

WikiLeaks, the Constitution, and a Free Press

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Abstract

A recent controversial WikiLeaks website report containing disturbing U.S. military conduct in Afghanistan brought into legal question as to where the dividing line between government censorship and what information is allowed to be made public under the First Amendment's right of freedom of speech. The Government views exposing top secret and sensitive information as harmful and damaging to America's reputation while possibly putting lives in danger.

Provisions in the Constitution, such as freedom of speech, were included to ensure that American citizens' rights are protected and the Government is limited from overexerting its power.

Various cited sources were examined in this report as well as a brief summary concerning a relatable government exposé from a few decades ago, known as the Pentagon Papers. Supporters of WikiLeaks believe that American citizens have the right to know what is going on in their country under the First Amendment. WikiLeaks claims to be a responsible, truth-telling site that carefully analyzes the information it releases to guarantee the world's safety. Although the press has the right to reveal information, it should be done for the right reasons and carefully reviewed before being released in order to protect innocent people.

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Introduction

In 2007, a young Private by the name of Bradley Manning leaked a forty minute video to WikiLeaks, a controversial website that posts top secret and classified information on the internet. This video showed American military helicopters firing at and murdering innocent people in Baghdad (Rohricht, 2013). People were outraged by this horrific film and the insensitive commentary that took place between the helicopter pilots (Adams, 2010). Some believe that what Manning did was extremely brave and ethical, while others consider his actions to be “aiding the enemy” (Queally, 2013). Manning was sentenced to jail without a trial; February 23, 2013 marked his thousandth day in prison. While Manning was imprisoned and viewed as a traitor, the soldiers that committed the actual war crimes which were exposed in the video were considered innocent. Instead of being rewarded for standing up to the government and informing the public these corrupt acts of war, Manning was sent to prison and denied his right to a speedy trial. Although he did leak classified information, his intentions were good and he did not receive any money for exposing these things. All Manning did was tell the truth and put the First Amendment’s right of freedom of the press into action (Rohricht, 2013).

According to the First Amendment of the Bill of Rights, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” This Amendment guarantees Americans the freedom of speech and press, therefore, Congress cannot take away the citizens’ right to speak, publish, and express their views (McClenaghan, 2006, 771). The fact that freedom of the press is included the First Amendment clearly shows that the early leaders of this country

believed this freedom was of the utmost importance. The freedom of the press was created to protect and ensure a free society. It was designed to allow people to voice their opinions and question their government (Dudley-Gold, 2005). If Congress had the ability to ban information from being published, whether it be online or on paper, the government would have too much power and control. American citizens have a right to know what is actually taking place within their government, military, and with their leaders. If Congress is not willing to be honest to the people, then, according to the First Amendment, they should be able to rely on the press to tell the truth (Cooke, 2007). According to Webster's Dictionary (2013), the term 'press' includes of all the media and agencies that gather and publish or share news. This consists of newspapers, books, pamphlets, television broadcasts, and even online websites, including controversial WikiLeaks. Bradley Manning's defense is built upon the fact that "WikiLeaks is a media organization that should enjoy the same legal protections the *New York Times* or *Washington Post* would" (Queally, 2013).

It is America's clearly stated right to be able to have a free press without government intervention. This right does not apply only during times of peace, but is to remain effective at all times. If the press supports the Government's decisions and rallies patriotic enthusiasm, then Congress is satisfied and can use the press in its favor to sway the public in its direction. If, however, the press decides to challenge the government or question its tactics, Congress often tries to limit the liberties of the press. Our founding fathers created this amendment to be inviolable, and remain unthreatened when the opinions stated oppose the government (Cooke, 2007). The National Government is a government of delegated powers, which are those powers granted by the Constitution, including expressed, implied and inherent. While the Constitution assigns specific authorities to the National Government, it also denies certain powers, such as the

ability to prohibit the freedom of the press (McClenaghan, 2006, 89). It is expected, however, that the press will not abuse its liberty and purposely oppose the government, but simply report facts accurately, separating opinion from news and keeping the American people up to date (Cooke, 2007).

Historically similar to the present-day WikiLeaks controversy, classified information was released through the Pentagon Papers in the 1970s. Hoping to shorten the war in Vietnam, U.S. Marine and military analyst Daniel Ellsberg released a 47 volume, 7,000-page top secret document to the *New York Times* in order to inform the American public of their government's deceit. These documents exposed Government leaders' arrogant attitudes, their disregard for public opinion, and how the press had been involved in misleading the public up until that point. The Pentagon Papers told of the untruths that Government officials had been feeding the American people, and that the United States, in reality, had a slim chance of winning the Vietnam War. In addition, it uncovered President Johnson's lies about claiming to have no plans of expanding U.S. involvement in Vietnam, when he actually authorized sending in more troops (Pentagon Papers, 2003).

In the beginning, people did not take much notice of the Pentagon Papers, which disappointed Ellsberg. However, the public's attention was grabbed when the U.S. Government banned the *New York Times* from printing any more of the documents, clearly defying the First Amendment's right of freedom of the press. The Government claimed that releasing these documents would "endanger national security" and brought the case of *New York Times Co. v. United States* to the Supreme Court. This trial ended in a significant decision that would affect the press from that time on. In a six to three vote, the Supreme Court denied the Government's request of prior restraint and decided that the press had the right to publish this information, and

afterward, if needed, the Government could prosecute. Justice Black of the Supreme Court had stated that the press runs “without censorship, injunction or prior restraint” (Pentagon Papers, 2003).

According to the National Government, some information ought to be kept classified in order to keep people, tactics, and the military safe (Schoenfeld, 2010). It views telling of the truth, exposing criminals, and whistle blowing as putting people’s lives in danger, threatening national security, and damaging America’s reputation (Daniel & Garamone, 2010). The Government has accused WikiLeaks of carelessly “dumping classified material online” (Davidson, 2010), compromising the safety of U.S. citizens. If this allegation is true, then WikiLeaks would be in the wrong and should be shut down immediately. Yet in reality, the National Government has overstated this threat of danger merely to sway the public’s opinion. WikiLeaks has an established team that reviews every document and withholds potentially harmful information. Although WikiLeaks probably should have been more careful in some past instances, the Government has exaggerated the possible risks (Burns, 2010).

Press Secretary Robert Gibbs says the leaking of top secret documents could “compromise private discussions with foreign governments and opposition leaders.” He says that “some of this information could contain names of people that are working with our government to help on issues like human rights, on issues of democracy, in places where those aren’t so easy to work on” (Press Briefing, 2010). This statement is valid, and WikiLeaks does need to be more careful with the type of information it releases, because if the enemy finds out about our Afghan allies, those people can be tracked down and killed by the Taliban (Burns, 2010). There are some facts that the public has the right to know, but some things are better kept secret when

dealing with U.S. foreign affairs and covert business. If this information gets in the wrong hands, it could be dangerous for our country (Press Briefing, 2010).

Although the Government makes some valid points about national security, it does fabricate some reckless stories about the leaks to persuade the public. This propaganda is clearly spread to diminish public confidence in WikiLeaks. Because the Government imposes these falsehoods on Americans, the public largely accepts its claims without question or opposition. Eventually, these created claims are discovered to be false, but by that time it is not current or relevant, thus the public does not care (Greenwald, 2010).

The Government stated that WikiLeaks created a huge hazard for American and Afghan citizens, and that the website could have “blood on its hands” (Burns, 2010). Since the National Government emphasized the potential threat posed by the leaking of confidential information, the American people were misled to believe that the website is wicked and harmful, and that the founder, Julian Assange, is a criminal and a murderer. However, according to Defense Secretary Robert Gates, no Afghan had been reported to have been harmed in any way due to the reporting. In fact, the only valid charge that can be made against WikiLeaks after the revealing of top secret information is the damaged reputation of the American Government (Rohricht, 2013).

Press Secretary Robert Gibbs says that the National Government “condemns in the strongest terms the unauthorized disclosure of classified documents and sensitive national security information.” He has stated that President Obama believes in an “open and transparent government,” but he views stealing classified documents as a crime (Press Briefing, 2010).

Obama has even called WikiLeaks a “hacktivist” website (meaning they break into Government files and illegally steal documents), and Vice President Joe Biden has gone to the extreme and called Julian Assange a “high-tech terrorist” (Queally, 2013).

These accusations of hacking are false and were constructed to deceive the American people. WikiLeaks is not a hacking website whatsoever, and merely serves as “a clearing house for leaking documents” that, in its opinion, the public deserves to know about. Hacking can be motivated by financial incentive, but WikiLeaks is a nonprofit media organization that maintains a desire to provide a “secure and anonymous way for sources to leak information to journalists” (Queally, 2013). WikiLeaks only obtains documents from “whistleblowers” who contact the website’s operators, and goes to great lengths to “verify the authenticity of the information it receives” (Collateral Murder, 2010).

The reason the United States Government attempts to deceive the public is to try and cover up some of the horrible truths that it had kept hidden for so long. In order prevent more secrets from being revealed, the Government has stated that it is going to “tighten security and inflict more severe punishment of those who leaked the documents” (Schoenfeld, 2010). The Government wants to convince people that WikiLeaks is corrupt and that several Afghans and Americans have been murdered as a result of the site in order to make sure the public ignores the revealing information and blindly supports their government instead. The Government’s attempts made to destroy WikiLeaks, and similar truth-telling websites, are out of anger and fear of future irreparable damage from exposed secrets (Greenwald, 2010).

Most of the criticism that WikiLeaks receives from the U.S. Government is aimed at the supposed jeopardy in which it puts American and Afghan citizens. It has been said that WikiLeaks carelessness has killed people. To make sure that it was not accused of negligence again and to ensure that no civilians were endangered, WikiLeaks approached the Obama administration and asked, using the *New York Times* as a mediator, if it would be willing to help the website remove names from the documents before they were released. Although this seemed

like a fair deal that WikiLeaks had proposed, the Pentagon denied the request. Not only did Obama's administration refuse to help WikiLeaks take proper precautions in its efforts to try to keep people from harm, it once again criticized the website for causing innocent people to die (Greenwald, 2010).

WikiLeaks, and other truth-telling media, are designed to maintain transparency by serving as a place where people can share classified documents from governments, institutions and companies. WikiLeaks does not take a pro or con stand on any government issue, as its goal is to simply support the freedom of speech and press and to keep citizens updated with what really goes on in their country (WikiLeaks Mission Statement, 2011). Although the American Government opposes negative press, sometimes the public has the right and needs to know about confidential and sensitive information.

WikiLeaks not only notifies people about present dangers, but can also be instrumental in helping prevent future tragic events from occurring. For example, if there had been a site like WikiLeaks in 2001, it is possible that the 9/11 terrorist attack could have been prevented, according to Minneapolis FBI agent Coleen Rowley. She had tried to alert the American Government of a suspicious man named Zacarias Moussaoui, who had attended flight school, yet had no interest in learning how to land a plane correctly, and had connections to a foreign terrorist group. When Rowley attempted to warn United States officials about a potential attack, they refused to take any action. Rowley believes that if WikiLeaks had existed and had made this essential information public, the 9/11 incident may have been prevented and she stated that "WikiLeaks provides a crucial safety valve" for all people (Wiener, 2010).

Due to all of the top secret documents that Julian Assange and WikiLeaks have exposed, the American Government is doing everything in its power to shut WikiLeaks down and believes

that Assange “should be killed to send a message loud enough to convince other people not to publish documents like this in the future” (Hawkins, 2010). However, according to the First Amendment of the United States, the press has the freedom to challenge Government, voice opinions, and act like Julian Assange has, which is informing people of the truths that their governments try to keep hidden from them.

Conclusion

After considering both sides of the issue, WikiLeaks and other forms of the press have the right, as directed in the First Amendment of the Bill of Rights, to reveal and post information that Government deems sensitive, provided it is carefully reviewed and appropriately altered in order to protect innocent people and keep them from harm. In addition, American citizens have the right to be made aware of how their government is running their country and conducting our business here and abroad. Only then, as well-informed citizens, will the public be able to evaluate the facts and come to their own conclusions and opinions, and then decide whether or not to take action and become more involved. The Founding Fathers carefully took measures in the Constitution to ensure America’s freedoms and limit Government control. Therefore WikiLeaks and other informative forms of the press should continue to do their jobs without government censorship.

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