

By Bruce Ackerman and Yochai Benkler

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Bradley Manning is the soldier charged with leaking US government documents to Wikileaks. He is currently detained under degrading and inhumane conditions that are illegal and immoral.

For nine months, Manning has been confined to his cell for twenty-three hours a day. During his one remaining hour, he can walk in circles in another room, with no other prisoners present. He is not allowed to doze off or relax during the day, but must answer the question "Are you OK?" verbally and in the affirmative every five minutes. At night, he is awakened to be asked again "Are you OK?" every time he turns his back to the cell door or covers his head with a blanket so that the guards cannot see his face. During the past week he was forced to sleep naked and stand naked for inspection in front of his cell, and for the indefinite future must remove his clothes and wear a "smock" under claims of risk to himself that he disputes.

The sum of the treatment that has been widely reported is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment and the Fifth Amendment's guarantee against punishment without trial. If continued, it may well amount to a violation of the criminal statute against torture, defined as, among other things, "the administration or application...of... procedures calculated to disrupt profoundly the senses or the personality."

Private Manning has been designated as an appropriate subject for both Maximum Security and Prevention of Injury (POI) detention. But he asserts that his administrative reports consistently describe him as a well-behaved prisoner who does not fit the requirements for Maximum Security detention. The brig psychiatrist began recommending his removal from Prevention of Injury months ago. These claims have not been publicly contested. In an Orwellian twist, the spokesman for the brig commander refused to explain the forced nudity "because to discuss the details would be a violation of Manning's privacy."

The administration has provided no evidence that Manning's treatment reflects a concern for his own safety or that of other inmates. Unless and until it does so, there is only one reasonable inference: this pattern of degrading treatment aims either to deter future whistleblowers, or to force Manning to implicate Wikileaks founder Julian Assange in a conspiracy, or both.

If Manning is guilty of a crime, let him be tried, convicted, and punished according to law. But his treatment must be consistent with the Constitution and the Bill of Rights. There is no excuse for his degrading and inhumane pretrial punishment. As the State Department's P.J. Crowley put it recently, they are "counterproductive and stupid." And yet Crowley has now been forced to resign for speaking the plain truth.

The Wikileaks disclosures have touched every corner of the world. Now the whole world watches America and observes what it does, not what it says.

President Obama was once a professor of constitutional law, and entered the national stage as an eloquent moral leader. The question now, however, is whether his conduct as commander in chief meets fundamental standards of decency. He should not merely assert that Manning's confinement is "appropriate and meet[s] our basic standards," as he did recently. He should require the Pentagon publicly to document the grounds for its extraordinary actions—and immediately end those that cannot withstand the light of day.

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*Additional Signers:* Jack Balkin, Kwame Anthony Appiah, Alexander M. Capron, Norman Dorsen, Michael W. Doyle, Randall Kennedy, Mitchell Lasser, Sanford Levinson, David Luban, Frank I. Michelman, Robert B. Reich, Kermit Roosevelt, Kim Scheppele, Alec Stone Sweet, Laurence H. Tribe, and more than 250 others. A complete list of signers has been posted on the blog [balkinization](#) .

