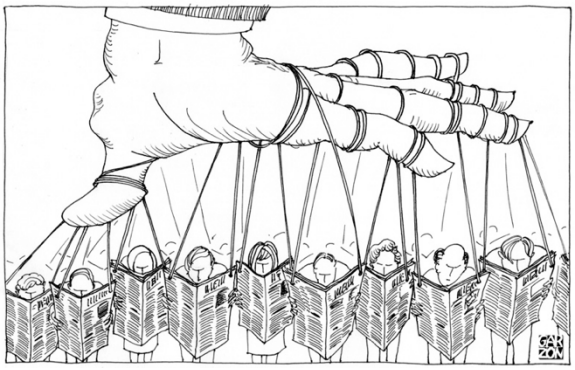
Unit 3 CIVIL LIBERTIES and CIVIL RIGHTS

3.4 First Amendment: Freedom of the Press



ESSENTIALS

1. In New York Times Company v. United States (1971) the Supreme Court bolstered the freedom of the press.

2. The Supreme Court has established a "heavy presumption against prior restraint" even in cases involving national security.

1. What is the main idea of this cartoon? Write it as a claim statement.

2. Who "controls the strings" in our news feed?

New York Times Company v. U.S. (1971)

New York Times Company v. U.S. (1971) is often referred to as the Pentagon Papers Case. The Pentagon Papers were thousands of pages of "top secret" documents compiled by the Secretary of Defense that documented the murky narrative of the United States involvement in the Vietnam War. One of its authors, Daniel Ellsberg, was incensed at what the Papers' revealed and chose to "leak" the documents to the New York Times. The Times began printing excerpts of the Pentagon Papers on June 13, 1971. Almost immediately the Nixon Administration saw the exposure of the Pentagon Papers in the press as a threat to national security. Ongoing peace talks in Vietnam, Nixon thought, would be jeopardized by this security breach in the American press. The Nixon Justice Department requested an injunction against the Times to stop the presses. The U.S. government had never before asked the courts to stop a national newspaper in this way. Due to the immediacy of the injunction, the Supreme Court agreed to resolve this issue within a matter of days. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. The Court returned a 6-3 decision that upheld the power and authority of the First Amendment's freedom of the press. New York Times Company v. U.S. (1971) bolstered the freedom of press, establishing a "heavy presumption against prior restraint" even in cases involving national security. There can be little doubt that a strong nation requires a free press. Years later Daniel Ellsberg was asked if "leaks" to the press and subsequent attempts by the government to pursue prosecution in our day bear any resemblance to the Pentagon Papers Case? Ellsberg without hesitation responded by saying, "The parallels are very strong." Each generation will see its freedoms challenged and tested.

Investigate Julian Assange and Edward Snowden.

What are the parallels between Daniel Ellsberg, Julian Assange and Edward Snowden? Should the "leaks" attributed to Assange and Snowden be protected under the First Amendment? Should the precedent in New York Times v. U.S. be applied to them?

INVESTIGATE:
Hazelwood School District v. Kuhlmeier (1988)

Describe the context of this case. Explain how the Court ruled.

Imagine you are a Supreme Court justice. Write a short opinion (decision) for this case.

SCOTUS COMPARISON

Respondent Erik Brunetti sought federal registration of the trademark FUCT. The Patent and Trademark Office (PTO) denied his application under a provision of the Lanham Act that prohibits registration of trademarks that "consist…of or comprise immoral...or scandalous matter...

The Lanham Act's prohibition on registration of "immoral…or scandalous" trademarks violates the First Amendment.

A divided Court agreed on two propositions. First, if a trademark registration bar is viewpoint based, it is unconstitutional. And second, the disparagement bar was viewpoint based.

The "immoral or scandalous" bar similarly discriminates on the basis of viewpoint and so collides with this Court's First Amendment doctrine. Expressive material is "immoral" when it is "inconsistent with rectitude, purity, or good morals"; "wicked"; or "vicious." So the Lanham Act permits registration of marks that champion society's sense of rectitude and morality, but not marks that denigrate those concepts. And material is "scandalous" when it "gives offense to the conscience or moral feelings"; "excite[s] reprobation"; or "call[s] out condemnation." So the Lanham Act allows registration of marks when their messages accord with, but not when their messages defy, society's sense of decency or propriety. The statute, on its face, distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation. This facial viewpoint bias in the law results in view point discriminatory application.

To cut the statute off where the Government urges is not to interpret the statute Congress enacted, but to fashion a new one. And once the "immoral or scandalous" bar is interpreted fairly, it must be invalidated.

Excerpted from Court syllabus Iancu v. Brunetti (2019)

Based on the information above, respond to the following questions.

A. Identify the specific clause in the First Amendment that was used as the basis for the decision in both Schenck v. U.S. (1919) and Iancu v. Brunetti (2019).

B. Explain how the facts in both Schenck v. U.S. and Iancu v. Brunetti led to a different decision in both cases.

C. Explain how contemporary political culture can affect decisions like Iancu v. Brunetti (2019).