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Freedom of Press in
the United States: How
the New York Times
Co. v. United States
case changed the
media

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RESUMEN

La presente investigación tiene por objetivo evaluar los cambios producidos en la libertad de prensa en Estados Unidos, recogidos bajo la Primera Enmienda de su Constitución, tomando los Papeles del Pentágono y la Guerra de Vietnam como punto de partida. A lo largo de la misma, se estudiará el desarrollo de la Guerra de Vietnam y su posterior reflejo en los Papeles del Pentágono, así como la filtración de los mismos a los medios de comunicación (principalmente el New York Times y el Washington Post) y la reacción de la sociedad americana ante la publicación de los mismos. Se estudiará el mediático juicio que enfrentó a ambos periódicos contra el gobierno de Estados Unidos y finalmente concluirá con un análisis de cómo este hecho histórico marcó para la posteridad la libertad de prensa en el país, así como la actitud de los medios de comunicación con respecto al gobierno y sus instituciones.

Palabras clave: medios de comunicación, Papeles del Pentágono, New York Times, Washington Post, Guerra de Vietnam, opinión pública, libertad de expresión, libertad de prensa.

ABSTRACT

The present dissertation aims at evaluating the changes produced in the freedom of press in the United States, collected under the First Amendment of its Constitution, taking the Pentagon Papers and the Vietnam War as a starting point. Throughout it, we will study the development of the Vietnam War and its subsequent reflection in the Pentagon Papers, as well as their leakage to the media (mainly the New York Times and the Washington Post) and the reaction of American society to their publication. The mediatic trial that faced both newspapers against the United States government will be studied and finally it will conclude with an analysis of how this historical event marked press freedom in the country for posterity, as well as the attitude of the media with respect to the government and its institutions.

Key words: media, Pentagon Papers, New York Times, Washington Post, Vietnam War, public opinion, freedom of speech, freedom of Press.

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1. Introduction

Nowadays it is almost impossible not to think of the media as one of the main forces that move the world as we know it, as well as its importance inside our highly globalized society. Not only do they move it, but they also mold it to their own interest since over the years a progressive increase in the importance of these media with respect of their initial function can be observed; we could even say that they have gone from being a simple mean of information to become great media forces that not only explain us the world, but they also shape it.

The media has always been tightly linked to politics, and in the case of the United States of America, they have even become “the fourth branch of the Government” or the state number 51, playing a very important role not only in the day-to-day lives of the American citizens, but also in that of their politicians. However, and as we will see throughout this dissertation, the media is not just another entity inside American politics or society, since they are even protected by the American Constitution through its First Amendment on freedom of expression, which states that the government cannot censor anything said about them.

The main objective of this dissertation is to analyze the role of the press in a concrete historical event within the political and social history of the United States: the Vietnam war and its subsequent leak of the so-called Pentagon Papers, by two of the most important newspapers in the United States: the New York Times and the Washington Post. This leak led to a trial in the Supreme Court of the United States that faced the above-mentioned newspapers with no other than the American Government, presided at the time by President Richard M. Nixon.

Said trial, in addition to becoming a great media milestone that would go down history, also marked a before and after regarding press freedom and its limitation inside the United States, something that we will try to analyze throughout this dissertation through several examples and real events that we will use to support this theory.

We should also underline the fact that during the presidency we will be focusing on (Richard M. Nixon's presidency), two similar scandals regarding freedom of speech happened before and after the Pentagon Papers Case the Chicago Eight case of 1968, in which eight men were charged by the United States Federal Government with conspiracy right at the beginning of Nixon's presidential term. Years after and after the judicial case we will be focusing on throughout this dissertation (the Pentagon Papers Case), the Watergate Scandal took place, where the press played a very important role as well in uncovering governmental documents and presenting them to the public.

2. State of the Literature

The case of the Pentagon Papers has been one that has lived on throughout the years in popular culture, turning itself into something that almost everyone knows or has heard about. It has not only changed history in the United States (it could be said that the publication of the papers was one of the reasons that led the United States Government to withdraw the troops from Vietnam, as well as to the resignation of President Richard M. Nixon). The case of the Pentagon Papers has not only been a subject of a large number of books including a memoir by Daniel Ellsberg himself, but they have also become important inside television and movies, with a PBS documentary called "The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers" which aired in 2010, as well as a Steven Spielberg film released in the year 2017 called *The Post*, starring Tom Hanks and Meryl Streep, that was nominated for an Academy Award for Best Picture. (Kobrick, 2019)

More than twenty years after it has taken place, the case remains in the minds of not only those who have experienced the procedure or learned about it, but more importantly, of those who study the laws of the United States of America, since to this day, it still fascinates and puzzles everyone studying or interested in the study of the First Amendment of the United States Constitution. As stated before, the case has not only lived inside popular culture, since it receives a detailed and thorough look in almost every single constitutional law book published to this date. Not only law professors or judges have been inspired or determined to still study the case, but also Government officials that played a role on it, with many of them involved publishing and airing their own stories

and versions of the controversy regarding the case. (Powers, 2012)

3. Theoretical Framework

3.1 Freedom of Speech

In order to understand the issue surrounding the Pentagon Papers case and the importance that freedom of speech has in our dissertation, we first need to take a closer look at the meaning behind that expression and its connotations, regarding of what is included in the First Amendment of The United States Constitution. The American Heritage Dictionary of the English Language defines freedom of expression as “The right to express any opinion in public without censorship or restraint by the government, protected in the United States as a right under the First Amendment to the US Constitution. Also called free speech.” (The American Heritage Dictionary of the English Language, 2020)

As stated in the introduction of this dissertation, we are going to focus on the United States and how the term is recognized and protected under its Constitution, being the Supreme Court of the United States the main figure regarding the freedom of speech since it has recognized several categories that are given less or no protection by the First Amendment. The First Amendment grants citizens a constitutional right of free speech but only prevents government restrictions of speech, being restrictions imposed by businesses or private individuals not considered inside this Amendment of the Constitution. (Dunn, 2009)

However, there are certain categories of speech that are given lesser or no protection at all by the First Amendment and those are, for example those that include obscenity, child pornography, fraud, speech that is integral to an illegal conduct, speech that incites imminent lawless action... Outside from said categories, similar ones or others that include rights for authors over their works such as copyright, there are no other boundaries for freedom of speech collected under the First Amendment of the United States Constitution. (Miller v. California., 1973) (New York Times Company v. Sullivan, 1964) (Pickering v. Board of Education., 1968) (Schneider v. State of New Jersey., 1939) (Turner Broadcasting System, Inc. v. Federal Communications Commission. , 1997)

(Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 1976)

3.2 Public opinion

Taking into account the fact that freedom of speech plays a very important role inside the United States Constitution and that it mainly restricts the government from censoring any opinion in public, it is as well important to analyze the role that public opinion plays in relation to freedom of speech.

Public opinion is defined as “the aggregation of the views of individuals in society” (Oxford Reference); public opinion has its roots in Western political thought and the term goes back to the eighteenth century although it can already be found in the works of Plato and Aristotle. Although it is a term that is still hard to define and no definition of it is considered to be completely precise, all of the definitions stress the influence of the elites or governments in society, turning it into a term strongly connected to politics, and more in concrete to the democratic process since it forms a tight link between the people and their leaders, being the source of information for the elite’s regarding the public’s opinion. (Oxford Reference)

During our dissertation, the term public opinion will be an important one due to its strong relation with all the political matters that will be treated throughout it, as well as for its relationship with the concept of freedom of speech. As we will be focusing on a concrete case that took place in the United States and that marked a before and after regarding the First Amendment of the United States Constitution and the political views of many (even leading to the resignation of the President at the time, Richard Nixon) American citizens regarding the situation. It will also be used to compare the case this dissertation is focused on with a present case in our conclusion, in order to analyze the importance of freedom of speech and evaluate the development of public opinion regarding that matter.

4. Objectives and Methodology

The main objective of this study is to analyze how the *New York Times Co. V. United States* case of 1971 marked a before and after in the relations between the media and the government institutions in the United States, and how freedom of speech has been more protected in the country since then, turning this event into a historical landmark that allowed future events (such as the Watergate) to gain more relevancy and public attention.

This dissertation will therefore implement some historical research in order to analyze the case from two different perspectives: on one hand, we are going to study the political situation at the time, starting at the time of the Cold War and concretely, the Vietnam War. We will analyze the geo-political situation in the area, as well as the influence of communism and the role of China in the conflict. It might look redundant or demanding to start the analysis at that time, but that will give us a better idea of what the Pentagon Papers actually were, and which presidencies were involved, as well as in the Vietnam War, being them Dwight D. Eisenhower's, John F. Kennedy's, Lyndon B. Johnson's and the one we will focus more in depth on, Richard M. Nixon's.

All of this information will not only give us a better idea of what the social and political situation was at the time, but it will also help us understand how important the leak of the Pentagon Papers was at the time, and how crucial for the media in the United States and for the society as a whole was for The New York Times Corporation and for the Washington Post to win that trial against the United States government.

On the other hand, we will analyze the media too, beginning with a study of the historical concept of freedom of expression and its rendering inside the United States Constitution inside its First Amendment, as well as a definition of what it actually is with examples of past cases that implied controversies as well with freedom of expression. Later on, we will give a brief introduction regarding the importance of media in the United States and more concretely, its importance inside politics and its influence. We will focus then a little more on the written press, especially in the history of The New York Times and The Washington Post, two newspapers of great importance to our dissertation.

Once we have studied and analyzed all of those concepts mentioned above, we will focus on the Pentagon Papers, their filtration as well as their content and the contradiction between what they stated and what they meant, and the political propaganda at the time. We will analyze the right of publication of those papers as well as the subsequent case that our dissertation is focused on: the attitude of Nixon's administration and the whole government towards the situation and the leak and the importance of the Supreme Court in the case as a safeguard for the right of freedom of expression.

Finally, we will briefly mention and explain the subsequent event that led to President Nixon's resignation, the Watergate Scandal, and its relationship with the Pentagon Papers case and situation.

In our conclusion, we will try to answer several questions regarding the laws of freedom of speech in the United States, especially regarding the legality or not of the publication of the Pentagon Papers. We will also try to analyze how the media and the freedom of expression has changed after this important landmark.

5. Analysis and Discussion

5.1 War-Political Conflict

5.1.1 The Cold War. The Cold War in Southeast Asia.

It is known as "The Cold War" a period of ideological and geopolitical tensions between the United States of America and the Soviet Union after the Second World War ended. Although there is not a clear timeline to define how long the Cold War lasted, it is believed that the most accurate span of time is between March 1947 (when the Truman Doctrine started) and December 1991, with the dissolution of the Soviet Union. Despite being the main actors in this international conflict, the United States and the Soviet Union were not the only ones involved since each of them had their respective allies by their side, being this the Western Bloc in the case of the United States, and the Eastern Bloc in the case of the Soviet Union. (Sykes, 2010)

Said conflict is known as a “cold” war since none of the parties involved fought directly against each other, but instead, they supported other states in regional conflicts known as proxy wars, term that is used to describe a conflict between two or more states that act under the instigation or on behalf of other parties or states. This was precisely what happened around the world during this period of time, and more in concrete in Southeast Asia, where it consisted in a mixture of interstate conflicts, civil wars, genocides and displacements. (Sykes, 2010)

In the case of Southeast Asia, the conflicted not only involved and affected the politics of those countries engaged in the armed conflicts, but it also affected their civil society and their social stability. On one hand, the West –led by the United States– sought to stablish stable government who would resist communism in the area, while the communist bloc was supporting the authoritarian governments that were already ruling in some of those countries, supporting them with funds, weapons and armies. (Hansson & Weiss, 2019)

Although the Southeast Asia region is composed by Indonesia, Vietnam, Thailand, the Philippines, Singapore, Malaysia, Laos, Myanmar, Cambodia, Brunei and Timor-Lester, throughout this part of our analysis we will be mainly focusing on Vietnam, the effects that the Cold War had on the country and how the United States army joined the armed conflict while its government was detailing every single event that went on during the Vietnam War in a series of articles that later on came to light known as the Pentagon Papers.

5.1.2 Geo-political situation at the time: South Vietnam and North Vietnam

In order to understand the geopolitical situation at the time in Vietnam, we will first need to take a look at the country and its history.

Vietnam is a country located along the coast of mainland Southeast Asia, from the Chinese border to the Gulf of Thailand; it is considered to be a rather small country, with

only a thousand miles of territory from north to south of the country. Their immediate neighbors in the south are Laos and Cambodia and Vietnam is considered to be a region of dense jungles and swamps. (Starr, 1991) (Miller & Vu, 2009)

Vietnam is considered to be a country that until recent times, it has always been under another State's occupation. For more than one thousand years it was part of China, which left a lasting impact and imprint in both its society and its culture. Later in time, it was under French colonial rule, which led, for the first time in the history of the country, to the rise of a nationalist movement against the French occupation and against colonialism. By the 1920's, the differences between the northern and the southern parts of the country were already clear for most of its population, with a big part of them starting revolts and fighting the colonial rule; by the year 1930, Ho Chi Minh created a new political nationalist party, called the Indochinese Communist Party, an institution that struggled to survive in the country until the end of that same decade, with the Rising of Imperial Japan and the Nazi Germany, when the Soviet government encouraged foreign communist parties and leaders around the world to cooperate with each other in order to fight fascism, leading to a situation in which many leaders of said political communist party fled the country in order to join forces in the Soviet Union. (Starr, 1991) (Miller & Vu, 2009)

By the year 1940, Ho Chi Minh returned to Vietnam after spending several years in the Soviet Union and created a new movement in order to fight for national independence; he also became the head of this movement, and it was a new political organization called the Vietminh Front or League of Independence of Vietnam, which gathered people that not only belonged to the communist party, but also people that even if they did not align with the communist ideology, they wanted a party that fought for their rights against the colonial French. (Starr, 1991) (Miller & Vu, 2009)

Japan, who had become a French ally and occupied the north of Vietnam through the beginning of the 1940's, surrendered on August 14, 1945 after the dropping of the two atomic bombs by the United States of America and a declaration of war from the Soviet Union. Ho Chi Minh saw his opportunity there and with the Vietminh front, he created guerrilla forces to take control from the Japanese in the Northern areas of

Vietnam. By September of that same year, in Hanoi (current capital of Vietnam) Ho Chi Minh proclaimed the formation of a new country, the Democratic Republic of Vietnam (DRV) and proclaimed himself as the new president of this new country. (Starr, 1991) (Miller & Vu, 2009)

Since this moment on, the country was divided in two hostile regimes: the Democratic Republic of Vietnam in the North with Ho Chi Minh as its president and the French colony in the south with the help from the British army, in order to restore their colonial authority. In March 1946 the French ended up recognizing the Democratic Republic of Vietnam as “free states” and by December of that same year, the Vietminh forces launched their first attack against the southern part of the country: the Indochinese war has begun. (Starr, 1991) (Miller & Vu, 2009)

Once the Indochinese war began (commonly known as the Vietnam war), the United States had no interest in participating in the war despite the fact that Indochina was one of the main reasons why they participated in the Second World War and had interest in the Philippines because of their colony there. Furthermore, during the Second World War the United States even provided military assistance to Ho Chi Minh’s Vietminh movement in exchange of information on the movements of the Japanese troops in the area; Ho Chi Minh tried to use that relationship with the United States later on to obtain recognition for their newly created state, the Democratic Republic of Vietnam but the United States was not willing to antagonize the French so they refused to do so. (Starr, 1991) (Miller & Vu, 2009)

When the conflict started, the French asked President Harry S. Truman for help in order to fight communism in the area and although the Truman administration did not like the communist presence in the area, they were not happy with the reluctance of the French armies to grant independence to Vietnam either, so at first they refused to become involved in the conflict until the victory of the communist party in the Chinese Civil War, when the Truman administration finally decided to grant military and economic assistance to the Western bloc in Vietnam, involving themselves in the conflict in the early 1950’s. (Starr, 1991) (Miller & Vu, 2009)

5.1.3 Johnson Administration: The beginning of the Pentagon Papers/ Internal movement against the war by the citizenship / The effect and importance of public opinion

The Pentagon Papers or the Vietnam Study as it was commonly known among the small circle of people within the United States of America Department of Defense, were a study commissioned by the at the time Secretary of Defense Robert McNamara in 1967. Robert McNamara initially commissioned this study since he was having doubts of whether American troops had any chance of succeed militarily in the Vietnam War or not. He wanted as well to leave a record of how the United States got into the war, and his main aim was to document every move the Defense Department and the troops were making so that they could prevent similar experiences in the future. The study was not only classified, but it was also given a low-level security clearance in order to not call the attention of other members of the Department of Defense, since the President at the time, Lyndon B. Johnson, did not even know the papers were being written. (Powers, 2012)

Although the United States intervention in the Vietnam War started during Truman's Administration, it was not until Kennedy's administration that the United States troops were being sent to the country, and it was under Johnson's mandate that the public opinion and the American citizens were starting to grow deep feelings against the Vietnam war. At the beginning, two different views predominated in the public opinion at that time, and they both still play an important role in today's debates regarding the United States' military intervention in Vietnam and Southeast Asia. The first view was in accordance to the liberal and realist perspective of international relations, and it stated that America's involvement in the war was an avoidable tragedy; if at the time American policymakers had been aware of the actual limits of their powers and the power that communism was gaining in that area of the world, the tragedy of the war could have been avoided. On the other hand, the second view was far more critical and stated that the United States, as a global superpower is responsible for its own economic expansion and they must oppose the expansion of communism. This opinion was mostly held by republican policymakers and it was translated into the necessity that the United States had of saving the world from communism; in that way, it was their responsibility to support the anti-communist regime of Southern Vietnam and therefore, their foreign

policy strategy was that of saving South Vietnam from falling into communism. The unanswered question regarding this point of view relies on the fact of whether the main reason for the United States to intervene was political, economic, or military, with the United States government at the time stating that it was merely a political attitude against the communist regime of the Soviet Union. This theory is supported by the fact that the United States government was simply trying to avoid a domino effect theory regarding communism; with this, meaning that the United States feared that if one country (even if it was as small as Vietnam was) fell victim of communism, then all nearby countries would do the same and it would reach one point where it would be unstoppable. (Hodbořová, 2008) (Lunch & Sperlich, 1979)

Public opinion regarding the Vietnam War inside the United States was divided. Furthermore, the longer the war was lasting the more negative and pessimistic feelings people were having about it. The country was fighting a never-ending war in a country only few Americans even knew where it was and raised it raised questions regarding what the United States as a nation stood for in the world. Therefore, people believed that the war was going to continue for many years with no positive results and it was the combination of this public opinion, the racial division in the country and the skepticism towards the war movement that pressed the United States government to start an intensive public relations campaign in order to reinforce and win again the popular support and trust not only in the war itself, but also in their own government. (Hodbořová, 2008) (Lunch & Sperlich, 1979)

The main strategy used by the United States government in order to do so was the use of propaganda, which can be defined as “the widespread dissemination or promotion of particular ideas, doctrines or practices in a systematic effort to manipulate attitudes, beliefs or actions, by the use of varied mediums.” (Smith & Lasswell, 1946) To put it in another way, propaganda could be translated into a set of messages aimed to influence the opinions or attitudes of a large amount of people, in order to transform their opinion or attitude regarding one matter. During the Vietnam War conflict, there was a great control of information from both the government and the military with very little information being transmitted to the media, and there was even an establishment in the White House called “A Vietnam Information Group” used with the only purpose of

monitoring the public opinion regarding the war and providing fake data and false statistics regarding the progress of the American troops in the conflict. (Hodboďová, 2008) (Lunch & Sperlich, 1979)

During the period of the Vietnam War, the intensity of the public's disagreement with it increased gradually as time passed by; at the very beginning of the war the pro-war propaganda that the government and the military were constantly launching had a good effect in the citizen's public opinion regarding the war, with the first hints of disapproval from the public starting almost simultaneously with the first protests of the Civil Rights Movement in the 1960's. The anti-war movements then gained national proportions in 1965 and they finally reached their peak by 1968, long before the war ended in 1975. (Hodboďová, 2008) (Lunch & Sperlich, 1979)

The fact that the Vietnam War being America's first racially integrated armed conflict, made a huge impact in public opinion and that is reflected in the fact that the first protests and movements against the war took place almost at the same time of the Civil Rights Movement and the rise of the Black Power during the 1960's, since people of color were not only being discriminated in the streets but also inside the armed forces of the United States. Before the Vietnam war, black soldiers used to fight in different segregated units where they had to follow only orders from leaders and commanders of Afro-American origin and were not allowed to get near the rest of the soldiers. Although the incorporation of Afro-American soldiers inside the troops was a positive thing at first, it also came with many kinds of discrimination. (Hodboďová, 2008) (Lunch & Sperlich, 1979)

The American anti-Vietnam War movement period from 1965 until 1971 was the most significant movement of its own kind in the whole history of the United States. It not only became a nation-wide campaign but it also managed to become powerful in many different social ranks with university students and members of college campuses becoming the most radical majority in the anti-war movement together with middle-class suburbs citizens and labor unions, as well as former soldiers that had already returned from Vietnam. (Hodboďová, 2008) (Lunch & Sperlich, 1979)

Then, it can be stated that the anti-war movement was composed of three main and different groups. On one hand, there were the pacifists who were against this war and any war in general since they saw them as completely immoral. On the other hand, there were the followers of radical policy, formed by younger people (specially students) that considered themselves as the “New Left” and view the Vietnam War as an example of how the ruling classes in the United States exploited the most vulnerable in order to maintain their capitalist system. Finally, the third group was formed by those considered the anti-war liberals; it was by far the largest group in number of advocates and their point of view was the immorality of the Vietnam War from every single standpoint: morally, strategically and practical. They also believed that the great investment that their government were making in the Vietnam War diverted the country’s attention and funds from more serious problems and that, instead of fighting against the Soviet Union, they should be trying to find a middle ground with them in order to avoid the war and find peace. (Hodboďová, 2008) (Lunch & Sperlich, 1979)

As stated before, the anti-war movement against the Vietnam War became not only the most significant movement but also the most successful anti-war movement in the history of the United States of America. During Lyndon B. Johnson’s presidency the anti-war movement played a big role in constraining the war and the protesters managed to feed the deterioration in the United States’ troops morale and discipline, which was an important factor that led to the withdrawal of the troops in the year 1975. (Hodboďová, 2008) (Lunch & Sperlich, 1979)

5.1.4 Nixon Administration / Start of de-escalation / End of the war

Richard Nixon’s campaign slogan was “Peace with honor” since he was well aware of the reputation his predecessors won regarding the Vietnam War. He was a republican candidate, and it was easy for him and his party to blame the Democratic Party considering that both former presidents, John F. Kennedy and Lyndon B. Johnson had belonged to that party, and their performance regarding the Vietnam War was highly criticized in both cases. (Powers, 2012)

Nixon assumed responsibility for the Vietnam War from the very first moment he

swore the oath to office on January 20, since he knew that ending the war in an honorably way would mark his success in the presidency and would get him reelected. However, during his first month as the leader of the United States he carried on the bombing strategy in North Vietnam at a massively increased level, carrying on these operations in complete secrecy. According to his point of view, that was a form of pressure that would get him closer to ending the war. His true intention was to find a middle ground where he could negotiate the retirement of all troops from Vietnam with the Soviet Union, but his strategy was clearly not the most successful or smart since the reaction of the Soviet Union was putting more pressure on the South of Vietnam as well, worsening the situation in the country. (Powers, 2012)

In order to buy time for himself and avoid the criticism from the public opinion, he began withdrawing American forces from Vietnam in early 1969, and by June 8 of that same year, he held a meeting with Nguyen Van Thieu, the president of South Vietnam at the time in Midway Island, an unorganized and unincorporated territory of the United States in the Pacific Ocean, in order to begin a process known as “Vietnamization”. This process consisted of a joint venture among the two states in working together towards rebuilding Vietnam’s military capacity in order for the country to be able to fight against the communist party of North Vietnam on their own. This raised the question of whether South Vietnam would be able to fight the northern part of the country on their own without the help of the United States army and although Nixon kept withdrawing troops from the territory, the United States was not officially out of the war until 1975, when Nixon had already resigned and Gerald Ford was the new president of the United States. (Powers, 2012)

5.2 Freedom of expression – Media

5.2.1 Freedom of expression, its historical concept, and its rendering on the United States Constitution

The United States Constitution, on its First Amendment as ratified by the States in the Bill of Rights, states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” (U.S. Const. amend. I, s.f.)

Generally speaking, the meaning behind the First Amendment of the United States Constitution, states that the government may not fine, jail or impose any kind of civil liability on people or organizations based on their said or written words, except in certain and exceptional circumstances. Despite the fact that the First Amendment refers to the “Congress” as the main authority, the Supreme Court of the United States of America has held its position regarding the fact that speakers are not only protected against the Congress of the United States, but against all government agencies and officials, whether they are federal, state, local, legislative, executive or judicial. However, it does not state or mean that it can protect said speakers from any private organizations or individuals, being the government the only organ it restrains. (R. Stone & Volokh)

In recent cases, the Supreme Court has held that the restrictions made on speeches due to their content —when the target is the message and not the speaker itself— it constitutes a violation of the First Amendment. According to this, laws that prohibit the citizens of the United States from making critics against certain topics such as war, abortion or governmental measures, are examples of unconstitutional content-based restrictions. As of today, there are only three circumstances that when given, the government is allowed to restrict the speech used under a less demanding standard: (R. Stone & Volokh)

1. According to the Supreme Court, some situations have been considered as of only “low” First Amendment value, such as for example:
 - Cases of defamation, when false statements about another person can lead to the damage of someone’s reputation, leading then to a civil liability, specially when the things said by the speaker were false or he/she deliberately lied. (New York Times Company v. Sullivan, 1964)

- Cases involving obscenity, pornography or high explicit content, although not normally prosecuted by the government, cases as such are not protected by the First Amendment. (Miller v. California., 1973)
 - Misleading commercial advertising. Although the government is allowed to ban misleading commercial advertising, it has been decided that the First Amendment does protect misleading political speech. (Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 1976)
2. In cases in which the speaker has or is in the middle of a special relationship with the government, the government can then restrict speech under a less demanding standard. This can be applied to, for example, government officials or employees, and even public-school teachers or students. (Pickering v. Board of Education., 1968)
 3. The government is also allowed to restrict speech under less demanding standards, as long as they do so without regard to the specific content or message that said speech contains. This type of restrictions, generally tend to be constitutional as long as they are reasonable. (Turner Broadcasting System, Inc. v. Federal Communications Commission. , 1997) Nevertheless, not all content restrictions can be considered as being neutral since the prohibition of demonstrations in public spaces or streets could be considered as a violation of the First Amendment of the Constitution. (Schneider v. State of New Jersey., 1939)

The Supreme Court throughout the years has not always been so protective of the First Amendment of the Constitution, but since the 1920s, they began to read this First Amendment more broadly, being this trend accelerated in the 1960s until our days, where the legal protection that the First Amendment offers is stronger and bigger than ever before in the United States history, and rarely any cases regarding this matters tend to arrive to the Supreme Court since it is considered that enough jurisprudence has been made. (R. Stone & Volokh)

5.2.2 Media in the United States and its political influence

Commonly and frequently known as the “Fourth Branch of the Government”, media in the United States plays and shares an equal stature with the other branches of

the United States government, protected by the Constitution of the United States, and playing a vital role as a guardian of democracy, guaranteed by the First Amendment to the United States Constitution, adopted in 1789, and forbidding the government from creating any laws that may interfere with the freedom of speech, but most importantly to our work, to the freedom of press. (Shah, 2012)

“In recognition of the role that the press played in the nation’s founding, and in appreciation of the crucial role it plays in maintaining a free society, the press was granted special protections under the First Amendment. But the founders knew that a free press would be worth little if the people could not read it, so public education became one of the great obsessions of the leaders of the early republic. [The problem in Europe at that time] was restricting education to the wealthy, in the mistaken belief that knowledge is the parent of sedition and insurrection. Instead, he wrote, education was vital to the maintenance of a free society. This concern with education was widespread in the founding generation, and Thomas Jefferson famously listed the establishment of the University of Virginia as one of the three great accomplishments of his life (he omitted his presidency from the list).” (Cornog, 2005)

As of today, and since the beginning of the existence of the press in the United States, the media has always played a great roll in influencing the government and its agenda through spotlighting the most important issues and directing the public’s attentions to social, public and political concerns. Even in some cases, the media create some kind of pressure within the government by highlighting issues that the government does not want to focus on, setting in that case the political agenda themselves. And just as the media can shape the political agenda, the government can influence as well the coverage of the media, since nowadays, the government is able to dictate the media’s knowledge of certain issues since the media tends to use government officials in order to obtain their information, news and stories. (Chandrappa, 2012)

Within the United States and nowadays, we can recognize the five main types of mass media, which are: the newspapers, the magazines, the radio, the television and the Internet. Throughout this paper we are going to specifically focus on the newspapers, who’s history dates back to the 17th century with the first newspaper published in the country, “The New England Courant”, created by Benjamin’s Franklin older brother, James Franklin. (Cambridge history of English and American Literature, 2014)

As of today, there are about 1,300 daily newspapers throughout the United States, most of them being locally distributed and with a few of them (typically the best-known ones) being found throughout the whole country. Although in this paper we are going to focus on both The New York Times and The Washington Post, which both belong to the list of newspapers with the largest combined daily average circulation, we should also mention others such as The Wall Street Journal, the USA Today and the New York Post, as some of the most important newspapers within the country. (Fiedler, Jansen, & Norman-Risch, 1990)

5.2.3 Media at the time – Written Press –The New York Times and The Washington Post

5.2.3.1 The New York Times

Founded in the year 1851 by the Sulzberger family, The New York Times (best known as The Times) is an American daily newspaper based on New York City. It is ranked as the third circulating newspaper in the United States and the eighteenth in the world, with 130 Pulitzer Prizes won over the years, it is one of the most famous newspapers in the world and the newspaper with the most Pulitzer prizes. (Britannica, T. Editors of Encyclopaedia, 2020)

The New York Times was the first newspaper in publishing the Pentagon Papers to the public, after Daniel Ellsberg, one of the few defense analysts that worked on the Pentagon Papers, decided to share the Vietnam study with The New York Times reporter Daniel Sheehan. Although the first abstracts of the study began being published on June 13, 1971, by January of that same year Daniel Ellsberg already started having serious doubts regarding what to do with that information, and even turned to many prominent members of the Congress for advice on what to do with said study; some of them included Senator Fulbright, Senator Charles Mathias and Representative Paul N. McCloskey. He first turned to them asking them to release the documents, but they all refused, and it was not until he reached out to Senator George McGovern that he reached a solution. Senator McGovern was a great end-the-war sponsor and the first democrat to announce

they candidacy for the 1972 Democratic party presidential nomination. When Ellsberg first told Senator McGovern about the classified documents he was in possession of, that would expose the misguided nature of the United States' policies in Vietnam and, if revealed, could even put an end to the war, the Senator advised him to turn the papers over to either The New York Times or The Washington Post, the two biggest newspapers at the time. (Rudenshteyn, The day the presses stopped: A history of the Pentagon Papers Case, 1996) (Ellsberg, 2002)

The first issue Daniel Ellsberg faced when taking this decision was which reporter to contact in order to share that information with, and his most likely prospect became Neil Sheehan from The New York Times. Sheehan began reporting on the Vietnam war while reporting for United Press International (UPI), quickly establishing himself as a gifted reporter that gave a vivid sense of the impact the war was having on Vietnam on his stories, which often reflected a pessimistic and controversial view of the war. He started working as a reporter for the New York Times in the year 1965 and although he was assigned to the Washington DC office of the newspaper, he had already met Neil Ellsberg in Vietnam years ago. (Ellsberg, 2002) (Rudenshteyn, The day the presses stopped: A history of the Pentagon Papers Case, 1996)

After much consideration, Daniel Ellsberg finally told Neil Sheehan about the Vietnam Study in February 1971. Sheehan, who was already aware of the existence of said study, from the start took the position that he could not help Ellsberg or make any commitments under his name or The New York Times name until he and all its editors had read the study. Daniel Ellsberg agreed under two main conditions: (Rudenshteyn, The day the presses stopped: A history of the Pentagon Papers Case, 1996) (Ellsberg, 2002)

- On one hand, he wanted The New York Times to devote substantial space to the Pentagon Papers so that a great portion of the 7,000 pages that made up the study would be published and shown to the public. (Ellsberg, 2002)
- On the other hand, he wanted the newspaper to print the actual documents as well, not just reports on them. He wanted the public to read what he did and to create an idea of the papers and the information they contained regarding the Vietnam war for themselves. (Ellsberg, 2002)

With no permission to copy or duplicate the documents in any way, Neil Sheehan began taking notes on the Pentagon Papers in the presence of Daniel Ellsberg and after months of planning and reading carefully all the information, he passed it on to the editors of The New York Times. At first, the great majority of them were reluctant not only to Ellsberg's conditions but also to the publication of the Vietnam study; Richard Nixon, the United States President at the time was known to be an "enemy of the press" and they did not want to have a confrontation with him that would end up on the federal courts and their newspapers facing major issues due to the publication of those contents. Finally, they took the position that the Vietnam Study was nothing but a history with no relevance to current diplomatic, military or intelligence interests; after being warned by their own lawyers that the publication of said study may violate federal espionage laws, Arthur Ochs Sulzberger, the director at the time, finally decided to begin publishing excerpts of the study on June 13, 1971 under the name "*Vietnam Archive: Pentagon study traces three decades of growing US involvement*". (Rudenshteyn, *The day the presses stopped: A history of the Pentagon Papers Case*, 1996)

5.2.3.2 The Washington Post

The Washington Post (best known as The Post) is an American daily newspaper published in Washington D.C that was founded in the year 1877. In its early years, the newspaper went through several owners and in 1933, Eugene Meyer purchased the newspaper who would later be run by Katherine and Phil Graham. The Post has received 69 Pulitzer prizes, being the second-most of any other newspaper, after The New York Times. (Roper Center for Public Opinion Research, 2020)

At the time of the publication of the Pentagon Papers by The New York Times, The Washington Post was run by Katherine Graham (Phil Graham's widow and Eugene Meyer's daughter) and its executive editor was Benjamin C. Bradlee. They both had their sights on transforming The Washington post from an average newspaper to one of the nation's greatest newspapers and for it to be as important as The New York Times was. (Rudenshteyn, *The day the presses stopped: A history of the Pentagon Papers Case*, 1996)

Four days prior to the publication of the Pentagon Papers on June 13 by The New York Times, Robert McNamara, former Secretary of Defense, and the man who commissioned for the Vietnam Study to be written, told his long-time friend Katherine Graham about how The New York Times was about to publish a major story on the Vietnam war that would potentially put an end to it and that would be “detrimental to him”. Although he did not go into further detail and it is unknown how he got informed of the publication prior to it happening, he confided that information in Katherine in order to pressure her from publishing it on her own newspaper and to gather any information regarding how The New York Times obtained the Vietnam Study. (Rudenshteyn, *The day the presses stopped: A history of the Pentagon Papers Case*, 1996)

When learning about how The New York Times had such a big story most of The Washington Post editors became desperate to obtain the information The Times was going to publish and after at first deciding to just rewrite whatever The Times published and publishing it themselves, Ben H. Bagdikian, The Washington Post’s assistant managing editor for national affairs, got in touch with Daniel Ellsberg who he had met through the RAND Corporation (an American policy think tank). Ellsberg was again desperate to share his story with the public because a long time had passed since Neil Sheehan obtained the information regarding the papers and nothing had been published yet, and after trying to make the papers to go public through three major television networks and being rejected by them (since they were licensed by the Federal Communications Commission, they were vulnerable to investigations from the government or the FBI), he confided the Study to Ben Bagdikian for The Washington Post to publish it. (Rudenshteyn, *The day the presses stopped: A history of the Pentagon Papers Case*, 1996) (Ellsberg, 2002)

After committing to publishing the material in a serious manner and beginning the series of publications with the pre-Kennedy era, The Washington Post published the Pentagon Papers on June 18, 1971 right after The New York Times was censored from doing so and with no fear of the consequences. (Rudenshteyn, *The day the presses stopped: A history of the Pentagon Papers Case*, 1996)

5.2.4 Existence of the Pentagon Papers, content, and contradiction with political propaganda. Filtration

Known as the Vietnam Study among a small circle of people in the United States Defense Department and as the Pentagon Papers by the great majority of the United States public, this study compiled a reconstruction of all the step-by-step decisions that the United States Army and the United States Department of Defense carried out in Southeast Asia during the mid-1960s. Through their almost 7,000 pages of content in which more than three dozen analysts worked on, the papers provide a great insight of the course of every military action the United States took in Vietnam for 23 years, revealing every single decision that was taken and how power actually operated in a war situation, something that had never been revealed to the American public before. (Powers, 2012)

The making of this study began in the aftermath of World War II and was commissioned in 1967 by Secretary of Defense Robert McNamara. It is unclear if the President at the time, Lyndon B. Johnson, was aware of the existence of this study since what McNamara wanted to achieve by pursuing this information was to solve his doubts regarding the United States' ability to succeed in the war. The documents were classified as "top-secret sensitive" and given high-level security in order to avoid anyone that did not belong to the small group of people that knew about them from finding out. The real reason behind his interest in creating the study and documenting the whole experience of the troops in the war is as well unclear, but it is thought that he did so with the intention of preventing similar interventions and mistakes in the future. (Powers, 2012)

The information contained in the Pentagon Papers was not only sensitive and self-defeating to whoever may read them, but it also completely contradicted Nixon's campaign slogan to achieve "peace with honor", while, as stated in the papers, he was about to increase the bombing level in the Southeastern Asian territories where thousands of thousands of lives were being lost on a daily basis, and where these policies of devastation were going to be conducted in absolute secrecy. (Powers, 2012)

It was precisely this propagandistic contradiction what grew a certain skepticism

inside Daniel Ellsberg, one of the few analysts that worked in the papers, making him realize that the levels of deceit and betrayal towards the American society were not only extraordinary but self-defeating as well. Also, the fact that Nixon was not going to remove the troops from Vietnam but worsen the situation, made him took the decision in the year 1970 of making copies of the whole Vietnam Study and started circulating them to selected officials. He also provided access to these documents to certain reporters from the New York Times and the Washington Post, which published some of the information in 1971, making them face the infamous trials known as the New York Times Co. v. United States and the United States v. Washington Post Co. (Powers, 2012) Although they were two separate trials, nowadays they are treated as a single one due to the results obtained and the importance and impact that both made in the United States society.

Daniel Ellsberg put not only his liberty at risk, but also his own personal well-being and security and although he was highly proclaimed and protected by the readers and the general public, the result of his leak was not the one he expected on the first place. His main intention was to end the war and although it was not the immediate result of the leak, he achieved with it a great skepticism from the public towards the government and a deterioration of Nixon's figure as the President of the United States, which later on (with the Watergate Scandal as well) led to his resignation in 1974. (Powers, 2012)

The publication of said papers led to a worsening on the citizens attitude regarding the Vietnam War. In the early stages of said war, most Americans supported their country's intervention in Vietnam since they believed it was necessary in order to avoid an increasement and a measure of containment of the spread of communism. But, as the war and the situation escalated and the Pentagon Papers were published, the public opinion drastically changed. (Kobrick, 2019)

5.2.5 Right of publication of the Pentagon Papers and the public's reaction

Just as the Vietnam War itself, the publication of the Pentagon Papers and the subsequent decisions of the federal courts in the United states brought very divisive opinions and feelings not only in America but around the world as well. The opinion towards the leak was completely divided: on one hand, many Americans expressed anger

at both The New York Times and The Washington Post for doing something that as to their perspective was completely immoral; those documents were leaked illegally by Daniel Ellsberg, so their publication should have been illegal too. In addition, other opinions included the fact that the disclosure of that kind of information was a danger to national security itself, and that at some point, it could have been used by those governments the United States was fighting against on the first place. Judges and justices of federal courts and the Supreme Court of the United States were criticized too regarding the publication for allowing it to continue; those objections just such as the ones mentioned above, were based on the fact that those documents were obtained illegally, and it was as well taken as an intrusion upon the separation of powers dictated in the United States Constitution. Their argument was based on the fact that by allowing the publication of those documents that the executive branch had deemed classified, high level security and “top secret-sensitive”, the Supreme Court had undermined the role of the President of the United States as the person with primary responsibility for protecting national security and conducting foreign affairs. (Kobrick, 2019) (Powers, 2012) (Cary Sims, 1993)

On the other hand, the Pentagon Papers were received with a lot of enthusiasm from a large number of Americans, who saw the episode as a triumph of the First Amendment over the power of the government, as well as a proof of “real patriotism” in figures such as Daniel Ellsberg or Neil Sheehan. This enthusiasm was to a big extent derived from the hostility towards the United States intervention in the Vietnam War and the feeling that the government had deceived American citizens by not showing the real meaning behind the war and putting thousands of lives at risk without being public about the progress of said war. (Sheehan, Hedrick, Kenworthy, Butterfield, & Greenfield, 2017) (Kobrick, 2019)

This discussion regarding the Pentagon Papers not only took place towards the civilians, the judiciary system or the newspapers, but also within the United States Congress. Prior to the Supreme Court’s ruling, a total of twenty-seven member submitted a letter to the Supreme Court asking them to drop the case and to not restrain the publication of the papers. Many members opposed to the Vietnam War since the beginning showed clear anger after the publication of the papers and about the

information that they contained, accusing former Secretary of Defense Robert McNamara, among others, of lying not only to the Congress but also to all Americans about the conduct and the reasoning behind the war. (Powers, 2012) (Kobrick, 2019) (Sheehan, Hedrick, Kenworthy, Butterfield, & Greenfield, 2017)

Following the publication of the Pentagon Papers in both The New York Times and The Washington Post, other major newspapers from all across the United States such as The Boston Globe and the Chicago Sun started receiving copies of the documents and they began publishing them too. Although the feeling towards America was not completely anonymous regarding the publication of said documents opened a big debate regarding the right of publication without any kind of censorship as part of a fundamental principle of the United States democracy. (Sheehan, Hedrick, Kenworthy, Butterfield, & Greenfield, 2017) (Kobrick, 2019)

5.2.6 Nixon's administration attitude towards the leak

As stated before, the Vietnam Study was commissioned by former Secretary of Defense Robert McNamara in 1967 without the knowledge of the President at the time, Lyndon B. Johnson, although it is unclear whether President Richard M. Nixon was aware of the existence of those documents or not, the publication of the excerpts from the classified Defense Department study came as a surprise for most people in the White House. Only fifteen copies were made of that study and they narrowly circulated among the staff and although the President might have not been aware of it, Nixon's National Security Advisor, Henry Kissinger had consulted the documents while the study was being prepared and his Secretary of Defense, Melvin Laird, learned about the existence of the report when he took office in 1969. (Kobrick, 2019)

Nixon's first reaction was to consider the leaker or leakers as "traitors", but also focused on the fact that the report could be more harmful towards his democratic predecessors than towards himself. His cabinet then decided that the leaker or leakers (unknown at the time) should be prosecuted, and legal action should be taken towards the newspapers that published the Pentagon Papers. (Cary Sims, 1993)

On June 14, the Justice Department lawyers filed a lawsuit against The New York Times in the United States District Court for the Southern District of New York seeking two separate orders to stop the publication of the Pentagon Papers. They seek to establish a temporary restraining order that would stop the publication of said documents until a date for the trial was announced, and the completion of the trial as a full. This was an attempt to obtain an unprecedented prior restraint on a newspaper from an administration, which quickly fueled criticism from the Congress and the Senate, since not once in the nation's history the federal government had been allowed to forbid a publication before a trial and a resolution took place, violating, in that way, The First Amendment in Freedom of Speech. (Kobrick, 2019) (Sheehan, Hedrick, Kenworthy, Butterfield, & Greenfield, 2017)

Nixon's reaction to these events played an important role into what led to his resignation on August 4, 1974, since his main strategy was to blame on his previous predecessors from the Democrat Party (specially on John F. Kennedy, who was apparently the only President fully aware of the existence of said documents), and to try to find additional information that could damage his opponents. Precisely these actions were the ones that led to the arrest of members of his team trying to steal documents from the Democratic National Committee, which led to the whole Watergate Scandal which we will talk about later on in our dissertation. (Powers, 2012)

5.2.7 Watergate as a similar and later event

"Watergate" not only refers to the hotel and office complex located in Washington DC, but it is as well the catchall term that refers to a series of abuses and cover-ups carried out by President Richard M. Nixon and his administration, that came out to the public after an attempted break-in in said building in 1972, that finally led to Richard Nixon's resignation and the downfall of his political career. (Farnsworth, Watergate Chronology – 1968-72, 2019) (Kutler, 1994)

The Pentagon Papers episode and subsequent scandal had an important connection with another scandal that marked as well before and after in American politics: the Watergate scandal. This scandal was the one that led to President's Richard

M. Nixon resignation due to the consequences this scandal had not only in the public view, but also on the government itself since Nixon resigned in the middle of his own impeachment period. (Farnsworth, Watergate Chronology – 1973, 2019) (Kutler, 1994)

The Watergate scandal is tightly tied to the Pentagon Papers scandal since it is believed that the whole thing was due to Nixon's paranoid personality due to the leak of the Vietnam Papers, after which he created a team of "plumbers" inside the White House in order to plug leaks from the White House itself, and by September 9th of that same year (1971) they had already stolen psychiatric medical documents from Daniel Ellsberg, the former defense analyst who leaked the papers to both The New York Times and The Washington Post, in order to supposedly discredit him if needed. (Sussman, 1974) (Farnsworth, Watergate Chronology – 1968-72, 2019) (Kutler, 1994)

Although the whole plot was not uncovered until June 17th, 1972, when five burglars were arrested at dawn during a break-in in the Watergate Hotel in Washington DC, where the Democratic National Committee headquarters were located. At first, the break-in barely appeared in the news since apparently the burglars didn't manage to steal anything and the whole country was in suspense with the following elections in November of that same year, where President Nixon was trying to get re-elected against the Democratic candidate, Senator George McGovern from South Dakota. (Sussman, 1974) (Farnsworth, Watergate Chronology – 1968-72, 2019) (Kutler, 1994)

The five burglars were Bernard Barker, Virgilio Gonzalez, Eugenio Martinez, James W. McCord, and Frank Sturgis. At first, none of them had any apparent relation with neither the Republican nor the Democratic Parties, but it was later discovered that James W. McCord was the security director for the Re-Election of the President. When set on trial on January of the following year (the elections already had taken place with little light on the Watergate scandal, and they led to the re-election of President Nixon with an approximate of 60% of the votes) the five men pled guilty and the later one was convicted not only of attempted burglary, but also of conspiracy and wiretapping. (Sussman, 1974)

The whole thing never appeared to be a big thing to the public and was never covered by mainstream media until two young reporters from The Washington Post, Bob

Woodward, and Carl Bernstein, broke the story of a high-level cover-up relying on an anonymous source from the FBI known at the time as “Deep Throat”. What they discovered was not only the fact that the break-in in the Watergate Hotel was orchestrated by John Dean, a High Official in the Committee to Re-Elect the President, in order to either obtain information that could help Nixon to win the Presidential Elections or to find out what the Democratic Party Officials knew about his own involvement in an ongoing investigation about a prostitution ring in Washington DC. (Sussman, 1974) (Farnsworth, Watergate Chronology – 1973, 2019)

As of today, it is known that President Nixon had no idea of the Watergate break-in when it took place, but once he found out about it, he decided to cover it up and to install recording equipment in the Oval Office, later denying to turn in those recordings and turning in transcriptions of them, which ended up turning to be fake. His refusal to give up said tape led to call for his impeachment from Democratic officials in the Senate and the House of Representatives. During his impeachment process and on August 8, 1974, Richard M. Nixon became the first and only President of the United States to resign while being on office in order to avoid his impeachment, and was later succeed by his Vice-President Gerald Ford, who pardoned him from all the criminal charges he faced due to the Watergate scandal. (Sussman, 1974) (Farnsworth, Watergate Chronology – 1973, 2019)

Said pardon became one of the most controversial aspects from the Watergate scandal with some people even speculating that the pardon was agreed between Gerald Ford and Richard Nixon before he even resigned, since he had stated that he would never resign two days prior to his official resignation. The same day he became President of the United States on August 9th 1974, Gerald Ford stated that the “national nightmare” was over, and that the country was ready to start recovering from it from then on. (Sussman, 1974) (Farnsworth, Watergate Chronology – 1973, 2019) (Kutler, 1994)

6. Conclusion

This dissertation has analyzed how the New York Times Co. V. United States case

affected the public and political sphere of the United States at the time, and how two newspapers (the New York Times and The Washington Post) fighting for their right of publication and their right to not be censored by the United States Government under the First Amendment of the United States Constitution marked a before and after on the United States press and public opinion regarding it. To do so, this study has begun by studying and analyzing the terms of “freedom of speech” and “public opinion”. This has allowed us to have a better understanding of the historical context of the time, the Vietnam War, and the political situation of the United States at the time. Secondly, the historical concept of freedom of expression has been analyzed as well as its rendering in the United States Constitution, followed by an analysis of the media in the United States, the media at the time (mainly focusing on The Washington Post and The New York Times) and a deep analysis of the Pentagon Papers, their right of publication and the government’s and Supreme Court’s positioning to their publication.

Although it is unclear if it was due to the publication of the Pentagon Papers or as a result of the globalized society we live in, it is considered that the publication of the Vietnam Study marked a before and after not only on the United States’ law and how the First Amendment of its Constitution would be applied regarding their right to publish secret or sensitive documents in regard to the government, but also in shaping America’s public opinion regarding what is published and what is not, and what the government is hiding from them. Not only the public became more interested on what was happening behind the closed doors of The White House, but they also became more critical regarding what was going on in issues such as foreign affairs or military interventions (Rudenstine, *The Pentagon Papers Case: Recovering its Meaning Twenty Years Later*, 1991).

Although everything that happened regarding the Pentagon Papers case is nowadays considered a “real-life political thriller” it was very much true and the devastation that the Vietnam War caused in American society is accurate as well. The Vietnam War constituted the longest and most costly war for The United States (even more than the Second World War), where more than two million soldiers were sent to the front. More than fifty-eight thousand of them were killed and more than three hundred thousand wounded, constituting a cost for US taxpayers of hundreds of billions of dollars that they are still paying nowadays and will continue for decades through

veterans benefits and loans. (Rudensine, The Pentagon Papers Case: Recovering its Meaning Twenty Years Later, 1991)

6.1 Future lines of research

Granting that freedom of speech and expression is something necessary in nowadays society, and that protecting the media and individuals from the censorship of governments is decisive as well in a country such as the United States, we propose a modification of the First Amendment of its Constitution (including all its exceptions and categories) in order to meet the needs of the globalized society that we live in nowadays.

In order to support our point, we will briefly talk about the case of Wikileaks which could be considered a “modern-day” Pentagon Papers situation. Founded in the year 2006, Wikileaks is one of the world’s most controversial websites, considered as a “non-profit media organization” that posts confidential and classified information of political, diplomatic or ethical significance. It is considered a news organization and an outlet for whistle-blowers, that adds high value on anonymity and protection of its sources, claiming that is based on the defense of freedom of speech and media publishing, in order to collect historical record to create a new history. (Kelly, 2020)

The webpage, whose public face is the Australian publisher, journalist and hacker Julian Assange, does not solicit information from its users, but enables whistleblowing from them, matter that protects them from a legal perspective. Wikileaks has published more than ninety-two thousand United States military reports on Afghanistan and more than four hundred thousand on the Iraq war, with the most controversial being the one published on April 5, 2010, being a classified video of a United States’ military helicopter attack in 2007 that resulted in the death of many civilians and two Reuters correspondents among others. To this day, although there had been many attempts to cease the activity of the webpage and to put its creators in front of a federal grand jury, the webpage has resulted victorious on every single legal dispute it has faced. (Kelly, 2020)

Why? Because under the First Amendment, Wikileaks is not doing anything illegal.

The only way the Supreme Court or American judges have been able to prosecute anyone involved with the traffic of information in Wikileaks (such as Chelsea Manning and Edward Snowden) was through the Espionage Act of 1917. The Act was created as an attempt to block the expression views that might be harmful to the United States without violating the freedom of speech. This means, that whoever sends information to Wikileaks can be prosecuted under the Espionage Act, but Julian Assange, its creator, is protected by the First Amendment. (Kelly, 2020)

Though the Espionage Act is a good measure to censor views without violating freedom of speech, nowadays it could be considered as outdated since it will prohibit individuals from leaking information, but not from publishing it onto the world. The fact that there have not been any new reforms to the First Amendment regarding this issue since 1917 not only shows how not well-prepared the United States Constitution is against possible attacks or breaches in confidential information, but also, how easy it could be for people such as Julian Assange to get away with publishing confidential information.

The case of Wikileaks is not only a good example regarding how an investigation could be held regarding its implications on the First Amendment and how the case of said webpage is not contemplated on it, but also on how the views of the public opinion change throughout the years in situations that might even look identical. Back in the day, Daniel Ellsberg was considered a hero by the public opinion for sharing the public what was happening behind closed doors and was even praised by many Democratic politicians at the time. Nowadays, figures such as Julian Assange are considered “terrorists” by some politicians, such as Joseph Biden when he was Barack Obama’s Vice-President, who stated that Julian Assange was a terrorist and Wikileaks a terrorist organization. (Kelly, 2020) However, it was Barack Obama who granted the Presidential Pardon to Chelsea Manning, one of the main Wikileaks whistle-blowers, before ending his last presidential term.

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