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The First Amendment is for Assh*les, Including Julian Assange

| [More](#)^[1]

| December 10, 2010

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If you needed evidence that there isn't much of a constituency for the First Amendment these days, the hysterical bipartisan reaction to WikiLeaks' latest document release should do the trick. Senators [Joe Lieberman](#)^[3] and [Diane Feinstein](#)^[4] view constitutional protection of speech as a mere speed bump on the road to prosecuting WikiLeaks founder Julian Assange for espionage. The [Obama administration](#)^[5], now promising his prosecution, does not dissent. [The](#)^[6] [Republicans](#)^[7] calling Assange a terrorist (presumably based on a novel definition of terrorism as "things that harm the US government") avoid even such minor gestures toward constitutional restraint. Acceptance of their previous claims that the government can kill whomever it designates a terrorist would moot debates about the speech rights of those so labeled.

Happily, the predictability of unpopular speech is why it enjoys constitutional protection. Which is another way of saying that the First Amendment is for a-holes.* Julian Assange qualifies—in the sense that he is both engaged in an activity deserving First Amendment protection and annoying enough to need it.

To start with the second point, Assange and WikiLeaks are easy to dislike. That is due not only to Assange's [grandiosity](#)^[8] and penchant for comparing imperfect governments like ours with police states, but also WikiLeaks's [opaque privacy standards](#)^[9], which makes it hard to differentiate from an organization that would keep no secrets. (I say that even though they seem to be proceeding more [carefully](#)^[10] in this round of releases than in previous ones). Like flag burners, WikiLeaks has a rare ability to unite Americans behind laws that would suppress speech. If a bill came up in Congress today plainly criminalizing WikiLeaks's conduct or even allowing the US government to use force against it, I imagine a large majority of Congress would vote yes.

That law would be dangerous because what WikiLeaks does—revealing information to citizens about what their government is doing—is what the First Amendment exists to defend. I say that without having a firm opinion on the balance of costs and benefits from WikiLeaks' disclosures. What's more relevant is that the [possible paths](#)^[11] to prosecuting Assange are all liable to offer

precedents allowing the prosecution of traditional journalists. I understand that people like Senator Lieberman see that as a bonus. But secrecy already impoverishes current debates about defense policy. It deprives us of information about the dumb, expensive, criminal, and potentially reversible things our government does, and lets them continue. Secrecy also causes security reporters to be overly reliant on official sources, allowing them to skew debate.

To simplify, the publication of more information [12], even classified information, about our security policies generally improves them. Information suppression harms them. One need not endorse Assange's methods to agree that prosecuting him would exacerbate that problem.

By the way, my lay understanding is that the First Amendment does apply [13] to foreign publishers, including WikiLeaks—at least if you follow one ruling arguing that “the essence of the First Amendment right to freedom of the press is not so much the right to print as it is the right to read.”

*I take that line from a story—maybe apocryphal—where Barney Frank used it to explain to a veterans group why he wouldn't follow their wishes and vote to outlaw flag burning.

More by

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[7] <http://nationaljournal.com/nationalsecurity/mcconnell-calls-wikileaks-founder-a-terrorist--20101205>

[8] <http://www.cato-at-liberty.org/the-politics-of-wikileaks/>

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