

Suppression Order and Freedom of Expression: WikiLeaks, Corruption and the Super Injunction

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“With this order, the worst in living memory, the Australian government is not just gagging the Australian press, it is blindfolding the Australian public.” Julian Assange, July 29, 2014

The Westminster system has always been seen, in some select circles, as a model for freedom and expression. It has been everything but. In Australia, whose institutions do still pride themselves on an antiquated obsession with aspects of English gagging, suppression orders do retain a certain mystique. They certainly do in the Australian state of Victoria, which is said to throw “suppression orders around like confetti”.¹

The absurdity of its application has become all too evident with the publication by WikiLeaks of the super injunction covering allegations of corruption dealing with leaders from Malaysia, Indonesia and Vietnam. All had multi-million dollar dealings of a purportedly inappropriate nature with subsidiaries of the Reserve Bank of Australia (RBA). These supposedly involved the alleged bribery of foreign officials concerned with banknote printing contracts. The top brass from these countries, including, for instance, “any current or former Prime Minister of Malaysia”, “Truong Tan San, currently President of Vietnam”, “Susilo Bambang Yudhoyono, currently President of Indonesia (since 2004)”, and “Megawati Sukarnoputri, a former President of Indonesia”.

The suppression order has formidable currency in the English law canon. It is used to shut people up. It is used to keep silence golden. It is intended as a self-censoring measure that uses the cudgel of the law to keep people, and the media, in tow. WikiLeaks has fronted this legal remedy before, notably in the case of Trafigura³, a multinational which had been more than happy to use African bases as dumping grounds for its toxic waste. The company attempted, unsuccessfully, to keep discussion of its exploits under wraps.

In the post-analogue age, it remains to be seen how far such orders can genuinely go – there is more than enough oxygen for publicity to go around, and social media has proven positively inflammatory on the subject of the money printing order. Any prosecution against either a social media user or publisher for discussing the case would not only be futile but dangerous. Because of the threat, Australia journalists have been tiptoeing like ballerinas on the subject of what to reveal.

This has meant that journalists in Australia can report that WikiLeaks has released a document disclosing details on a suppression order, but are unable to discuss it without legal consequences. Such details cannot be disclosed, despite the absurd situation of a global conversation taking place on that very order. (Witness, for instance, a vigorous discussion taking place on the order in the Malaysian press.⁴) As with all matters regarding

ensorship, absurdity, and a good degree of spinelessness, tend to be the only victors.

The super injunction has had several famed appearances. The absurdity was well exposed when it came to such programs as the British quiz show *Have I Got News For You*. There, the super injunction has been discussed, only to disappear at the behest of legal advice to participants on the program. Ian Hislop, veteran editor of the hilariously wicked *Private Eye* tended to, as he still does, sail close to the legal wind on several occasions.

The super injunction has certainly been the favoured form of restraint on the press from celebrities. The situation with such figures is far less relevant than that of political subjects – what Ryan Giggs, former Manchester United player did or did not do in his sex life can hardly be said to be a matter of grand public interest. Such figures, in their dubiousness, are certainly entitled to what shreds of privacy they might have left, even if the resort to the Human Rights Act 1998 may seem gratuitous. The same can't be said for political representatives who use their offices to pursue goals outside the remit of their election. Their relationship with constituents is both bond and undertaking.

There are always concessions to be made when allegations are reported. Material alleged has to be material proved. The respective evidentiary onus on the parties has to be discharged. This will happen, it is hoped, in the fullness of time, in so far as time is generous in such proceedings.

But the assumption that the province of law is somehow meditative and hermetic, that it exists outside the time and workings of politics, is at best a childish notion. Embarrassment masquerades as matters of national security. As the document itself states, "The purpose of these orders is to prevent damage to Australia's international relations that may be caused by the publication of material that may damage the reputations of specified individuals who are not the subject of charges in these proceedings." Naturally, terms such as "justice" are used liberally, though the primary object is less justice than the necessity to "prevent prejudice to the interests of the Commonwealth in relation to national security."

The governments in question – those of Australia, Malaysia, Indonesia and Vietnam – want silence on the matter. Canberra is particularly worried, feeling that their business partners might be unnecessarily impugned. They have managed, in part, to secure that reticence through the channel of Australian, and more specifically Victorian, law. They are desperate to chill, if not kill, the matter. Alleged misconduct has effectively been cloaked from public scrutiny.

Time and time again, orders of restraint and injunctions have been sought to restrain the publication of information that would have informed public discussion on matters of crucial political performance. That discussion can still, as it should, take place irrespective of whether the charges are proven in court. The very fact that the governments in question are all receiving the comforts of immunity in an Australian court room needs to be seriously questioned. Don't expect Australian media outlets to heed that point.

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Notes:

1 <http://www.crikey.com.au/2014/07/30/wikileaks-reveals-not-so-superinjunction/>

2 <https://wikileaks.org/aus-suppression-order/>

3 <http://www.theguardian.com/media/2009/oct/13/trafigura-drops-gag-guardian-oil>

4

<http://www.themalaymailonline.com/malaysia/article/australia-muzzles-press-on-bribery-case-involving-malaysian-regional-leader>

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