

A sad day for the US if the Espionage Act is used against WikiLeaks

Resurrecting the 1917 law would be a mistake: it has a history of being used to suppress dissent



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Numerous US officials are calling for a resurrection of the US Espionage Act as a tool for prosecuting WikiLeaks. The dusting-off of the old law is all but certain. But the outcome of the constitutional dust-up that is sure to follow will result in triumph or tragedy for the US bill of rights.

In 1917, in the midst of a war hysteria, the United States passed the Espionage Act. The law has nothing to do with prosecuting spies. From its inception, it had everything to do with suppressing dissent. The Great War was unpopular with many Americans, very like today's engagements in Iraq and Afghanistan.

Make no mistake about it. The Espionage Act targeted political dissidents. Senator Kenneth McKellar of Tennessee offered a simple defence of the law when it was introduced to Congress: "If we cannot reason with men to be loyal, it is high time we forced them to be loyal." Others, such as Congressman William Green of Iowa, were more blunt. His statement resembled modern calls supporting the execution of the suspected WikiLeaks "whistleblower" Bradley Manning: "For the extermination of these pernicious vermin no measures can be too severe."

The Espionage Act wreaked havoc on the American political left, destroying the young American Socialist party and one of its most progressive unions, the Industrial Workers of the World. Many others, including intellectuals, journalists, film producers and pacifist religious figures were also prosecuted. Prison terms were long, and some political prisoners died in federal jails. The abuses under the law were legendary, and mark a sad day in US history.

Why is the threat to prosecute WikiLeaks under the Espionage Act so potentially destructive? The law is not restricted to properly prohibiting the release of classified information. The law is not restricted to protecting legitimate government secrets. The law broadly prohibits any publication by anyone (newspapers included) of information related to national security, which may cause an "injury to the United States".

Who determines whether national security is actually at stake? Who determines what constitutes an "injury to the United States"? In 1917 the courts bent over backwards to permit the justice department to indict and prosecute thousands of dissidents. Loyalty to America meant nothing. The first amendment's protections for freedom of speech were mocked. Opposition to US war policies dictated who was jailed.

There are responsible mechanisms policing truly abusive leaks. The Espionage Act is not

such a tool.

The attorney general should stop trying to resurrect the Espionage Act, and instead dust off his copy of the US constitution. If he has any question as to the meaning of the first amendment, he should read James Madison's 1789 speech, in which he introduced the bill of rights in the first Congress of the United States: "Freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."

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