your memorialist would most respectfully petition your honorable bodies to make such law as in the wisdom of Congress shall be necessary and proper for carrying into execution the right vested by the Constitution in the citizens of the United States to vote without regard to sex.

And your memorialist will ever pray.

VICTORIA C. WOODHULL

New York City. *December* 19, 1870.

[Document Source: Senate, 41st Cong., 3rd sess., Miscellaneous Document No. 16.]