Abstract: The war between the whistleblowers and governments is not a new one. However, it has taken a new turn in the 21st century. This paper explores the relationship between whistleblowing and national security in modern neoliberal democracies. The paper adopts the utilitarian approach relying more specifically on John Stuart Mill’s theory of Liberty and applying his notion of the “the value of truth for the society” to the whistleblowers in instances of conflict with national security considerations. It is argued that whistleblowing as an action is reflective of the “truth” that Mill seeks as a prerequisite for man as a progressive being; whistleblowing is imperative for a more inclusive and deliberative democracy. Furthermore, the analysis of Mill’s “Harm Principle” as a qualifying condition for intervention by the state against the individual yields the fact that the alleged harms lack substance. The paper also contends that the gains to the society from these “leaks” are much more substantial than the possible harms.

1. Introduction:

“Tell them, it was, because he was too bold,
And told those truths which should not have been told!
Extol the justice of the land,
Who punish what they will not understand!

Tell them, he stands exalted there
For speaking what we would not hear:
And yet he might have been secure,
Had he said less, or would he have said more!”
(Defoe 1708, 15)

In 2010, Wikileaks released a video titled “Collateral Murder”, showing an airstrike by the US Apache helicopter in Iraq in 2007, targeting and killing civilians including two reporters from Reuters (Wikileaks 2010). The same organization had previously released leaked official documents pertaining to torture and violations of Human Rights by the US officials in Guantanamo Bay (Guardian 2007). The year 2010 also saw the release of the official US Afghan and Iraq War logs by the same organization, uncovering civilian death statistics and instances of torture, published simultaneously by Guardian, NY Times and Der Spiegel (Jones and Brown 2011, 116). The leaks created mayhem in the United States and the US administration termed it as a “threat to US’ national security” (McCullagh 2010). Bradley Manning (now Chelsea Manning), the US marine officer who leaked the documents to Wikileaks, was trialed under the Espionage Act, and was sentenced to 35 years in prison (Sledge 2013).
On June 5, 2013, Guardian and the Washington Post started the publication of leaked documents from the National Security Agency (NSA), revealing the existence of one of the largest surveillance programs in the history that covers civilians and politicians across the globe. While the world has termed the operation as an attack on civil and individual liberties, US maintained that the leaks are an attack on its national security (Žižek 2013). The former NSA official, Edward Snowden, who leaked these official documents, is currently seeking asylum while the US is pushing for his extradition and trial (The Guardian 2013).

The war between the whistleblowers and governments is not a new one. However, it has taken a new turn in the 21st century. The emergence of organizations such as WikiLeaks, and more broadly internet as a medium of exchange of information, has provided greater opportunity and a possible anonymity to the whistleblowers (Fitri et al. 2011). On the other hand, the Obama administration has trialed more people under the Espionage Act than all the previous governments put together (Greenwald 2013). National Security, and the right of the governments to keep secrets from their own people and legislatures, has been defended over freedom of expression, information and uncovering government wrongdoings in matters of national security (Somerville 2010).

It is, with this backdrop, that this paper explores the relationship between whistleblowing and national security in modern neoliberal democracies. The paper adopts the utilitarian approach relying more specifically on John Stuart Mill’s theory of Liberty and applying his notion of the “the value of truth for the society” to the whistleblowers in instances of conflict with national security considerations. The paper begins by tracing the idea of whistleblowing through the course of history, both ancient and recent, and the kind of impact it had on the times. Mill’s idea of individual liberty and freedom of expression and what he believed is the value of truth for the society is then outline in the subsequent section. In this regard, the ideas put forward by Mill in “Considerations on Representative Government (1869)” will be linked to his idea of liberty in the overall utilitarian framework. The paper then explores the legal and moral debate that surrounds the whistleblowers and the framework that exists for the protection or persecution of those who challenge the national security regimes. After establishing the context and the parameters, the study proceeds to look at the “value of truth” in real terms for the society i.e. the case for these as prerequisites for a shift from neoliberal era to deliberative democracies.
Furthermore, the paper also assesses the possible and the argued harms of whistleblowing with respect to national security. In light of all these considerations, the paper contends that the role of the state needs to be revisited and measures for the protection of whistleblowers need to be put in place for a more deliberative and informed democracy.

2. Whistleblowing: A Brief Description

In order to understand and trace the history of whistleblowing, we must first define the scope of this action. The definition used here is the one given by Peter Jubb (1999) who reviewed the most widely used definitions of the term and consolidated them in a single comprehensive definition. He believes that:

Whistleblowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under control of that organisation, to an external entity having potential to rectify the wrongdoing. (Jubb 1999, 78)

Historically, precursors of the act that we know as whistleblowing today can be found in a range of sources. Perhaps the most popular example would be of Socrates who faced public prosecution for having corrupted youths with stories of ‘truth’ (Bjorkelo 2013, 3). Interestingly, the ancient Greek society also had the official position of the ‘truth-teller’ that was protected from harm for exercising what was called ‘fearless speech’ or “parrhesia” (Foucault 1983). Whistleblowing has also been linked to medieval times in the United Kingdom and the ‘qui tam’ law that enabled citizens to sue each other in the name of the king, a practice that worked as a type of civil police (Bjorkelo 2013, 3).

In recent history, however, whistleblowing has been recognized as a more direct phenomenon. The bill to protect whistleblowers by the Continental Congress in 1778, the False Claim Act of 1863 and the Lloyd-La Follette Act of 1912, all recognized whistleblowing and provided for its protection. Similar legislations have been adopted by countries across the globe, including UK, India, South Africa, Australia, Canada etc. (Latimer and Brown 2008, 770). However, the adoption is not universal and a majority of countries including Germany, France, Japan, China and Russia, much of Latin America have inadequate or no legal cover for whistleblowers (Deutsche Welle 2013; Latimer and Brown 2008, 769).
2.2 Scope & Limits of Whistleblowing

However, while whistleblowing has been generally recognized as a positive act in public interest, there exist considerable differences on the scope of whistleblowing (ibid, 785). One such limit has been generally placed with regards to matters of national security. The Daniel Ellsberg Case is perhaps one of the most important examples of this (Moberly 2012, 70). In 1971, the New York Times and the Washington Post published a series of excerpts from the classified documents on Vietnam Policy, showing that the statements made by the Kennedy and Johnson administrations were fabricated lies (Jones & Brown 2011, 117). The documents were leaked by the then defense consultant, Daniel Ellsburg, who was dissatisfied with the administrative misconduct and believed that, in view of the actual facts, the war should stop (Ehrlich and Smith 2009). Ellsburg was trialed under the Espionage Act 1917 for theft and conspiracy. However, in 1973, these charges were dismissed by the court (Ehrlich and Smith 2009). However, the grounds of dismissal were “totality of government misconduct, including the suppression of evidence, the invasion of the physician-patient relation-ship, the illegal wiretapping, the destruction of relevant documents and disobedience to judicial order” and not an acquittal of charges, which leaves considerable ambiguity with regards to an individual’s right to disseminate information that is suppressed by the government in the name of national security interest but is supposedly illegal or unconstitutional (Nimmert 1974, 311). Another interesting case was observed in the UK, where Clive Ponting was acquitted by the jury on the grounds that his disclosure of secret information in the Belgrano Case was in public interest (Cram 2009, 133). This, however, led to a subsequent legislation i.e. The Official Secrets Act 1989 which does not allow a defendant to seek acquittal by arguing that the disclosure was in public interest (ibid, 134).

2.2 Whistleblowers and the Press: Two Sides of the Same Coin?

Bradley Manning leaked the classified US documents, which were later published by the WikiLeaks, New York Times, Der Spiegel and The Guardian as Afghan and Iraq War logs in 2010. However, it is interesting to look at the treatment handed out to all these partners “in crime.” Manning was trialed for 31 different charges including treason and was eventually sentenced to 35 years in prison (Sledge 2013). WikiLeaks (and its founder Julian Assange), which is not recognized as a formal press or journalist organization by some, faced a crackdown against the site and till date, attempts are being made to extradite Julian Assange to the US (Jones and Brown 2011). However, surprisingly, not even a threat of legal action was made against the New York Times or any other newspaper.
The press in the US has been historically protected by the First Amendment, which has also become known as the *Daily Mail Principle* (ibid). Similarly, the UK has a strong history of civil liberties and human rights law (Obrien 2013, 4). The underlying principle is simple: free press acts as a legitimate check on the actions of the government, leading to better accountability and transparency (Jones and Brown 2011). However, it is strange that the same principle does not apply to the basic unit of the state i.e. the citizens, who are vehemently prosecuted for such actions.

Somerville (2010) believes that the individual, who leaks the information, does so in violation of the trust posed in him by the relevant authorities. This “wrong means” approach, however, raises two fundamental questions: Firstly, if the information is obtained through wrong/illegal sources, then the use of such information by the press must be equally wrong as the act of leaking it. Secondly, and even more importantly, is the issue of what comprises as wrong means? As Marlin (2011) argues, the individuals are bound by a higher consideration than just the trust of the government or the organization they work for: they are bound to follow and uphold the constitution of the country. When the government or the national security agency is itself the violator of the constitution, then it is already on the wrong side of the law. This would suggest that the wrong in this case, for the whistleblower, was only *prima facie* wrong and not wrong when given further consideration (ibid, 3).

It is important to see that the whistleblowers and organizations such as the WikiLeaks, perform the same function i.e. informing the public and uncovering government misconduct. As the editor of The New York Times observed, Julian Assange did what the journalists across the globe do (Jones and Brown 2011). However, while the earlier is charged with harming the state, the latter are heralded as beacon of freedom and accountability. The argument that the nature of press and consequently its role demands that it be allowed to publish leaks without being prosecuted is to an extent valid. However, the duty of the individual to bring to light any governmental or departmental wrongdoings, once the government attempts to gag such disclosure, needs to be seen in a similar light. This dichotomy, severely curtails the ability and resolve of the whistleblowers to step forward, as in every situation, they are the ones who are bound to lose the most (Greenwald 2013). It is therefore, important that we distinctly highlight the benefits that the society reaps (or can reap) from these individuals, and then, in light of these considerations, we revise the regulatory framework that impedes the individuals from blowing the whistle.
3. Mill and the Principle of Liberty

The subject of Mill’s “On Liberty” is the nature and limits of the power that can be legitimately exercised by society over an individual.” (1863, 1). In other words, Mill was not concerned with the problem of protecting subjects from tyrannical monarchs; he believed that the question had been settled by the establishment of constitutional checks and balances. On the contrary, Mill perceived that the challenge for the new age would be the abuse of the democratic government itself i.e. “the tyranny of the majority” (Rawls 2007, 284).

Mill suggests that a democratic government will not, by default, cater to the interests of the entire population. Rather, there exists a great possibility that the white majority may brutally oppress the black minority etc. (ibid, 137). But an even greater danger that may exist is that of democracy turning into oligarchy. As Mill notes:

“One of the greatest dangers, therefore, of democracy, as of all other forms of government, lies in the sinister interest of the holders of power: it is the danger of class legislation, of government intended for the immediate benefit of the dominant class, to the lasting detriment of the whole. And one of the most important questions in determining the best constitution of a representative government is how to provide efficacious securities against this evil.” (ibid, 141)

In view of this eminent threat of a tyrannical majority, Mill’s principle of liberty needs to be seen as a public-political principle, which attempts to regulate free public discussion concerning appropriate adjustment between individual independence and the control exercised by the society (Rawls 2007, 287). It may also be noted that this idea is consistent with the critique of modern neoliberal democracies, where the government is believed to be in the hands of the elite and consequently, working for their interests, which may not necessarily coincide with those of the general population (Decker 2012, 10). However, this will be explored further in the later stages of the paper.

3.1. Freedom of Expression & the Path towards Truth

Mill outlines three types of liberties that fall under the scope of his discussion, namely: 1) the liberty of conscience, 2) liberty of tastes and pursuits and 3) freedom of association (Mill, 1863, 12). However, the scope of the paper is limited primarily to the first kind of liberty and partly to the third type.
Consequently, the subsequent discussion will revolve mostly around the need for freedom of expression and its significance.

Mill believes that the freedom of press and speech is a given within the idea of freedom of conscience (ibid, 27). As he says:

“No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear.”(ibid)

And even if the government is acting with the majority’s backing, it has no right to silence even a single individual from expressing his opinion or speaking against the popular ideas, just as the individual has no right to force his opinion on the majority (ibid, 29). But why should the majority not have the right to enforce opinions that are widely accepted as true? Mill believes that this deprives the society from the possibility of exchanging truth for error (ibid, 31). If the individual was speaking the truth, then by suppressing him or her, the society has suppressed the truth. Examples of such suppression can be found in the treatment of Socrates or Galileo, both of whom were later vindicated as the ones speaking the truth (ibid, 44). On the other hand, even if these opinions were proven to be false, it provides still a strong reason for them to be allowed. Such a collision with error would almost always provide a clearer perception of the truth i.e. the belief that all arguments against the truth have been sufficiently answered (ibid, 63-69).

It is interesting to note, however, that Mill does not simply support truth for deontological reasons. In fact, it is utilitarian considerations that govern his idea of liberty i.e. greatest benefit for the largest number (ibid, 20). At first instance, this idea of utility for the largest numbers may seem to be at odds with the majoritarian government’s imposition of its views on the minorities. However, Mill responds to this apparent contradiction by explaining the value that truth holds for the society at large. This is explored in detail in the following section.

3.2. Utilitarianism and the Value of Truth for the Society

If the happiness of the largest number is the guiding principle, then there may seem to exist an apparent contradiction in asking the majority to forego the forced imposition of its opinions on the minority.
However, we need to understand that Mill’s utilitarianism looks at the happiness in the long run (Rauls 2007, 300). In Mill’s own words:

“I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.” (Mill 1863, 20)

This permanent interest of man can be defined as the drive towards Mill’s natural state of the society i.e. a state of complete equality as well as for the maintenance of this natural state of equality, once reached (Rauls 2007, 302). Mill believes that once freedom of speech and discussion is replaced by despotism, it would lead to a degradation of the society as well as civilization. In Considerations on Representative Government, he notes that:

“Some of the most fatal changes in human affairs have been, as to their more manifest immediate effects, beneficial. The establishment of the despotism of the Caesars was a great benefit to the entire generation in which it took place. It put a stop to civil war, abated a vast amount of malversation and tyranny by praetors and proconsuls... Yet this was the commencement of a regime by whose gradual operation all the civilization which had been gained insensibly faded away...” (1869, 135-136)

The reason for such degeneration is simple. Once the regime becomes despotic or is driven by interests of a certain class, it is in their interest to keep the rest of the people at a low level of political and social intelligence, so they can remain the dominant class. (ibid, 131-134). It is imperative, thus, that the society allows for freedom of speech and dissent, as they are the engines of discussion and agitation, keeping the government in check and ensuring positive advancement for the society at large (ibid, 142-143).

This leads us to an important conclusion with respect to Mill’s Principle of Liberty: only if the democratic society adjusts its attitudes and laws in consonance with the principle, can its political and social institutions succeed in fulfilling their role of shaping the national character in a manner that the citizens can realize the “permanent interests of man as a progressive being.” In other words, liberty is the precondition of continual political and social advancement within a society. As Mill says himself:
“No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified.” (Mill 1863, 22)

4. Neoliberal Democracies, National Security and the Whistleblowers

A recent study conducted by Princeton University concluded that the US governmental policy is being governed by the economic elites of the country, while average citizen or citizen-based pressure groups have little or no influence on the policy processes (Gilens and Page, 2014). While the latest in this regard, it is by no means the first to criticize the functioning of modern neoliberal democracies.

One of the major reasons for this is the conscious effort by the governments to keep information on such policy processes out of reach of common people. This may appear to be a contradiction of sorts, as the free-market principle, which is the underlying ideology of neoliberalism, should imply a near complete freedom of information. However, there is a growing tendency among governments across the globe, and not just US, to increasingly operate in secrecy rather than openness. While the NSA scandal may be the most well-known instance of such secrecy, it is certainly not the only one. One of the most apt in this regard is the Trans-Pacific Partnership (TPP) agreement which involves 12 Pacific Rim nations, including the US, Australia, Japan, Malaysia, Chile etc. The agreement is being conducted behind closed doors and, as a recent WikiLeaks suggests, might have drastic consequences for civil liberties in these countries (WikiLeaks 2013). A similar case is the Transatlantic Trade and Investment Partnership (TTIP) between the EU and US, which has been criticized for its secrecy and or granting provisions contrary to the principles of democracy (Monbiot 2013).

These apparent violations of the free-market principles and increased governmental insistence on secrecy, may at first appear simply as aberrations to the original doctrine. However, as Chomsky (2008) and Harvey (2007) note in their respective analyses, this is a corollary of the mutilation of a neoliberal system that is driven by elite interests. It is, therefore, important to see how these mutilations have led us to these times of secrecy and surveillance. This is discussed briefly in the following sections and then linked to the national security paradigm that exists in the status quo.
4.1. Neoliberal Democracies: A Brief Introduction

Although neoliberalism emerged initially as a set of economic principles in the 1970s, advocating free-market principles, it soon had a direct impact on political functioning of the states (Harvey 2007, 2-7). A natural corollary of neoliberal policies was the emergence of the economic elite and an increase in socio-economic inequality (McChesney 1999). This new economic elite translated itself into the political elite, with the free-market principles forbidding any real civil society activism (ibid). An obvious byproduct of this system is, thus, the depoliticized citizenry which lacks active participation in the civil society processes. Moreover, as Vegh (2003) notes, this elite control is complimented by a mass media that skews its presentation of “counter-hegemonic” activities, by labeling them as anti-state or anti-democratic etc.

Another aspect is the use of common sense ideas such as “freedom” and “national security” as veils for class-interests. Harvey (2007) discusses how such concepts are “profoundly misleading, obfuscating or disguising real problems under cultural prejudices.” This, combined with a depoliticized population, leads to the notion that public deliberation can be excluded from the political decision-making process (Dekker 2012, 3-5). These effects can be witnessed by looking at the low/decreasing voter-turn outs during elections in almost all the neoliberal democracies such as US, UK and even the likes of Chile etc.

It may be observed that this neoliberal democracy is similar in a lot of ways to the one highlighted by Mill (1969, 139-141), as driven by class interest. It is in the interest of this government to maintain such a class division, and keep the rest at a low level of socio-political intelligence, so they can maintain the status quo without facing any major opposition. And the most common way of achieving this is by hiding information from the public under the pretext of national security.

4.2 National Security: Who does it Protect?

“Anyone who has worked with declassified documents can see very clearly that the reason for classification is very rarely to protect the state or the society from enemies; most of the times it is to protect the state (or the government) from its citizens.”(Chomsky 2013)

While there has been a growing recognition for protecting the whistleblowers in all other fields, national security is still deemed by almost all the countries to lie outside the scope of whistleblowing. One such
example is the recent Whistleblower Protection Enhancement Act 2012 by the Obama administration, which provides legal protection for all whistleblowers, except those related to national security and intelligence agencies (Greenwald 2013). It is not a matter of surprise then, that increasingly, states have become national security states, and have started to withhold information under the pretext of national security (ibid).

While this will be discussed in greater detail in the subsequent sections, one such example is pertinent for discussion here. The publication of the declassified Pentagon Papers in 2011 came forty years after they were leaked by Daniel Ellsberg. The documents show that what was published in 1971, and contested vehemently by the then government, was actually true (Jones and Brown 2011). While some would say that the admittance of these facts by the then government would have affected the national morale and thus fell under matters of national security, no one would be able to deny that this was a case of a government blatantly lying to its people for achieving objectives that the government itself thought were unachievable (ibid). It was either trying to cover its own failures or, as some would say, protecting the interests of the military-industrial complex (Greenwald 2013). Considering the fact that a similar claim of WMDs in Iraq by the US and the UK governments was also false, there exists sufficient ground for mistrusting the governments about what they choose to tell or not tell their people. It is no surprise then, that the number of documents classified or withheld under national security pretext have increased manifolds during the last decade (ibid). And the situation is not just limited to the US alone, incidents in the UK and Australia, where governments have attempted to gag the employees from revealing documents related to defense deals and national security to their own MPs, shows that the problem is much more widespread than one might think (Dreyfus 2012).

5. The Value of Truth Offered by the Whistleblowers
As stated earlier, Mill is not driven by simple deontological considerations for propagating conditions that help us realize truth through its “collision with error.” Rather, he believes that truth offers a utility to the society, far greater than any other action i.e. “the realization of man’s permanent interest as a progressive being” (Mill 1863, 20). It is, therefore, imperative that before we move on to the benefits achieved for the society by truth, we first identify the eventual goal that Mill highlights i.e. what are these permanent interests of man? Rawls (2007, 305) identifies four permanent interests for mankind in Mill’s doctrine. These include:
1. “First, the permanent interest in the institutions that guarantee the basic rights of equal justice.

2. Second, the permanent interest in the free institutions and in public attitudes of moral opinion that affirm freedom of thought and liberty of conscience.

3. Third, the permanent interest in the free institutions and public attitudes that allow for individuality, and so protect and encourage the liberty of tastes and our choice of a mode of life suitable to our character.

4. Fourth, the permanent interest in just and free institutions and the attitudes required to realize the natural and normal state of society as a state of equality.”

In short, Mill’s permanent interest is a state of continual progress towards achieving the best state of the society and, once achieved, in ensuring that the best state is maintained. Out of the interests that have been identified, the third one is outside our scope of discussion but the other three provide us with a yardstick against which the value that truth offers to the society can be measured. The following discussion will show how the whistleblowers help create conditions that challenge asymmetric distribution of information, provide greater transparency, allow for a greater involvement of the majority in the deliberative processes, realization of truth and creation of institutions and attitudes required for just and free institutions; all part of a transition towards a more deliberative democracy that realizes Mill’s permanent interests.

5.1. A More Equal Distribution of Information

Information asymmetry is perhaps one of the most important and, at the same time, restrictive aspects of the neoliberal democracies. Access to information is denied to the general public and consequently, their ability to make informed choices is considerably curtailed. While laws related to freedom of information exist in most countries, their scope does not include information that is of real significance, as it is protected under the guise of national security.

As has been shown in the host of leaks that have been issued till date, most of the information that is classified under national security pretext is not to protect the state but the wrongdoings or the incompetence of the government in power. The targeting of civilian population in Iraq by the US forces, torture and inhumane treatment of prisoners in Guantanamo Bay, fabrication of reports by the UK experts to support claims of WMDs in Iraq, surveillance of civilian population across the globe by the US and UK’s security agencies are examples of such instances. The restricted access to such information
serves the interests of the elite i.e. the military, industrial and political nexus, as it protects their interests which may not be necessarily in consonance with the people at large.

This asymmetry is what is challenged by the whistleblowers. From a utilitarian perspective, unless this asymmetry is countered, an informed choice is not possible which would result in an infinite loop of choices that are in opposition to the general will and interest of the people. As Daniel Ellsberg later regretted that had he leaked the Pentagon papers earlier, a costly war (both in material terms and the number of soldiers that died) could have come to an earlier end. In the case of Iraq, perhaps an ill-fated and costly war could have been completely avoided.

### 5.2. A More Transparent Government

Transparency in decision-making processes as well as the implementation of executive decisions is directly proportional to the confidence that the people have in their governments (Greenwald 2013). However, as is the case with many countries in the world, the governments are increasingly operating in greater secrecy. In US alone, the number of documents classified under national security has exceeded billions (ibid). As Scheuer (2010) notes, this sometimes allows the governments to convince their citizens that “black is white.”

However, such lack of transparency leads to suspicion within the public that the governments are deceitful in their affairs and are working contrary to the public interest. The endorsement of whistleblowers in all sectors of the government, allows for the government to increase transparency within its ranks and improve confidence within the general population with regards to the policy-making processes.

Another aspect of transparency is the openness within governmental departments which allows for them to keep checks on each other. Secrecy thus, undermines accountability (Moberly 2012, 114). Kitrosser points out that secrecy needs, based on national security, are dramatically over-stated and may as a result lead to poorly informed or under-vetted policies (ibid). An interesting case in this regard is the report by the 9/11 Commission which identified the excessive secrecy in inter-departmental communications as one of the possible causes of security breach. It is no surprise, therefore, that WikiLeaks was awarded the Media Award by the Transparency International in 2009 for their leaks related to governmental misconduct in Kenya (Jones and Brown 2011, 112)
5.3. Shifting towards Deliberative Democracies

The significance of the whistleblowers needs to be seen in the broader context as part of the departure from the neoliberal democratic systems. As discussed earlier, neoliberalism creates information asymmetry and, consequently, excludes the masses from the decision-making processes. The state, as a result, serves the interest of the elite rather than people at large. Eisenhower, the former US President, was perhaps the first to talk about the military-industrial complex but certainly not the last one (Eisenhower 1961).

In this context, whistleblowers and organizations, such as WikiLeaks, bring the people back in the deliberative loop. As Marlin (2011) suggests, whistleblowers provide the raw material that is needed for an informed judgment. They improve public-political engagement by opening the discourse for the public (Dekker 2012, 14).

A deliberative democracy requires such liberty of conscience and freedom of expression to exist, because, as Mill argues, it is only when such liberty exists, can the social and political institutions shape national character that allows for the widest participation in governmental functions (Mill 1969, 122). In this regard, the role of whistleblowers can be seen as integral to building social capital within democratic societies, ensuring that governments are not only working for their people, but also in a manner that is consistent with the established moral and legal norms.

6. A Brief Discussion of Whistleblowing and Harm Principle

While the utility that can be drawn from liberty is a justification for it to be granted, Mill himself conceded that it can be curtailed in event that exercise of such liberty causes or has a realistic potential of harming legitimate interests of others. So, the defense of whistleblowers merits a discussion of the alleged “harm” that it may cause.

One such allegation is endangering the lives of people who are involved in secret missions and operations. As the New York Times’ editorial suggests in their profile of Assange,

“The digital secrets that he (Assange) reveals can have a price in flesh and blood.” (O’Brien 2013, 21)
However, as has been noted by many scholars till date, the governments in these cases have been unable to bring forward any substantive claims with regards to the fatal nature of these leaks. There are two major reasons for this. Firstly, the whistleblowers have to collaborate with the press and consequently, all the documents are carefully read and reviewed for any such instances. Secondly, even whistleblowing organizations themselves have started adopting “harm minimization” procedures, which allow for redactions in cases where an operatives life may be under threat (Marlin 2011, 5).

The other major challenge is that, in cases of national security, governments need to operate with a certain level of secrecy and such a disclosure will harm the national interests of a country by impeding its ability to do so (Galveston 2014). A related issue is the disclosure of documents that have no real public interest at hand, but are a genuine threat to national security (ibid). In view of this line of reasoning, rogue individuals cannot be trusted to make the judgment call and the matter should be left in the hands of the governments.

This line of reasoning is problematic as it undermines the basic principle behind whistleblowing i.e. exposing the government’s wrongdoings. The right of the government to secrecy is accepted. However, when this right is used by the governments to hide their own failures or to carry out illegal or unconstitutional actions, the right cannot hold. As Greenwald (2013) notes, the responsibility of the individual to uphold the constitution is higher than to abide by the legal requirements of confidentiality because in such instances, there is no other way for the people to know about them but for someone to blow the whistle on them. As far as the latter issue is concerned, it cannot be taken as a principle, rather needs to be looked at on a case to case basis. The government has the right to take an individual to court if they believe that the disclosure was not in public interest rather had malicious intent or harmed national security more than the benefits. However, that should not take away the right of an individual to expose governmental misconduct.

The harms that are enumerated as possible outcomes of such leaks, as shown in the discussion above, lack sufficient merit to be considered either legitimate or realistic. It is important to remember that harms to a particular government or a specific agency are significantly different from harms to national security and the state in general. While the earlier one may result from acts of whistleblowing, the chances of the latter are significantly less.
7. Conclusion

While national security has remained the sacred cow for much of the history of nation-states, it has increasingly become clear that it is being used as a pretext by governments around the globe to hide their dirty laundry. Access to information is becoming increasingly restricted in existing neoliberal democracies, which has resulted in two important developments: One, the political decision-making is concentrated in the hands of the elite and policies are made to protect their interests. Secondly, the public-political partnership has been decreasing considerably, with the individuals suspecting their governments of lying and deceitful behavior. As per Mill’s theory of liberty, only when a complete freedom of conscience exists can the society progress towards its best possible state. In neoliberal democracies, such a freedom of conscience can only exist if the asymmetry in information can be reduced and transparency in the government processes increased.

It is in this light that Mill’s theory of liberty provides perhaps the most powerful defense of the whistleblowers. Whether it is the uncovering of Extra-judicial killings by the government in Kenya, inhumane torture in Guantanamo by the US forces, fabricating evidence for WMDs in Iraq by scientists in UK or the mass surveillance program that violates the individual freedom and privacy of millions of individuals, unless there exists a Bradley Manning, Julian Assange or an Edward Snowden, the people would probably never hear of these gross misconducts by their governments. In order to progress towards an ideal society where freedom of thought and liberty of conscience exists, whistleblowers need to be protected and not prosecuted. Only in such a situation can the social and political institutions facilitate a transition towards a more inclusive, representative and deliberative democracy. It is not simply some higher consideration of the truth that these whistleblowers speak, but the concrete benefits that the society reaps from their actions that justifies a case for social, political and legal legitimacy for the whistleblowers. As Mill himself said:

“The reason why, in any tolerably constituted society, justice and general interest (of the public) mostly in the end carry their point is that... those who are governed by higher considerations, though too few and weak to prevail against those in power, usually after sufficient discussion and agitation, become strong enough to turn the balance in favor of the body of interests which is on the same side with them.” (Mill 1869, 131)
Bibliography


