

Reflections on the First Amendment- Free Speech--Sedation

HIS/ 301

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REFLECTIONS ON THE FIRST AMENDMENT

The first amendment issue that this paper will address is about free speech, specifically, sedation. This will be discussing three cases involving issues of speaking against the government. The first case will be *Schenck V. United States*; the second case that will be discussed will be *Abrams V. United States*, and lastly, *Brandenburg V. Ohio*. These cases were significant to the United States and the challenge to the Supreme Court because when our constitution was made, and signed, the people of the United States of America were given free speech, “Freedom of speech is the concept of the inherent human right to voice one's opinion publicly without fear of censorship or punishment” Wikipedia article.

In the case *Schenck V. States* case, Charles Schenck was prosecuted during World War I for sending out flyers to recently drafted men. It cited the Thirteenth Amendment’s provision against “involuntary solitude”. Charles Schenck was charged with conspiracy to violate the Espionage act of 1917.

Schenck was found guilty of the conspiracy because “The Court, in a unanimous opinion written by Justice Oliver Wendell Holmes, Jr., held that Schenck's criminal conviction was constitutional. The First Amendment did not protect speech encouraging insubordination, since, “[w]hen a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.” In other words, the court held, the circumstances of wartime permit greater restrictions on free speech than would be allowable during peacetime.” Wikipedia.

Schenck’s case was monumental because it showed that in war time, rights are limited and need to be censored. It is one time where the bill of rights is not recognized.

In wartime it does not matter what is said against the government, anything can be taken as unconstitutional, and basically American Citizens need to support their government, or else censor their true feelings. It does not matter if one agrees or disagrees.

In the *Abrams V. States* case, “each of the first three counts charged the defendants with conspiring, when the United States was at war with the Imperial Government of Germany, to unlawfully utter, print, write and publish: In the first count, 'disloyal, scurrilous and abusive language about the form of government of the United States;' in the second count, language 'intended to bring the form of government of the United States into contempt, scorn, contumely, and disrepute;' and in the third count, language 'intended to incite, provoke and encourage resistance to the United States in said war.' The charge in the fourth count was that the defendants conspired 'when the United States was at war with the Imperial German Government, ... unlawfully and willfully, by utterance, writing, printing and publication to urge, incite and advocate curtailment of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war.' The offenses were charged in the language of the act of Congress.” Findlaw.com

All five of the defendants were born in Russia and had a considerable amount of schooling, and were very intelligent. At the time of their arrest they had been living in the United States varying anywhere from five to ten years, however none of them had applied to be natural citizens. These defendants were accused of printing and distributing 5,000 pamphlets in the New York area. The pamphlets were written in either English or Yiddish.

Four of the five accused testified on their own behalf. Three of the four that testified that they did not believe in government of any form and declared themselves as “rebels, revolutionists, and anarchists.” They said they had no interest whatsoever in the government of the United States.

The defendants pleaded not guilty and the introduction of the copies of the two printed pamphlets began. They distributed the circulars by throwing them out of a window from a building in New York City. The sheet was entitled “Revolutionists Unite for Action”

“On the record thus described it is argued, somewhat faintly, that the acts charged against the defendants were not unlawful because within the protection of that freedom [250 U.S. 616, 619] of speech and of the press which is guaranteed by the First Amendment to the Constitution of the United States, and that the entire Espionage Act is unconstitutional because in conflict with that amendment.” Findlaw.com

This case was a monumental case because it showed that if a person unintentionally talks about a rebellion on the government, it is constitutionally okay.

Finally this will discuss the Brandenburg V. Ohio case. Clarence Brandenburg was a Klu Klux Klan leader who invited a Cincinnati news caster to report on a KKK rally in Hamilton County, Ohio. Portions of the rally were taped, and during these segments it showed men in robes and hoods burning crosses, carrying firearms and making speeches. During one of the speeches, it was hinted of a retaliation against the “niggers” and “jews” and all those that supported them. It was also said that “our president, our congress, our supreme courts continue to suppress the white, Caucasian race.”

Brandenburg was charged with advocating violence under Ohio's Criminal Syndicalism statute for his participation in the rally and for the speech he made. He was then given the chance to prove that there was no direct link between what he said and the actions that may or may not have happened.

Under the constitution, Brandenburg was able to prove his case because there was no evidence that any violent acts that happened to African Americans, those of Jewish religion, or even those that supported those races and backgrounds were directly caused by the rally and the speeches.

This was a monumental case because it tested the limits of free speech. It showed that you can push the envelope, and not be held accountable for your actions, intentional or not.

In conclusion, there have been many significant cases where the courts have had to rule on the constitutional right of Free Speech, and Sedation. These three cases were only a small example of the way the constitution has been tested and pushed. *Schenck V. US* showed that during war time, citizens have their basic rights minimized. *Abrams V. US* showed that unintentional rebellion against the government is acceptable. Lastly, *Brandenburg V. Ohio* proved that a person can not be held accountable for their actions if a direct link between the things a person says and does can be established.

References:

http://en.wikipedia.org/wiki/Abrams_v._United_States

http://en.wikipedia.org/wiki/Freedom_of_speech

http://en.wikipedia.org/wiki/Brandenburg_v._Ohio

http://en.wikipedia.org/wiki/Schenck_v._United_States

<http://laws.findlaw.com/us/250/616.html>

<http://www.findlaw.com/cgi-bin/getcase.pl?court=US&vol=249&invol=47>

www.findlaw.com/cgi-bin/getcase.pl?court=US&vol=395&invol=444

Grading: the paper will be graded in the following areas applying the definitions listed

Ideas (10 poss.)	Organization (7)	Fluency (4)	Conventions (3)	Total

Ideas =

Connections, assessments, evaluations and your own descriptions.
The content is comprehensive, accurate, and /or persuasive.
Numerous examples from the news and one’s own life are related to the topic
A clear thesis statement is made.
A position is taken and its arguments are refuted.
The paper links theory to relevant examples.
Major points are stated clearly and are supported by specific details, examples, or analysis.

Fluency =

Ease to read
Citations are integrated to the paragraph structure.
Paper is interesting to read.
The thesis is clear throughout the paper.

Organization =

The paper develops a central theme or idea, directed toward the appropriate audience.
The introduction provides sufficient background on the topic and previews major points.
The conclusion is logical, flows from the body of the paper, and reviews the major points.
Transitions between sentences, paragraphs, and sections aid in maintaining the flow of thought.
The tone is appropriate to the content and assignment.

Conventions/Mechanics =

Citations of original works within the body of the paper follow APA guidelines where appropriate.
The paper is laid out with effective use of headings, font styles, and white space.
Rules of grammar, usage, and punctuation are followed.
Sentences are complete, clear, concise, and varied.
Spelling is correct.