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The Emergence of WikiLeaks: Openness, Secrecy and Democracy

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Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.

— Lord Acton

Disclosure is not merely an action; it is a way of life. To my mind it carries both sense and sensibility: you are what you know, and no state has the right to make you less than you are. Many modern states forget that they were founded on the principles of the Enlightenment, that knowledge is a guarantor of liberty, and that no state has the right to dispense justice as if it were merely a favour of power. Justice, in fact, rightly upheld, is a check on power, and we can only look after the people by making sure that politics never controls information absolutely.

— Julian Assange

Just three years ago WikiLeaks was virtually unknown and its founder, Julian Assange, was next to unrecognisable as a national, let alone global identity. A short time later almost no one could say that they knew nothing about the organisation. Assange's picture appeared on the front cover of *TIME* magazine and he was described early in 2011 as the most 'famous man in the world'. The website that encouraged whistleblowers to send

their secret documents securely to it without prospect that the sender could be identified had become a global internet phenomenon of unprecedented scale and significance.

Yet, at the same time, the depositing of large collections of formerly confidential private and governmental documents in the public domain carried with it a host of problematic, complex and difficult political and ethical issues. In this chapter I examine some of the most important, concentrating in particular upon those bearing on freedom of information and its centrality to the idea of democracy. Before embarking upon that study, however, it is worth painting a picture of the background to these massive, fascinating documentary disclosures.

WikiLeaks' dramatic emergence

The basic idea behind WikiLeaks was that people who wished to do so could submit leaked documents to the website anonymously. Behind the site lay a complex, highly technical process of encryption designed to ensure that it could not be hacked so as to expose either those submitting documents or the means by which the documentation was made secure. The site was said to combine the protection and anonymity of cutting edge cryptographic technologies. That technology was the means through which the site's philosophical stance could be made tangible. The stance was not difficult to understand.

WikiLeaks stood above all for transparency in the governance of public and private sector organisations. By exposing secret documents to public view, the organisation saw itself as in the vanguard of a citizens' movement to combat corruption, deceit, abuse and malpractice in public and private organisational affairs. It sought to equalise power between governments and the governed by providing citizens with the information they needed to hold their rulers and bosses to account. In this, the organisation portrayed itself as a global advocate for democracy and equality. The global focus was important. WikiLeaks in principle did not seek to distinguish

between or be selective as to nation states or as between governments and corporations. Its objective was to promote its ideal of openness governance internationally and multi-nationally. No national government, international governmental organisation or multinational company would escape its gaze. These were next to impossibly ambitious goals, but between 2008 and 2010 the organisation flew close, but dangerously, towards their achievement.

WikiLeaks' first coup came in Kenya. In 2008 it obtained a copy of a voluminous report that had been commissioned to investigate the corruption of the former President, Daniel Arap Moi. It had been expected that the report would be released upon its completion. But Moi's successor as President, Mwai Kibaki, ordered that it should remain secret. WikiLeaks published it. Julian Assange later claimed that the publication had resulted in a shift of 10% in Kenyan voting patterns. The release projected WikiLeaks to prominence, following which a steady stream of leaked material made its way to the site, and with each new release, its effectiveness and name became ever more evident.

The crucial turning point for the organisation came, however, with the release of the so-called 'Apache video'. Leaked to the website from an unknown source, the video showed a group of civilians caught in cannon fire from a US helicopter. The helicopter fired from a kilometre in the sky and was, therefore, almost invisible to those on the ground. Two Reuters journalists were killed in the incident, twelve others died and two young children were seriously injured but survived. Radio transmission from the helicopter appeared to demonstrate that the air crew were unconcerned that children had been shot. The video was premiered at the National Press Club in Washington and caused a sensation. WikiLeaks had taken off.

In 2010, three colossal document disclosures occurred. Each related to different aspects of US foreign and military policy. Each created a political storm whose effects bore not only upon the conduct of the US administration, but also upon that of its allies. Insofar as each related to the conduct of military and diplomatic affairs in the world's most sensitive and difficult conflicts, the content of the leaked documentation was of significance to most national governments across the globe, including those with whose regimes the United States differed.

The Afghanistan war logs contained more than 90,000 discrete items of information on the conduct of the war as described by military officers in the field. The war logs were broken down into detailed categories that related to every significant action taken by the US military and its allies, local Iraqi and Afghan forces, civilians and enemy combatants. Each case was concluded with figures as to numbers killed and wounded. The statistics produced by this method revealed a substantial variance between official statistics as to casualties in Afghanistan and those contained in the war log spreadsheets. The documents disclosed that many thousands more had been killed than had previously been acknowledged.

Only a few months later, WikiLeaks posted on its website some 91,000 field reports from the conflict in Iraq. Here again, the principal value of the documents lay in the content of the statistics as to deaths and injuries sustained during the many years of bloody battles that had taken place in Iraq since the invasion in early 2003. The US government kept figures on the rate of casualties among its soldiers, but denied that any other statistics as to the deaths of others in the combat were available. Incident by incident, the Iraq logs catalogued the huge losses suffered by the Iraqi side and by the Iraqi civilian population. The official US figures stated that towards the end of 2009, some 4,748 US and allied troops had lost their lives.

The incident reports in the Iraqi war logs, combined with the patient and studious study of casualties conducted by the non-government organisation, Iraq Body Count, produced a best estimate as follows: 66,081 Iraqi civilians died; a further 15,196 members of the Iraqi security forces were killed; 23,984 people classified as ‘the enemy’, were extinguished. However, the figure for US and allied dead came down to 3,771. These figures, previously unascertainable, shocked the globe.

Julian Assange launched the Iraq logs in the ballroom of the Plaza Hotel on the Thames in London, together with Phil Shiner of Iraq Body Count. Three hundred journalists from around the world attended, five times more than those at the launch of the Afghan logs. WikiLeaks and its founder had become a global phenomenon. But the most stunning disclosure was yet to come.

The 28 November 2010 was the date on which the largest ever publication of confidential governmental documents took place. In coordination with *The Guardian*, *The New York Times*, *Le Monde*, *Der Spiegel* and *El Pais*, WikiLeaks commenced the disclosure of 251,287 internal state US State Department communiques, written by 280 embassies in 180 different countries. The publication produced an uproar. *The Guardian* newspaper introduced the disclosures on its front page. The headline was ‘US Embassy Cables Leak Sparks Global Diplomatic Crisis’.¹ The article that followed focused especially upon two major diplomatic issues. The first was the disclosure that Arab leaders had privately urged an air strike upon Iran. The second was the revelation that US officials had been instructed to spy on the leadership of the United Nations including on the organisation’s Secretary-General, Ban Ki-Moon. *The Guardian’s* editor described the publication of the documents as the biggest story on the globe.²

The US government was appalled. Its spokesman declared that the publication of cables could prejudice candid discus-

sions with representatives of foreign governments. It would adversely affect the conduct of US foreign policy and that of its allies. It was reckless and dangerous. *The Guardian* responded by making it clear that the paper had carefully scrutinised and redacted the cables it was to publish. This had been done to ensure that named sources, particular in the context of war, had been protected and that special operations would neither be disclosed nor prejudiced.

It is with freedom of information of this kind and its proper limits that the remainder of this chapter will be concerned. An examination like this cannot hope to cover the entire field of WikiLeaks' documentary disclosures. I confine my attention therefore to the release of the diplomatic cables alone.

Openness and secrecy

To set the scene for a discussion of the justification and ethics of the release of the State Department cables, I think it worthwhile first to consider the principles on the basis of which a fair and reasonable balance might be attained between the desirability of transparency in government administration on the one hand, and the imperatives of secrecy on the other.

Jeremy Bentham put a powerful case for transparency in public administration more than two centuries ago. He insisted that publicity was essential to ensure that government promotes the greatest happiness for the greatest number.

Let us place at the head of the [political assembly's] regulations the fittest law for securing the public confidence, and causing it to constantly to advance towards the end of its institution ... the law ... of publicity.³

Publicity, Bentham believed, was valuable first and foremost because it underpinned democratic accountability. It encouraged citizens to deliberate about public policy and enabled public officials to learn about and from public opinion. In this context, too, Bentham warned of the dangers of secrecy.

Secrecy, he argued, may act as a powerful encouragement to the abuse of political power. ‘Whom ought we to distrust,’ Bentham asked, ‘if not those in whom is committed great authority, with great temptations to misuse it?’⁴

More recently, conceptual argument concerning the idea of publicity has been advanced within the context of the new idea of ‘deliberative democracy’. Within this framework, to be truly democratic, public deliberation about political and ethical questions should not be confined to constitutional conventions, parliamentary debates, judicial opinions and so on, but should properly extend throughout the political process. Ideally, such deliberation, if and when realised, would encourage extensive ethical and political argument as to the merits of public policies in a diversity of public forums. Its aim would be to arrive at public and political agreement between competing interests on matters of public concern, while at the same time maintaining mutual respect between contending parties.

In an impressive recent work, the Australian political philosopher, Phillip Pettit, described the institutional and procedural requirements for such democratic deliberation in the following terms:

It would mean that at every site of decision-making, legislative, administrative and judicial, there are procedures in place which identify the considerations relevant to the decision, thereby enabling citizens to raise the questions as to whether they are the appropriate considerations to play that role. And it would mean that there are procedures in place which enable citizens to make a judgment on whether the relevant considerations actually determined the outcome: the decisions must be made under transparency, under the threat of scrutiny, under freedom of information and so on ... In arguing for an arrangement in which public decisions are taken in a deliberative way, I make contact with the idea of a ‘republic of reasons’.⁵

For deliberative democracy to fulfil its potential it is insufficient to know abstractly or retrospectively that policies could be justified. The justification must be public to secure citizens' consent. The giving of public reasons will broaden the moral and political perspectives upon which citizens can form their opinions to the betterment of public, democratic discussion. Reasons need to be public and reciprocally acceptable to fulfil a condition of mutual respect that democratic deliberation seeks to achieve. Without publicity, the public reasoning that founds policy formulation might not be self-correcting in the way that a deliberative democracy would seek to encourage.

It follows that to be able to take part actively in a democratic society, citizens must necessarily be aware of the facts on the basis of which governmental decisions are made, of the competing arguments relevant to the adoption of these decisions, and of the reasons proposed as their justification. Policy considerations should be made explicit. They should be open to inspection and criticism.

Publicity challenges ignorance, error and bias and allows for the shifting of positions crucial to reasoned political and ethical choice. It serves to counter abuses of public power. It can illuminate dark corners of administration in which corruption may otherwise take hold.

Freedom of information is a democratic good for all the reasons just outlined. However, secrecy too can have its democratic justifications. Some desirable policies may not be capable of implementation without secrecy. Privacy and confidentiality, each of which is dependent upon a measure of secrecy, ought also to be valued democratically. And the quality of democratic deliberation itself may sometimes be prejudiced if conducted in full public gaze. So, a balance needs to be struck. Justifiable limits to openness need to be defined. There are four such limits that my reasonably be advanced.

First, for the reasons already delineated, there ought to be a *prima facie* presumption in favour of openness. It is the perpetuation of secrecy that requires explanation. Exceptions, therefore, should be kept to a minimum and each should require a public justification. We should accept secrecy, then, only when its rationale is made public and reviewable. So, where exceptions to the principle of publicity are fully discussed, approved in advance, and subject to regular re-evaluation, they are more likely to be acceptable from the deliberative perspective. It follows too, that there should be no secrets about the existence of secrets. The implementation of strong freedom of information laws is one very important means of meeting these general requirements.

Second, secrecy, in certain specific and defined circumstances, may be justified on the principle of necessity. Necessity, for example, may relate to a need to protect government policies and plans in the making and to protect the confidentiality of certain, critical sources of information. Similarly, necessity may require the protection of trade secrets, business information likely to prejudice commercial competitiveness, and other matters that are commercially sensitive. A measure of secrecy may reasonably be defended in the interests of law enforcement, national defence and collective security.

Third, secrecy may be justified to protect personal dignity, autonomy and safety. To disclose private information in the public arena may cause substantial psychological and perhaps physical harm. Where, therefore, a government requires the collection of sensitive personal information, it assumes a corresponding obligation to protect it. The argument from personal integrity, however, should be treated with caution when extended from individuals to groups. It should be considerably more difficult to claim the information may not be made public because to do so may adversely affect one's identity as a member of a particular nationality or race, for example.

Fourth, it is sometimes desirable to attach a measure of confidentiality to discussions in order to protect and facilitate processes of public deliberation themselves. The confidentiality normally attaching to Cabinet discussions and documents provides the cardinal example. Premature disclosure of records of critical matters of state may prejudice the success of subsequent endeavours to address them. Too open a discussion about matters having a special sensitivity to specific sections of the community, proposed means to tackle the radicalisation of sections of the Islamic community for example, may produce ill-informed discussion, generate unnecessary hostility and fan undesirable prejudice. It may not be possible to hear and determine complaints where, as the result of premature information disclosure, the hearing is likely to become the subject of popular tumult. In each of these cases, public deliberation will be facilitated by the existence of quiet, a quiet that an appropriate measure of secrecy may effectively and hence democratically provide.

Having identified the reasons for which secrecy may be justified, two final caveats should be entered. Each of the limitations seeks to address the occurrence of a particular kind of harm. Before we accept the limitations, however, the claim that the harm is likely, rather than potentially, to occur will need to be made out. To overturn the bias in favour of publicity, the harm itself must be established as significant.

Finally, even if a significant harm arising from documentary disclosure is likely to occur, the disclosure may nevertheless still be contemplated where it will serve some competing and compelling public interest.

The ‘Cablegate’ disclosures

With these general principles in mind we can return to consider the ethical and policy issues that bear upon the WikiLeaks disclosure of a vast cache of US State Department briefing documents.

It may help first to categorise the kinds of documents made public, a task made difficult by the fact that there were so many. *Guardian* authors David Leigh and Luke Harding summarised the documents the newspaper was disclosing in collaboration with WikiLeaks as follows:

They highlighted the geopolitical interests and preoccupations of the US superpower: nuclear proliferation: the supposed threat of Iran; the hard-to-control military situation in Kabul and Islamabad. The American Embassy cables came from established power centres (London and Paris) but also from the far-off margins (Ashgabat, Yerevan and Bishkek) ... They offer an incomparably detailed mosaic of life and politics in the early 21st century ...

The cables discussed human rights abuses, corruption, and dubious financial ties between G8 leaders. They spoke of corporate espionage, dirty tricks and hidden bank accounts. In their private exchanges, diplomats dispense with the platitudes that characterise much of their public job; they give relatively frank, unmediated assessments, offering a window into the mental processes at the top of US power. The cables were, in a way, the truth.⁶

Consistent with the preceding analysis, in the interests of publicity and conformably with the principles of deliberative democracy, it is best to begin with a bias in favour of the publication of the State Department documentation. Several relevant considerations favour this view.

None of the Cablegate documents disclosed were classified as 'top secret'; 11,000 were marked 'secret'. An additional 9,000 were classified as not for disclosure to foreign governments. Four thousand were marked as secret and not for disclosure to foreign governments. The rest were either labelled as confidential or were unclassified. An indication of the laxity that surrounded the security of these cables was the fact that no less than two million US Government officials had both the permission and means to obtain to them. Among

these was a 22-year-old junior intelligence officer in Iraq, Private Bradley Manning, the person alleged to have leaked the material to WikiLeaks. While the government clearly did not intend that the documentation would be publicly disseminated, it seems to have made only minimal attempts to protect it. That attitude tends to suggest that the US administration did not believe that the documents were of a kind whose wider disclosure might result in serious harm.

Next, WikiLeaks engaged in conduct already more than familiar in journalistic circles. Governments leak all the time. Whistleblowers provide information confidentially to journalists as a matter of course. These disclosures may occur simply to advance the interests of one or another faction within government, or more crucially, to expose some aspect of maladministration, unethical behaviour, deceit or corruption. True it is that disclosures of these kinds may be unauthorised or contrary to law, but their existence very commonly serves to draw governments and their officials publicly to account for their actions. Insofar as leaks inform public and political discussion to the betterment of the quality of governmental administration and parliamentary deliberation, they play their part in furthering democratic ends.

Certainly, WikiLeaks is different. The scale of its disclosures has been unprecedented, and the dissemination of the information obtained by technological means has meant that information about the nature and quality of government can be disseminated instantly and globally. Nevertheless, the process has been the same. Like any newspaper, and in this case in collaboration with major newspapers, WikiLeaks has acted as publisher of classified information in what it considered the wider, global public interest.

The fact that the Cablegate disclosures have been global has introduced a new and important element into argumentation concerning the public interest. In Western democratic countries, the process of leaking and the concomitant protection of

journalistic sources throw up occasional new insights as to the means and ends of government. Only rarely, as in the case of the Watergate scandal and the release of the Pentagon Papers, has such material cast significant new light on issues of public concern and, in consequence, changed the direction of government or resulted in its replacement. In the present instance, however, things have been different for one very important reason. The documents publicly released related not only to the distortions and aberrations of Western governments but also to the cruelties, lies and abuses of autocratic regimes in other parts of the globe. While a case can be made against the unauthorised release of internal governmental documents in the United States, that case is far more difficult to justify when the disclosures illuminate secrecy, repression and corruption in dictatorial regimes. The case for publicity in those circumstances is next to unarguable, even if some collateral damage might be caused to diplomatic relations.

The more general argument for the revelation of the US diplomatic cables is straightforward. Diplomats work for democratically elected governments of which the United States is one. These governments are elected by and responsible to the people. If democracy is to work effectively, and if governments are properly and effectively to be held to account, people must be able to access sufficient information to comprehend what is being done in their name. The idea of accountability is crucial. This principle requires that governments do much more than simply present themselves for election once every few years. In a deliberative democracy what is required is that governments engage consistently and constantly in a dialogue with their citizenry. This dialogue can take place equally only if both sides possess the information necessary to found their arguments and inform their decisions. Where there is a substantial imbalance in the information available to the governors on the one hand and the governed on the other, the requisite dialogue breaks down to the detriment of democratic deliberation.

Crucial to this dialogue is the further condition that in the exercise of accountability, governments provide intelligible reasons for their actions. This does not mean that a reason must be provided for every action. But it does mean that citizens should be able to determine the foundation and criteria upon which decisions that directly affect them have been made. Access to information is the primary means through which such reasons may be determined and evaluated.

The US cables concerned one of the most important aspects of modern governance, that is, the conduct of foreign relations. The prosperity and security of the nation and its peoples is crucially dependent upon the success of this international diplomacy. Subject to the exceptions to be discussed in a moment, in principle the greater the degree of transparency that can attach to diplomatic activity, the more sensitive and accountable to domestic concerns that activity is likely to become. There is little doubt that publicity arising from the WikiLeaks' disclosures made a substantial contribution to such democratic accountability. Consistently with the international dissemination of information, that accountability was owed and flowed not just to the citizens of the United States, but far more extensively to citizens hungry for information in every corner of the globe.

In his unauthorised autobiography Julian Assange made the same point somewhat more stridently, as follows:

Information sets us free. And it does so by allowing us to question the actions of those who would sooner we had no means to question them, no right to reply. WikiLeaks, for all its modernism and all its software, is a force for the upholding of liberty ... We come under fire, very often, for upholding those principles that many of the governments that criticise us are elected to uphold. We are a people's bureau of checks and balances, working internationally, and knowing that the things governments and diplomats do behind closed doors is entirely our business. The people elect them, pay for them, trust them and are bosses of them.⁷

Exceptions and exemptions

Anyone with even a cursory experience of government will be aware that its deliberations cannot be conducted entirely in the open. A measure of confidentiality is required to facilitate effective governmental planning, to guard operational intelligence and to ensure that no harm comes to those with whom government agencies interact. Considerations such as these were the first to be cited by the US administration in response to the Cablegate releases. The official US spokesman put the government's position as follows:

We anticipate the release of what are claimed to be several hundred thousand classified State Department cables ... that detail private diplomatic discussions with foreign governments. By its very nature, field reporting to Washington is candid and often incomplete information. It is not an expression of policy, nor does it always shape final policy decisions. Nevertheless, these cables could compromise private discussions with foreign governments and opposition leaders, and when the substance of private conversations is printed on the front pages of newspapers around the world, it can deeply impact not only on US foreign policy interests, but those of our allies and friends around the world. The release of the cables was 'reckless and dangerous action'. The spokesman declared that it had put lives at risk.⁸

These are serious allegations that deserve closer scrutiny. In my opening analysis, I identified several exceptions that might reasonably apply to the general rule in favour of publicity. Two of these are particularly relevant here. First, confidentiality will properly attach to internal governmental discussions where to do so is necessary to facilitate and protect inherently sensitive consideration of or negotiations concerning important matters of state. Second, secrecy is necessary to protect the identity of individuals who provide information to government in circumstances in which it is understood that the information is given in confidence or where the provider may come to harm if the information provision is disclosed.

Frank diplomatic exchanges between governments are essential to the effective conduct of foreign relations. Such exchanges between governments may be affected detrimentally if diplomats engaged in bilateral meetings believe the content of their discussions or the opinions of the counterparts about their meetings could become public at some later stage. This is a legitimate concern, but it is one that should be qualified in several different ways. In most Western democratic countries, freedom of information legislation operates. Diplomats conduct their discussions and record them, therefore, in the knowledge that, except in relation to the most sensitive of matters, disclosure may subsequently and lawfully occur. Their conduct is tailored to this contingency. Similarly, senior diplomats work in an environment in which it is known that occasional and sometimes damaging leaks may occur. While condemning and prohibiting such unauthorised disclosures, they will, nevertheless, adapt their discussion to cater for the outside possibility of publication. This may be done either by framing discussion and reporting sensitively or by limiting the way in which discussions are recorded. A reasonable measure of protectiveness is appropriate in the interests of constructive deliberation. The problem, however, is that the cloak of secrecy thrown over governmental discussion is all too often too extensive. Far more documents may be publicly disclosed without any harm caused to policy development or program implementation. This disclosure is all too often and too widely constrained by sweeping legislative provisions prohibiting the dissemination of official information.

Further, in areas of considerable international and public controversy, much will already be known about the outlines of relevant disagreement. The disclosure of documentation which serves simply to confirm the existence and nature of that disagreement is highly unlikely to cause serious damage to the conduct of international deliberation. In the case of the

Cablegate documents, those who follow matters concerning domestic politics and international relations intelligently and conscientiously were, for the most part, aware of most of issues canvassed there. And the diplomats themselves were rarely traversing new ground. Some of the personal remarks made about particular individuals were certainly embarrassing. But embarrassment does not constitute sufficient reason to cloak information in unnecessary and unjustifiable secrecy.

In this respect, perhaps the sanest commentary about the cables came from the highly respected Australian diplomat John McCarthy. He expressed the view that 80% of political assessments and 90% of general economic assessments could be freely shared even though the documentation is an expression of a government view. In an article in *The Australian*, McCarthy observed that:

The climate of inhibition is not in the national interest. A good policy requires all sensible points of view to be reflected, representing different foreign policy and domestic interests. This means the relevant people need to be informed of what is coming in and going out. A good cable system does this. Over the longer term, the test in Australia will be to create an internal culture where greater openness is seen as the avenue for better policy — albeit at the risk of the occasional leak or the odd embarrassing FOI release. Over time, WikiLeaks could actually generate a more open approach to managing foreign policy in democracies such as Australia.⁹

The second and more important qualification to the principle of publicity is that it must not lead to harm to those who provide information to government in confidence. It is on this ground that the Cablegate disclosures have been most trenchantly criticised. Here it is important to be reminded of the arrangements made in relation to the cables' release. The documents were not released initially by WikiLeaks. They were published, in collaboration with WikiLeaks, by five highly respected international newspapers — *The Guardian*, *The New*

York Times, *Le Monde*, *El Pais* and *Der Spiegel*. The newspapers and WikiLeaks agreed that the cables should be published progressively and only after they had been carefully scrutinised so that any reference to individuals who may come to harm as a result of the publication would be redacted. After having made the redactions it deemed necessary, *The New York Times* sent the cables it proposed to publish to the US administration. It suggested additional redactions, some of which were made, but others were not. *The Times* alerted the other newspapers to its redactions and to the administration's concerns so that they too might follow suit. *The Guardian* followed a similar course. The essential principle which governed the making of redactions was described by *The New York Times* as being that 'we withhold secret information that would expose confidential sources to reprisals or that would reveal operational intelligence that might be useful to adversaries in war ... On the other hand we are less likely to censor candid remarks simply because they might cause a diplomatic controversy or embarrass officials.'

The sheer volume of the documentation disclosed in Cablegate makes it impossible to say that no person has been or will be harmed as a result of the disclosures. What can be said first, is that no such harm has been intended and, second, that at the time of writing no person has yet been identified as having been injured by the cables' release.

The public interest

I noted in my earlier analysis that even if some harm to the practice of governmental deliberation were reasonably likely to occur as the result of publicity, that harm must necessarily be weighed in the balance against any competing and compelling public interest in the disclosure of information concerned. Again, given the scale of the disclosures, it cannot reasonably be said that the release of every single cable can be justified in the public interest. Many may have failed that test.

What cannot be doubted, however, is that taken as a whole, the Cablegate disclosures have given citizens in many different parts of the world an unparalleled opportunity to learn about and evaluate the work that its governments and their officials undertake on their constituents' behalf in the pursuit of international diplomacy. That is a beneficial thing. That general benefit is compounded in this instance by the revelation in many countries of maladministration, corruption and endemic human rights abuse. The public interest in the illumination of such practices cannot be doubted. Among the more prominent examples of such practices have been:

- the revelation that the US administration ordered that senior officials of the United Nations, including the Secretary-General, be spied upon contrary to international law
- the existence of arms trafficking, money laundering, personal enrichment extortion, kickbacks and the establishment of secret offshore accounts by a combination of organised criminals and governmental officials in Russia
- the identification of large scale corruption in the administration of the government of Afghanistan
- the siphoning of billions of dollars from government coffers by the President of Sudan, Omar-al-Bashir
- the sclerotic, corrupt and repressive activities of the former Tunisian regime of President Zine Ben-Ali
- the alleged infiltration by Shell of almost every senior level of the Nigerian administration
- the alleged attempt by the chemical multinational, Pfizer, to unearth evidence of corruption against the Attorney-General of Nigeria as a means to persuade him to drop legal action over one of its drug trials in the country.

The full list is far more extensive than this. In combination the evidence of corruption and abuse revealed provides in and of itself the most formidable public interest justification for the WikiLeaks disclosures. In its editorial justifying publication, the New York times summarises the case eloquently:

But the more important reason to publish these articles is that the cables tell the unvarnished story of how the government makes its biggest decisions, the decisions that cost the country most heavily in lives and money. They shed light on the motivations — and in some cases duplicity — of allies on the receiving end of American courtship and foreign aid. They illuminate the diplomacy surrounding two current wars and several countries, like Pakistan and Yemen, where American military involvement is growing. As daunting as it is to publish such material over official objections, it would be presumptuous to conclude that Americans have no right to know what is being done in their name.¹⁰

It is not just Americans, but citizens across the globe whose knowledge of government and capacity to participate more effectively in influencing governmental decision-making that has been strengthened by these extraordinary and extensive disclosures. Global democracy and deliberation have been considerably fortified as a result.

Endnotes

- 1 *The Guardian*, 30 November 2011.
- 2 Quoted in D Leigh & L Harding, *WikiLeaks: inside Julian Assange's war on secrecy*, Guardian Books, 2011, p. 199.
- 3 J Bentham, 'Of Publicity', in *Essays on political tactics in the works of Jeremy Bentham*, J Bowring (ed), William Tate, 1839.
- 4 *ibid.*
- 5 P Pettit, *Republicanism*, Oxford University Press, 1998.
- 6 *Supra*. Note (ii) at p. 212.
- 7 J Assange, *Julian Assange, the unauthorized autobiography*, Text Publishing, 2011, p. 243.
- 8 Office of the White House Press Secretary, 28 November 2010.
- 9 J McCarthy, 'WikiLeaks should propel less secrecy at the top', *The Australian*, 13 January 2011.

- 10 *The New York Times*, 'A note to readers: The decision to publish diplomatic documents', 28 November 2010.



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