

The Use of Prior Restraints on Publication in the Age of Wikileaks

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As James Madison put it, “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors must arm themselves with the power which knowledge gives.”¹ Free speech is essential to effective self-government. A democracy cannot function if its citizens do not know what their government is doing.

For that reason, the First Amendment significantly limits the government’s ability to control the flow of information to the public. In particular, the First Amendment renders prior restraints on speech presumptively unconstitutional.² Even if the government could punish the speech after the fact, it cannot— absent a heavy burden of justification—prohibit the publication of that speech.

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