

The Trial of Susan B. Anthony—Suggestions for Judges

Judges can make an important contribution to students' understanding of the cases included in the Federal Judicial Center's Teaching Judicial History project. When meeting with students who are studying the cases, judges may wish to draw on these suggested discussion topics.

Overview

Susan B. Anthony, the prominent woman suffrage leader, was tried in a federal court in 1873 on charges of violating a federal law that made it a crime to vote in a congressional election if the voter was not qualified to vote under state law. A voter registrar had permitted Anthony and other women to register to vote in Rochester, N.Y., even though New York law denied women the suffrage, and election inspectors had allowed the women to cast votes in an election for U.S. representatives from New York. The widely publicized trial of Anthony was at the center of public debates on the legal rights of women and the protection of citizens' rights under the Fourteenth Amendment. The actions of the judge in the circuit court, Supreme Court Justice Ward Hunt, prompted further debates on his directed verdict of guilty, his refusal to let Anthony testify, and the lack of a provision for appeal of criminal convictions in the federal courts.

Understanding the court procedures and legal questions

In studying historic cases, students find it helpful to understand the differences between historical and current procedures in the federal courts. They also want to learn how the current courts handle similar cases. The questions below highlight features of the Anthony trial that can frame conversations between judges and students.

1. Justice Hunt's directed verdict of guilty was very unusual at the time, and in 1895 the Supreme Court ruled that federal courts could not direct a guilty verdict. Judges can, however, dismiss charges before a jury decides a case. For what reasons do judges dismiss charges in a criminal case?
2. Many of the arguments surrounding the *Anthony* trial concerned the intent of the congressional authors of the Fourteenth Amendment. How do courts address questions of legislative intent?

3. In 1873, federal law did not provide for appeals of criminal convictions. What are the standards for criminal appeals in the federal courts today?
4. Justice Hunt refused to allow Susan B. Anthony to testify in her own defense. Was he justified in this decision? What are a defendant's rights to testify today?
5. Anthony's attorneys argued that she did not knowingly break any federal laws because she had voted on the advice of her lawyers. What role does the advice-of-counsel defense play in current criminal proceedings?
6. Many observers of the trial thought that popular support for Anthony in Rochester would lead the jury to acquit her, regardless of the case against her. Is this kind of "jury nullification" still possible in the federal courts?
7. Susan B. Anthony embarked on extensive speaking tours before the trial in an open effort to persuade potential jurors of the rightness of her cause. Do current courts regulate defendants' efforts to influence potential jurors? What would most attorneys say about this outreach to potential jurors?

Focus on Documents

These excerpted documents can be the basis of a classroom discussion with students who have read about the *Anthony* case and reviewed these selections in advance of a judge's visit.

1. Arguments of the defense attorney and the U.S. attorney

The lead attorneys in the *Anthony* trial offered very different readings of section one of the Fourteenth Amendment, which guaranteed the protection of due process and equal protection of the laws and, for the first time in the Constitution, defined citizens of the United States. Why did Selden think that the amendment protected the right to vote? How did Crowley reach the opposite conclusion?

Henry Selden, for the defense

What, then, are the "privileges and immunities of citizens of the United States" which are secured against such abridgement, by this section? I claim that these terms not only include the right of voting for public officers, but that they include that right as pre-eminently the most important of all the privileges and immunities to which the section refers. Among these privileges and immunities may doubtless be classed the right to life and liberty, to the acquisition and enjoyment of property, and to the free pursuit of one's own welfare, so far as such pursuit does not interfere with the rights and welfare of others; but what security has any one for

the enjoyment of these rights when denied any voice in the making of the laws, or in the choice of those who make, and those who administer them? The possession of this voice, in the making and administration of the laws—this *political* right—is what gives security and value to the other rights, which are merely personal, not political.

Richard Crowley, for the prosecution

By the first part of section one, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the States wherein they reside.” The framers of the amendment did not mean, and we think it cannot be claimed, that this language gives the right to vote to all citizens. If so, then there is no limitation as to sex or age or disqualification on account of conviction for crime, or unsoundness of mind; for persons of unsound mind, criminals, and persons under twenty-one years of age, are citizens, if born or naturalized in the United States and subject to the jurisdiction thereof.

2. Justice Hunt’s decision

Hunt asserted that the qualifications for voting were to be determined by state governments, but the Constitution guaranteed that the qualifications for voting in congressional elections would be no more restrictive than each state’s requirements for voting for the more populous house of the state assembly. Why was this the only mention of voting qualifications in the Constitution?

The right of voting, or the privilege of voting, is a right or privilege arising under the constitution of the state, and not under the constitution of the United States. The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different States, or may be so. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States. If the state of New York should provide that no person should vote until he had reached the age of thirty years, or after he had reached the age of fifty, or that no person having gray hair, or who had not the use of all his limbs, should be entitled to vote, I do not see how it could be held to be a violation of any right derived or held under the constitution of the United States. . . .

The Legislature of the State of New York has seen fit to say, that the franchise of voting shall be limited to the male sex. In saying this, there is, in my judgment, no violation of the letter or of the spirit of the 14th or of the 15th Amendment.

3. Susan B. Anthony on the right to vote

Anthony long held that the right to vote was a natural right at the foundation of governments based on popular sovereignty. What would have been necessary to prove these rights in a federal court in 1873?

Our democratic–republican government is based on the idea of the natural right of every individual member thereof to a voice and a vote in making and executing the laws. We assert the province of government to be to secure the people in the enjoyment of their unalienable rights. We throw to the winds the old dogma that governments can give rights. Before governments were organized, no one denies that each individual possessed the right to protect his own life, liberty and property. And when 100 or 1,000,000 people enter into a free government, they do not barter away their natural rights; they simply pledge themselves to protect each other in the enjoyment of them, through prescribed judicial and legislative tribunals. They agree to abandon the methods of brute force in the adjustment of their differences, and adopt those of civilization.