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WikiLeaks, National Security and Cosmopolitan Ethics

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Introduction: Was *WikiLeaks* Pro US?

On Tuesday 22 November 2010, *New York Times* editor Bill Keller attended a tense meeting with national security advisors in Washington. (Keller 2011: 5). During the same week, his counterpart at the *Guardian* newspaper in London, Alan Rusbridger, met with UK government officials and representatives of the US government. The discussions focused on the security implications of plans to publish news stories selected from a cache of more than 250,000 secret cables that whistle-blower website *WikiLeaks* had received from an anonymous source. Would publication lead to persecution of US informants and activists operating in authoritarian countries? Would frontline troops be placed in immediate danger by the release of their position, equipment or plans? Both journalists and government representatives were concerned that making the information public could compromise the security of diplomatic sources, agents and interests.

The meetings in Washington and London were part of the sensitive process of determining which of the cables would be made public and which would – for the time being at least – not be published; which stories of US intelligence activity would be met with public outrage, amusement and debate, and which would, for the time being at least, remain secret. And for those cables that were published, this was part of the process that would decide which details, such as names and places, were to be erased prior to publication. According to Keller, the government officials he met wanted to protect the identities of any individuals who had spoken to US diplomats in oppressive countries, and wanted to remove references to secret US intelligence programmes (Keller 2011: 5). The journalists, not wanting blood on their hands, agreed with much

of what was suggested to them. But when officials requested that the *New York Times* should remove remarks by heads of state and other top officials where publication would cause embarrassment or strain relations, Keller was more sceptical and the meeting abruptly came to an end (Leigh and Harding 2011: 191; Keller 2011: 5–6). Whilst journalism ethics generally permit a degree of self-censorship where life and limb are at stake, neither the *New York Times* nor the *Guardian* were prepared to restrict material purely to avoid diplomatic embarrassment.

Two things are worth noting here. First, the approach to potential harms caused by the publication of the cables focused on US and UK national security. Pakistani, Afghan and Chinese officials, for example, were not involved. Second, whilst neither *WikiLeaks* nor its founder Julian Assange conducted detailed negotiations with government officials about what they should and should not publish,[1] they did accept the redactions by the *Guardian* and the *New York Times*. When the first batch of documents was published on the *WikiLeaks* site, they were those selected by the *Guardian* and the *New York Times*, with sensitive details that could compromise operational security removed by the newspapers. Thus the whistle-blower site had delegated to its media partners the task of redacting security-sensitive information from the leaked cables.

This process of apparent self-censorship raises fundamental questions relating to current debates about globalization and cosmopolitanism. Was *WikiLeaks* a genuinely global organization or did it operate within national systems of regulation and military censorship? Did the publication of the US cables represent part of a process of 'taming' *WikiLeaks* to serve the interests of the UK and the US? If *WikiLeaks* or sites like it are able to evade the ethical and legal framework of a single country, might it perhaps develop a more cosmopolitan, global approach to ethical journalism?

Referring to the Pentagon Papers case,[2] which defined the legal immunities of publishers of military secrets in the US, Jay Rosen (2012) and Clay Shirky (2010) see the 'stateless', global nature of *WikiLeaks* as its defining feature:

Let me propose, for the sake of argument, two labels for action that spans more than one country: international, and global. International actors are actors rooted in a nation, even when they are able to participate in activities all over the world, while global actors are unrooted; global actors have, as their home environment, the globe.... The most dramatic of *WikiLeaks*'s breaks with previous

journalism is the global nature Rosen identified. The biggest differ-
ence between the Pentagon Papers case and *WikiLeaks* is not the legal
precedent, but the fact that the Pentagon Papers case was an entirely
national affair.

(Shirky 2010)

In this chapter I first outline the evolving features of the Wikileaks
model of encrypted whistleblowing. Then I examine the background to
the current settlement on media ethics outlining the historical develop-
ment of what I describe as a 'social compact' – a legal and self-regulatory
framework – outlining the responsibilities of free media within a nation-
state. I go on to discuss the experience of *WikiLeaks* in relation to
that national ethical compact. Then, based on an analysis of published
accounts, blogs and online discussions, I examine *WikiLeaks's* approach
to its responsibilities, in particular the process of redaction and selec-
tion that it applied to the US cables. I also look at the legal framework
drawing on case law and comparative research on media ethics and
regulation in Europe. Finally, I return to the central question of global
media ethics. If media can operate in a global, unregulatable space, what
ethical rules might they seek voluntarily to adhere to and how would
these norms differ from the settlement within national legal and ethical
systems?

In studying *WikiLeaks* I use a 'practical' approach to ethics, build-
ing upon Onora O'Neill's *modus operandi* (O'Neil 2000). This does not
start from abstract principles but asks 'what assumptions we are already
building into our action, habits, practices and institutions'. This more
empirical take on global media ethics[3] directs us to examine the ethi-
cal experimentation being carried out by *WikiLeaks* – and others on the
frontier of structural change. Nick Couldry (2012) raises the question,
after Ricoeur, of whether the current juncture of global media consti-
tutes a 'limit situation' necessitating a new domain of ethical thinking,
and this chapter examines whether *WikiLeaks* can help us to understand
this empirically.

What had changed, what had created this potential limit situation,
necessitating a groping for a new global ethics? The key feature of
WikiLeaks during this period was indeed its global, stateless nature
or, more precisely, its ability to operate beyond the reach of the law.
Because of the problem of jurisdiction (sites mirrored abroad) and iden-
tity (use of encryption masks), internet communication is difficult to
censor. Whilst China and other authoritarian governments have illus-
trated that points of control can be exploited (Deibert et al. 2010),
internet communication within and between free-speech jurisdictions

is more difficult to control. In its short history, *WikiLeaks*'s approach to legal liability has principally been to avoid it wherever possible, by moving around the globe and hiding assets. In 2008, when a California court successfully used an injunction to shut down a *WikiLeaks* site, there were still hundreds of mirror sites available in other jurisdictions around the world. It was, according to Daniel Domscheit-Berg 'virtually impossible' to take *WikiLeaks* offline (Domscheit-Berg 2011: 20–21). With no physical assets, such as offices and printing presses, and with limited financial assets, *WikiLeaks* has attempted to exist outside the law. The site operated behind a cloak of encryption, seeking to evade the jurisdiction of countries such as the US and distributing sensitive information around the world in encrypted form to trusted collaborators, for release when *WikiLeaks* or its founder were attacked. Unlike mainstream media, therefore, which are subject to licensing restrictions and/or existing ethical codes, and ultimately the law, *WikiLeaks*'s own ethical procedures are self-imposed.

It would thus be an oversimplification to claim that *WikiLeaks* was beholden, through its mainstream media contacts, to any one national interest or coalition of interests. In fact, the organization was involved in a tense confrontation about the ethics of publication and the potential for harm to both 'friends' and 'enemies' of the so-called 'War on Terror'. Even during November 2010, Assange was already contacting journalists outside Europe and the US – such as the Brazilian Natalia Viana – about the US Cables. According to Viana, Assange saw this 'as a way of breaking the exclusive contract that tied them to the five most important mediums of communication in the world, and at the same time, increasing the circulation of secret documents about countries that were isolated from the geopolitical center of power'.[4] Phased releases of cables in collaboration with other countries began in April 2011, and *WikiLeaks* chose trusted journalists and publications in countries such as Pakistan (the newspaper *Dawn*) and Jamaica (*The Gleaner*), as well as bloggers such as Viana in countries where Assange chose to avoid the mainstream media. But the fact that this second phase took place some months after the cables were first shared with US/EU media partners made the material less sensitive and should have given the US time to take action to protect security interests, and change diplomatic and military personnel where necessary. Media outside the coalition of US and EU countries had to wait for their access to this valuable material, and wait until after the US and European media had taken their pick of what was most newsworthy, and diplomatic damage limitation had taken place. So whilst *WikiLeaks* leader Julian Assange may or may not be pro-US, the approach to the release of the cables was

a negotiated compromise between coalition interests and those outside the US and Europe.

The next section briefly reviews *WikiLeaks*'s basic model, with a focus on the central question of the organization's approach to journalism ethics and 'harm minimisation'. We find that in its short history, *WikiLeaks* has experimented with a range of ethical approaches, at times conforming to the more established media ethics of mainstream news providers, and during other periods seeking a more absolute freedom.

WikiLeaks: From wiki to global news organization

WikiLeaks's original idea was a simple one: whereas in mainstream journalism sources are protected by an ethical and legal code, *WikiLeaks* would protect sources by software code. When whistle-blowers post material to the *WikiLeaks* site, they do so through a secure encrypted interface that anonymizes their IP address and records no identifying information. 'Documents can be leaked on a massive scale in a way which combines the protection and anonymity of cutting edge cryptographic technologies.' *WikiLeaks* claims to 'keep no records as to where you uploaded from, your time zone, browser or even as to when your submission was made' (Leigh and Harding 2011: 52–53).

WikiLeaks began as a 'wiki' – a site that was open to posting and editing by users. Journalism was at this stage not something done by *WikiLeaks* itself. The idea was that selection and sifting of *WikiLeaks* documents would be 'crowd-sourced' from anyone with an interest in the material. This model was short-lived: not only was there a lack of audience but 'Assange and his colleagues rapidly found that the need to remove dangerous and incriminating information made such a model impractical' (Leigh and Harding 2011: 52). Leigh and Harding observed that 'Assange had now discovered, to his chagrin, that simply posting long lists of raw and random documents on to a website failed to change the world' (Leigh and Harding 2010: 61).

WikiLeaks thus began to take a more hands-on approach to editing during the period 2007–2010 (Dormscheit-Berg 2011: 44–50). Assange formed relationships with mainstream media to gain more impact. Stories would be cherry-picked from leaked material and shared with mainstream media. Assange claims that a 2007 story about corruption in Kenya led to a change of government – after the *Guardian* ran a front-page story on it. According to press reports, the initial Afghanistan War Logs release consisted of around 77,000 documents. When the names of people who might be put in danger had been redacted, another

15,000 or so were published (Benkler 2011: 11). According to Daniel Domscheit-Berg, however, the process was chaotic and *WikiLeaks* lacked the capacity to redact effectively (Domscheit-Berg 2011: 183–184). This was the reason Assange gave media partners access to the material, and over time the arrangements became more formal. Witnesses in a PBS documentary transmitted in May 2011 reported that the *WikiLeaks* 'harm minimisation policy' dates from that time (Keller 2011).[5]

The release of private documents of clients of the Julius Baer Swiss Bank in January 2008 revealed details of their alleged tax evasion and money laundering. Whilst the court order to suppress the *WikiLeaks* release was quickly overturned, the extrajurisdictional status of *WikiLeaks* is confirmed by this episode. *WikiLeaks* remained online despite court orders in a number of jurisdictions outside the US and was accessible globally (Domscheit-Berg 2011: 22).

During 2010, *WikiLeaks* attempted to address mounting concern about an allegedly 'fast and loose' approach to the security consequences of publication of Iraqi and Afghanistan war material. The site formalized a deeper partnership with mainstream media and in particular *Der Spiegel*, the *Guardian*, *Le Monde*, the *New York Times* and *El Pais*. Alasdair Roberts summarized the nature of this new arrangement for *WikiLeaks*:

> By the end of 2010 it was clear that *WikiLeaks'* *modus operandi* had fundamentally changed. It started the year with a straightforward conception of its role as a receiver and distributor of leaked information. At year's end, it was performing a different function: still hoping to function as a trusted receiver of leaks, but now working with mainstream media to decide how – or if – leaked information ought to be published.
>
> Roberts (2011)

This shift to a more active editorial position also created new risks. Selecting material for publishing, like actively soliciting specific material, brought to *WikiLeaks* new ethical responsibilities and potential legal liabilities (Benkler 2011). As it developed a harm-minimisation policy there was controversy about the level of professionalism in its approach to redactions. According to Daniel Domscheit-Berg, four days before the US diplomatic cables were to be published, Assange had still not told the *WikiLeaks* staffers preparing the documents for publication to redact names (Domscheit-Berg 2011). The *WikiLeaks* employees did not learn of the issue until editors at German newspaper *Der Spiegel*

asked him about progress on redactions. *WikiLeaks* couldn't complete the redactions, so its media partners told it to withhold 14,000 files that contained names. Assange eventually asked the *New York Times* to help to redact but later complained that he had received no help from the paper.

Some of the small number of *WikiLeaks* 'journalists' became increasingly uncomfortable with the procedures and security at the website during 2010. The 'second in command' there, Daniel Dormsheit-Berg, grew uncomfortable with what he saw as the inability of *WikiLeaks* to negotiate the complex ethical balances they faced in relation to national security. He gave an interview to *Der Spiegel* on 29 September 2010 in which he said that

> In recent months we have grown crazily fast and there are technical problems that no one cares about. *WikiLeaks* urgently needs to become more professional in all areas and improve our transparency. But this development is blocked internally. Even for me is not clear how decisions are actually made and who is ultimately responsible. Because of the high pressure with the publication of the American military documents, we have not come to rebuild the organization accordingly. The result is that not all jobs are done correctly.
>
> (Dormsheit-Berg, reported in *Der Spiegel* 2011)

If arrangements within *WikiLeaks* were fraught, relationships with media partners were even stormier, with a long series of disputes and recriminations between *WikiLeaks*, the *Guardian* and the *New York Times*. This led to a formalized procedure, though not a transparent one. By June 2011, Assange was asserting that he would never work with media partners without a written agreement.[6] Part of the difficulty with these relationships, according to him, was that he was constantly challenging the media to be more bold in releasing the cables; and the journalists, citing their own legal and ethical responsibilities, counselled caution. In the following section I examine some of the rules and structures within which conventional news media operate.

Free speech and the media responsibility compact

In order to understand the global ethical terrain on which *WikiLeaks* is operating, it is necessary to understand the national terrain within which journalism ethics has developed. In the jurisprudence of the European Convention on Human Rights (ECHR) and the First

Amendment to the US Constitution, free speech is not an absolute, but balanced with what are considered to be legitimate restrictions of speech. I could face prosecution if I unjustifiably shouted 'fire!' in a crowded theatre since this could endanger people's lives, and there is a range of other restrictions on free speech justified in terms of privacy, reputation, intellectual property, harassment or confidence and other rights.[7] The right to life itself is, of course, most fundamental, and national security considerations such as those engaged in the *WikiLeaks* case can therefore constitute legitimate restrictions on speech.

Media law and policy in liberal democratic countries constitute a set of institutions and practices that structure the speech field and decisions about what should be made public with a presumption in favour of free speech, but in terms of a balance with these other rights. Journalists claiming protection under Article 10 of the ECHR (Freedom of Expression), for example, may be required to demonstrate that they are performing a public interest role and acting responsibly. They do so in terms of a series of free-speech-related privileges – such as the right to protect sources and protection from liability for public interest journalism, which are granted in recognition of the performance of a certain set of functions – chiefly performing responsible journalism in the public interest.[8]

Various authors have debated the historical development of the current settlement in terms of notions of countervailing powers, reflexivity (Eder 2006) and the detailed negotiation and battles that occurred during historical battles over free speech (Pickard 2010). What is clear is that in democracies, the media have had some autonomous power, because of their influence in the electoral market, to repel attempts to control speech.[9] So whilst clear legal limits are defined in relation for example to national security, voluntary self-restraint defines the practice of media responsibility within the nation-state.

Steven Ward has outlined a contract theory of media ethics in which freedoms are granted in return for a commitment to a series of responsibilities (2005). Pickard (2010) has developed the notion that the media exist within a compact of rights and responsibilities. In short, we can understand the institutional position of media, including press freedom and journalistic privilege, as a social compact. The media serve a valuable social function in the facilitation and distribution of public debate, and in return they are granted by society a series of privileges (see Tambini 2012). But the media are not 'free' in an absolute sense. They operate within a tense regulatory settlement. One of the conditions upon which such a compact is based is that the media should work within accepted rules.

The point here is that *WikiLeaks* and similar sites have the potential to operate not only beyond the law, but outside the social compact that governs mass media. Within national free-speech frameworks, media enjoy certain immunities and privileges deriving from freedom of expression but these are granted on condition of good behaviour defined in terms of a nation-state bounded public interest, and national security in particular provides a justification of restriction of free speech. WikiLeaks is free of these constraints, ultimately relying neither on ethical nor legal, but on software code.

It is important to note that this is an institutional rather than a solely normative approach. So-called 'social responsibility' theories of the press and journalism (Siebert et al. 1956) are often merely normative considerations of what journalism 'ought' to be and do. By contrast, my rights and duties approach is a sociolegal, institutional theory of journalism, based on an understanding of the legally constituted practice of reporting and its institutionalized role (see Pickard 2010; Ward 2005, Tambini 2012). A number of theorists are engaged in the urgent task of providing a normative theoretical basis for globalizing media in both a deontological and a neo-Aristotelian[10] framework. The approach of this article owes more to Stephen Ward and Onora O Neill in adopting an institutional, practical approach to ethics.

Parliaments have tended to be restrained in codifying laws on news and journalism, and they defer to self-regulation through codes of ethics. Self-regulation is a collective means of avoiding statutory regulation and a condition of free-speech protection. So long as the media are able to exercise restraint and act responsibly, they can be 'free'. In relation to national security, therefore, whistle-blowers may be subject to prosecution, but news media that publish the material will not be prosecuted, as long as they do so responsibly. Responsibility of the media includes the balancing of national security interests against the public interest in publication.

WikiLeaks's approach to the US cables was thus not in any simple sense pro-US, but it may have been shaped by its relationship to media partners embedded within these national legal frameworks. In order to understand the implication of new communications phenomena such as *WikiLeaks* for current transformations of the public sphere, it is necessary to acknowledge that liberal democratic media including *WikiLeaks*'s partners have operated within a clear institutional-legal context, a social compact of rights and duties. Freedom of expression is not absolute but involves balancing freedom of speech against restrictions that are prescribed by law and necessary in a democratic society. The news media,

in particular, enjoy privileges such as qualified journalistic privilege. Those privileges are predicated on a set of responsibilities to observe ethical codes; respect rights of others; and operate in the public interest. *WikiLeaks*, like *The Times* in the Reynolds case (See Clayton and Tomlinson 2009: 1383),[11],[12] has argued that in releasing the secret cables it was not doing harm; rather, it was acting ethically, responsibly and in the public interest.

Despite the efforts of Rusbridger and Keller, controversy surrounding the *WikiLeaks* revelations in 2010 centred upon the extent to which publishing the leaked information compromised US national security and particularly the security of the military coalitions occupying Iraq and Afghanistan. Government spokespeople were highly critical of the publication of the US cables, both in the UK and in the US. A spokesperson outlined the UK government position: 'Clearly we condemn the unauthorized release of classified information. The leaks and their publication are damaging to national security in the United States and in Britain, and elsewhere.' It was not claimed that the information would lead to direct threats to life and limb but that 'it's important that governments are able to operate on the basis of confidentiality of information'.[13] In the US the reaction was firmer, and singled out a particular cable, one that was in fact released by *WikiLeaks* and not its media partners: 'On Dec. 5, *WikiLeaks* released a 2009 diplomatic cable from Secretary of State Hillary Clinton detailing key sites worldwide. Among the locations cited were undersea communications lines, mines, antivenin factories and suppliers of food and manufacturing materials...U.S. officials said the leak amounted to giving a hit list to terrorists.'[14] According to Alan Rusbridger writing in January 2011, however, 'barely two thousand of the 250,000 diplomatic cables have been published, and, six months after the first publication of the war logs, no one has been able to demonstrate any damage to life or limb'. Julian Assange has repeatedly made the same claim, though it has been pointed out that US security services would be unlikely to publicly identify cases in which their sources had been endangered, since to do so would itself involve further compromising their sources.[15]

Several celebrated legal cases have sought to balance freedom of expression and national security.[16] These do not offer a clear standard against which *WikiLeaks* may be judged, but there is a consensus that prior restraint cannot reasonably be justified on the basis that politicians or diplomats may be embarrassed: restrictions must protect the public from a grave danger or they are not justified. Whilst the Pentagon Papers case did not agree a test, the Supreme Court's Justice Stewart's dissenting

opinion argued that restriction of speech would be justified if publication was sure to 'result in direct, immediate and irreparable damage to our Nation or its people'.[17]

In the Spycatcher case, the European Court of Human Rights rejected the notion that reports could be subject to restrictions in order to protect reputation: the judge argued that restrictions ceased to be justified after the book had become more widely available.

> The purpose of the injunctions had thus become confined to the promotion of the efficiency and reputation of the Security Service, notably by preserving confidence in that service on the part of third parties; making it clear that the unauthorized publication of memoirs by its former members would not be countenanced; and deterring others who might be tempted to follow in Mr Wright's footsteps. The court does not regard these objectives as sufficient to justify the interference complained of.[18]

The court therefore found that restricting the publication of the book was not 'necessary in a democratic society' and that there was a violation of Article 10.

According to the ECHR, restrictions must be 'necessary in a democratic society'. This, according to the Spycatcher judgement, refers to a 'pressing social need' which would be needed to justify restrictions on freedom of expression.[19] The US government alleges that such a pressing social need to prevent publication of at least one of the US cables indeed existed, but *WikiLeaks* and its media partners counter that the apparent lack of fallout from publication may cast doubt on this claim. This lack of apparent consequence is a key aspect of *WikiLeaks*'s search for legitimacy. '*WikiLeaks* has a four-year publishing history. During that time we have released documents pertaining to over 100 countries. There is no report, including from the US Government, of any of our releases ever having caused harm to any individual.'[20]

Drawing on international law, a network of NGOs and lawyers developed the Johannesburg Principles[21] on national security and freedom of expression. According to these standards, 'any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest'. Specifically,

> a restriction sought to be justified on the grounds of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the

use of threat or force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

The principles explicitly exclude from justified restrictions those that aim 'to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions or to entrench a particular ideology or suppress industrial unrest'.[22] So there is a clear line between direct and physical security consequences of publication (which justify restriction) and mere embarrassment (which should not). These legal principles are rarely invoked in court, but they are reflected in daily newsroom practice and voluntary ethical regulation such as the D-A notice system in the UK.

Doing no harm? Responsibility, national security and the US cables

> *WikiLeaks* has developed a harm minimisation procedure to clean documents which might endanger innocent lives . . . *WikiLeaks* may delay publishing some news stories and their supporting documents until the publication will not cause danger to such people. However in all cases, *WikiLeaks* will only redact the details that are absolutely necessary to this end. Everything else will be published to support the news story exactly as it appeared in the original document.[23]

It is widely asserted that *WikiLeaks* simply 'dumps' large amounts of information into the public domain, and as such acts irresponsibly. Yochai Benkler has measured the extent to which the mainstream exaggerates the number of documents that were published during the US cables release. He found that whereas in fact the initial release was of only 272 documents, 'a substantial majority of newspapers stated as fact that *WikiLeaks* had "released," "published," or "posted on its site," "thousands" or "over 250,000" cables' (Benkler 2011: 19).

   WikiLeaks publicly claims that the harm-minimization procedure is always followed:

When information comes in, our journalists analyse the material, verify it and write a news piece about it describing its significance to society. We then publish both the news story and the original material in order to enable readers to analyse the story in the context of the original source material themselves.[24]

WikiLeaks is also clear that this procedure has developed over time:

> As the media organisation has grown and developed, *WikiLeaks* has been developing and improving a harm minimisation procedure. We do not censor our news, but from time to time we may remove or significantly delay the publication of some identifying details from original documents to protect life and limb of innocent people.[25]

According to Alan Rusbridger of the *Guardian*, 'The final piece of the journalistic heavy lifting was to introduce a redaction process so that nothing we published could imperil any vulnerable sources or compromise active special operations.' (Rusbridger 2011: 5). He claims that the *Guardian* led the redactions on behalf of the other media partners and *WikiLeaks*. 'Once redacted, the documents were shared among the (eventually) five newspapers and sent to *WikiLeaks*, who adopted all our redactions' (Rusbridger 2011: 5). But the road was not a smooth one. According to Assange and the journalists he was working with, the *WikiLeaks* organization was perpetually pressurizing media partners to be more bold and take more risks.

There were disagreements. The *Guardian* and the *New York Times* refused to publish 'Critical Foreign Dependencies (Critical Infrastructure and Key Resources Located Abroad)'.[26] This cable was released by *WikiLeaks* rather than partner organizations.[27]

Assange's own description of the process following the release of the US cables was that

> the cables . . . have been redacted by the journalists working on the stories, as these people must know the material well in order to write about it. The redactions are then reviewed by at least one other journalist or editor, and we review samples supplied by the other organizations to make sure the process is working.[28]

Whilst the details of the redaction process and the outcome of the process (Did people come to harm as a result of the leaks?) will not be known for some time, if ever, the broad outline of the process is not in dispute. Broadly, *WikiLeaks* can be seen to have outsourced ethical questions regarding publication to its media partners who perform a dual role: on the one hand they select stories on the basis of their public impact and level of public interest, and on the other they redact to minimize potential harm. But harm for whom? Who has moral standing (O'Neil 2000) in this complex of ethical practices and procedures?

Wikileaks' outsourcing of ethics to national mainstream media short-circuits a set of more complex ethical challenges that arise in relation to transnational circulation of media and *Wikileaks* has failed to reflect enough on its own ethical status. The following section unpacks some of the notions of national interest, national security, and the public interest from a cosmopolitan perspective, and outlines some key ethical challenges raised by *Wikileaks*.

Ethics outside the law: A case study

When *WikiLeaks*'s release of diplomatic communications was first reported in Pakistan's *Dawn* newspaper on 1 December 2010, details were removed from one of the cables. The newspaper report, quoting the cable, ran as follows:

> The embassy cables also revealed that small teams of US special forces soldiers were allegedly secretly embedded with Pakistan's military forces in the tribal regions, helping to hunt down Taliban and al Qaeda fighters and co-ordinate drone strikes in the area. 'The Pakistani Army has for just the second time approved deployment of US special operation elements to support Pakistani military operations. The first deployment, with SOC(FWD)-PAK elements embedded with the Frontier Corps in XXXXXXXXXXXX (location blocked), occurred in September (reftel). Previously, the Pakistani military leadership adamantly opposed letting us embed our special operations personnel with their military forces', one of the cables' summary stated.[29]

Given the date, we can surmise that the redaction was the product of the *New York Times*/*Guardian* redaction process (*Dawn* links to an October 2009 cable published on the Guardian website).[30] Notably, the location of the Frontier Corps that were coordinating the drone attacks has been redacted. From the point of view of the US army, and *the New York Times*, it is clear that such information may be security sensitive, and may even endanger military personnel.

It would be possible to argue that the Pakistani national interest narrowly defined by the Pakistan government at the time – in terms of common cause with the US against the Taliban – was served by redacting the cables. But there was such a controversy in Pakistan about the nature of collusion with the US that Pakistani journalists would have had a strong public interest defence had they published

the material, and it is likely that many of them would have been keen to do so.

From the point of view of Pakistani citizens, given the high incidence of civilian deaths caused by drone attacks, the location of special forces and the use of drones was information of paramount public importance. If there is Pakistani army support for the deployment of drone attacks in a given region, Pakistani civilians would have a strong argument that they should know in which regions support was given. The fact that such a deployment was condoned by Pakistan – particularly when the Pakistani government publicly condemned all drone attacks – gives even more weight to the argument to publish this detail from a Pakistani perspective. If *WikiLeaks* adopted a global perspective, or even an international view, the appropriate balance between freedom of expression and national security would shift. Whilst the question of the safety of US special forces will be of paramount importance to the US, and Rusbridger (2011: 5) does not want to 'imperil any vulnerable sources or compromise active special operations', the utilitarian calculus from a Pakistani perspective is more likely to include the safety of Pakistani civilians.

There are other cables that reveal some of the standards applied by editors. One that outlines a request for military assistance from the Pakistani army to the US army reveals information that may be very useful to their enemies, such as how many helicopters are operational, how many are required and the specific number of bridges that are requested.[31] This information could reveal plans of military deployments against militants on the Afghan border. These details were not redacted by the *New York Times*/*Guardian* redaction process perhaps due the nationally bounded approach to national security and redaction.

As noted above, however, in spring 2011, *WikiLeaks* began to work closely with media partners in a wider range of countries. Media partners in countries including Pakistan were given the opportunity to sort and sift the cables, to select stories relating to cables from their region. The process that the Pakistani daily newspaper *Dawn* went through in assembling the stories based on the cables is described by the paper's journalist Hasan Zaidi.[32] This short account does not indicate that *Dawn* journalists were involved in redacting the cables: indeed, the only redacted cables that were referred to by *Dawn*/*WikiLeaks* at this point had previously been published (and redacted) by *WikiLeaks*/the *Guardian*.

What seems to be apparent is that redaction rights – and with them, decisions about who has moral standing – were given to US and UK

interests, but, in the case of the second phase of cable releases in spring 2011, material selected by *WikiLeaks* and its partners was not redacted by partners in other countries, such as Pakistan. The cables that were published appear to have been published in full. It could, of course, be argued that because of the time elapsed between the original leak (early 2010) and the security services knowing of the leak (mid-2010), and the release by global media partners early in 2011, *WikiLeaks* and partners may simply have assumed that any operational impact would be minimal.

There are thus cases in which the balancing of the public right to know with national security raises fundamental questions for global media. Who are the public? Whose (national) security is under consideration? As Clay Shirky put it,

> Appealing to national traditions of fair play in the conduct of news reporting misunderstands what *WikiLeaks* is about: the release of information without regard for national interest. In media history up to now, the press is free to report on what the powerful wish to keep secret because the laws of a given nation protect it. But *WikiLeaks* is able to report on what the powerful wish to keep secret because the logic of the Internet permits it.

> (Shirky 2010)

Those who have sought to generalize a set of universal ethical principles for journalism or the media have tended to focus their efforts on the issue of cultural, linguistic and political diversity, and whether any rules could be sufficiently general to accommodate this difference.[33] Kai Hafez argues that despite cultural particularities – for example, the notion in the Islamic world that 'the idea of responsibility for the community ... in public speech is unique to the Muslim world' – a comparison of codes shows that 'truth, accuracy and objectivity are almost consensual cornerstones of journalism ethics'. (Hafez 2002: 228). Strentz simplifies universal ethical principles into four: use restraint; know thyself; respect others; and be accountable (Strentz 2001). Other commentators extend the list. For Herrscher (2002: 281–282) the ethical principles should be truth; completeness; avoiding conflict of interest; freedom and independence; honesty; respect for privacy and reputation; ethnic and religious tolerance; and importance.

This deontological approach to developing universal codes and ethical approaches indicates that an alternative *WikiLeaks* model could find legitimacy in terms of some global ethical principles, but these

principles are so abstract that they would not provide much help with the publication decisions regarding the US cables. Such an approach would not help with the issue of diversity of interest – for example, the fact that national security or national interest differ across boundaries. As we saw with the redaction of Pakistan stories, key justifications for publication based on national security and public interest are often nationally bounded. My analysis thus makes clear that Wikileaks raises more profound ethical challenges than have generally been acknowledged, particularly by Wikileaks itself. The attempt to develop ethical legitimacy for such a site would need to articulate what a genuinely global – or cosmopolitan – public interest would constitute, and its implications for publication ethics.

Conclusion: A global ethical code for WikiLeaks?

David Held defines cosmopolitanism in the following terms: 'In the first instance, cosmopolitanism refers to those basic values which set down standards or boundaries which no agent . . . should be able to violate.'

> Focused on the claims of each person as an individual, these values encapsulate the idea that human beings are in a fundamental sense equal and that they deserve equal political treatment: that is treatment based on the equal care and consideration of their agency, irrespective of the community in which they were born or brought up.
>
> (Held 2010: 95)

When *WikiLeaks* released all of the remaining unpublished cables in August 2011, this could be described as a cosmopolitan act, or as an irresponsible one. Cosmopolitans would give equal weight to lives in Washington and Waziristan, Birmingham and Beijing. Should *WikiLeaks* have sought somehow to consult both sides of the relationship before publishing? Clearly to do so would be absurd and impractical. After all, the cables originated with the US government, and the US military and the US state department would be the best guide to whether publication itself was likely to lead to harm to US forces or US sources. But the process of redaction, for the reasons explored, resulted in judgements that were made in a nationally bounded and US-centric notion of national security and the public interest.

Despite *WikiLeaks*'s global scope and reach, it seems that its approach in relation to the US cables was asymmetrical: media partners in the

US and Europe, with the *New York Times* and the *Guardian* at the fore-front, were allowed first choice of the initial selection of stories from the cables, and they conducted the redactions within their national and geopolitical context. In terms of the selection they made, it is likely that their concerns were for their national subscriber and purchasing public; and in terms of the calls that were made on the security impli-cations of stories, their focus was on the implications for the national interest of the nations in which they are based, as reflected in their assessments of legal liability. When *WikiLeaks* embarked on a second phase of publications with media partners from a wider group of coun-tries, they were not subject to this national media logic, but by that time the news value of the cables was arguably diminished because of the pas-sage of time, and the security implications were less likely to be direct. There were fewer redactions and these were not made on the basis of protecting the US military.

WikiLeaks's approach was pragmatic. First, it had neither the scale nor the skills to carry out responsible journalism in relation to the origi-nal cables, and may also have sought to spread legal risk with powerful media groups that governments may be reluctant to sue. Second, as long ago as 2007, it had been disappointed by the lack of impact of simply releasing documents. Assange and colleagues found that only by work-ing directly with major outlets, such as national newspapers, could they guarantee that releasing files would generate an impact.

The relationship between *WikiLeaks* and its partner national newspa-pers during 2010 was tense. Unlike its media partners, *WikiLeaks* exists outside the 'social compact' of responsible, public interest journalism. Just as it seeks to use internet architecture to escape the reach of a legal framework in which national security provides established justi-fication of restriction of free speech, the site also struggles with the informal social compact that establishes the ethical practice of responsi-ble journalism. The site, in developing its harm-reduction strategy, has acknowledged a need to maintain its legitimacy, but in the case of the US cables it has done so in a way that raises questions about how to bal-ance nationally bounded and cosmopolitan versions of harm reduction and the public interest.

This chapter has focused on the issue that has led to the most intense scrutiny of *WikiLeaks*: national security. As I discussed in rela-tion to releases of cables relating to Pakistan, the process of publication exhibited an unresolved tension between national and cosmopolitan approaches to the harm principle. The same set of general rules would not generate the same kinds of redaction in the US and in Pakistan.

WikiLeaks has not yet articulated ethical practices for global publication. A selection and redaction process that involved not national but global interests, and gave a Waziristani life the same weight as an American life, would be radical, and would be the appropriate longer-term strategy for *WikiLeaks* to gain support globally. Nationally rooted, nationally regulated media are unlikely to take this step.

WikiLeaks, and other sites that exploit an extra-jurisdictional approach to publication and source anonymity need to clarify their own position as ethical actors, and we need a wider, better informed debate on the transnational challenges for an ethical journalism in which such actors operate. This chapter has hopefully contributed to that new and urgent debate.

Notes

1. 'As part of the review process, we requested the US State Department, which has claimed to have conducted an extensive review of the material of its own over the last few months, to provide the titles of the cables which we should look at with extra care. The State Department refused to provide that information, or negotiate any other arrangement, suggesting that its desire to cover up at all costs eclipses its bona fide desire to minimise potential harm. The State Department gave its side of the correspondence to the *New York Times* and elsewhere at the same time.' *WikiLeaks* FAQ, http://Wikileaks.open-web.fr/static/html/faq.html (last accessed May 2011).

2. The case of the Pentagon Papers is strikingly similar to the *WikiLeaks* case. In 1971 the *New York Times* began to publish historical documents relating to the Vietnam War dating back to 1967. The ensuing prosecution examined whether and under what conditions publishers of leaked secrets should enjoy the protection of freedom of expression guarantees. New York Times Co. v. United States (403 US 713).

3. Such an approach has the additional benefit of avoiding the necessity of taking a position that sides either with the virtue-based neo-Aristotelian camp (Couldry 2010, 2012; Chouliaraki 2008) or with deontological, duties-based approaches.

4. http://www.narconews.com/Issue67/article4417.html.

5. PBS Frontline 30 May 2011.

6. Assange, Julian. Remarks at the Hay Literary Festival, 5 June 2011.

7. See also Castendyck, O, Dommering, E and Scheuer, A (2008), Tambini (2009b) and Harrison and Woods (2007).

8. The theoretical point here is that rights – including those deriving from free expression – are conditional on a notion of responsible behaviour. I develop this point in D. Tambini (forthcoming) 'Conflicts of Interest and Journalism Ethics. A Case Study of Hong Kong', *Journal of Mass Media Ethics*.

9. In the recent history of the development of media laws there are numerous examples of the exercise of press and media power (to frame a policy

or politician, to influence public opinion in order to protect media free-dom). Some of these are technical, such as the mobilization of press interests against the application of the Market Abuse Directive (EC Directive 2003/6) in 2002; and some of them are rather populist, such as press attacks on judges (such as Justice Eady in the UK by the *Daily Mail* in 2010) or politicians (such as culture minister, David Mellor, in the 1990s) when they argue for the introduction of new regulations to apply to news and journalism. Such regulatory efforts are often thwarted by media power.

10. See Chouliaraki (2008), Silverstone (2006); and Couldry (2010; 2012) for variants of this approach.
11. *Reynolds v. Times Newspapers Ltd* (2001) (2 A.C. 127). In a defamation case brought by the Irish prime minister, Albert Reynolds, against a UK newspaper, the reporter was protected from liability when it could be demonstrated that she acted responsibly and professionally, even though the report was inaccurate.
12. This test was later criticized for creating 'hurdles' over which journalists had to leap in order to be able to access a public interest defence. Geoffrey Robertson and Andrew Nicol, (2008) *Media Law*, 5th edn. London: Penguin. 3–064–3–065.
13. *Daily Telegraph*, 29 November 2011.
14. Associated Press, 7 December 2010.
15. This point was made repeatedly to Assange by Phillipe Sands QC when he interviewed Assange at the Hay on Wye Literary Festival on 5 June 2011.
16. See for a discussion, for example, of the UK T. Mendel et al. (2000) 'Secrets, Spies and Whistleblowers: Freedom of Expression and National Security in the United Kingdom, Article 19. Notable cases include Spycatcher in the UK and the Pentagon Papers case in the US.
17. Cited by Malcolm Turnbull in a speech to Sydney Law School, 31 March 2011, http://www.malcolmturnbull.com.au/blogs/malcolms-blog/reflections-on-Wikileaks-spycatcher-and-freedom-of-the-press-speech-given-to-sydney-university-law-school/
18. *Sunday Times v the United Kingdom* no. 2. (App no. 13166/87) 26 November 1991. 55. http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695585&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649.
19. *Sunday Times v the United Kingdom* no. 2. (App no. 13166/87) 26 November 1991. 59c.
20. Wikileaks, US Cables FAQ http://Wikileaks.open-web.fr/static/html/faq.html, last accessed May 2011.
21. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the Article 19 International Standards Series, London 1996.
22. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the Article 19 International Standards Series, London 1996. Art. 2.a- 2.b, http://www.article19.org/pdfs/standards/joburgprinciples.pdf.
23. *WikiLeaks*: submissions http://*WikiLeaks*.ch/Submissions.html.
24. *WikiLeaks*, http://213.251.145.96/About.html, last accessed 6 April 2011.
25. *WikiLeaks*, http://213.251.145.96/About.html, last accessed 6 April 2011.

26. The 2009 cable listed foreign assets viewed as 'crucial' by the US. Publication was immediately criticized by Sir Malcolm Rifkind (Chair of the Intelligence and Security Committee), who said that the publication was 'bordering on criminal' (MSNBC 6 December 2010), http://www.msnbc.msn.com/id/40526224/.
27. Benkler 2011: 14.
28. Julian Assange in a web chat with readers of the *Guardian* on 3 December 2010, http://www.guardian.co.uk/world/blog/2010/dec/03/julian-assange-Wikileaks.
29. Dawn.com, 1 December 2010, http://www.dawn.com/2010/12/01/pakistani-leadership-'okayed'-drone-attacks-Wikileaks.html, last accessed May 2011.
30. http://www.guardian.co.uk/world/us-embassy-cables-documents/229065.
31. http://www.dawn.com/2011/05/21/details-of-us-military-support-for-pakistan.html.
32. http://www.dawn.com/2011/05/20/putting-together-the-pakistan-papers.html.
33. There have been a great number of attempts to generate universal ethical principles led by journalist associations and UNESCO. See the contributions to the *Journal of Mass Media Ethics* (2002) 17(4). Some contributions highlight the 'do no harm' principle (S. Rao and S. Lee 2005) but most attempts to derive a set of common principles do so by taking a sample of existing codes and examining the overlaps and differences. See also Hafez (2002), Ward (2010).

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