

Do You Want To Know A Secret?

Habermas' Public Sphere & Wikileaks as a part of it

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Introduction

Julian Assange and a handful of journalists, hackers and mathematicians started Wikileaks in 2007. Wikileaks strives to offer a platform for whistleblowers to expose secret material in an anonymous way. Its aim is to achieve a higher level of government transparency by exposing sensitive files to the public, thus subjecting it to societal scrutiny. On Wikileaks' main page, it is formulated as follows:

WikiLeaks is a non-profit media organization dedicated to bringing important news and information to the public. We provide an innovative, secure and anonymous way for independent sources around the world to leak information to our journalists. We publish material of ethical, political and historical significance while keeping the identity of our sources anonymous, thus providing a universal way for the revealing of suppressed and censored injustices.¹

Since its coming into existence, Wikileaks has stirred worldwide debate on the extent to which sensitive information should be publicly available. It has become especially notorious for certain leaks relating to the war in Afghanistan and even classified US Intelligence plans to destroy Wikileaks.²

My thesis examines Wikileaks' stated purpose under reference to Habermas' theory of the public sphere. How exactly does 'providing a universal way for the revealing of suppressed and censored injustices' help in preventing those injustices? The paper claims that while the public sphere has become more accessible, rational-critical debate cannot take place without the information needed to come to a well-informed opinion. Wikileaks' importance, then, may be that it provides that information, or in any case information that no other news source is able to provide but that is of relevance for the public debate. Without it, voters and consumers may be misled, believing that their governments and corporations behave in an exemplary manner, when in reality this may not be the case.

The research question of this paper is: 'How does Wikileaks influence the public sphere as defined by Habermas, and how is this influence shown in Jonathan Franzen's *Freedom*?' The paper is structured as follows. The first section will explain the relation between Habermas' theory of the public sphere and Wikileaks. The second section will illustrate this relation with examples from Franzen's novel, *Freedom*. The third section examines two often-heard critiques when

¹ www.wikileaks.org, (last access: 15-07-2011)

² These leaks took place, respectively, on November 28th, 2010 ('Cablegate', see <http://www.wikileaks.org/cablegate.html>), July 25th, 2010 ('Afghan War Diaries', see <http://wardiary.wikileaks.org>) and March 15th, 2008 ('U.S. Intelligence planned to destroy WikiLeaks', <http://mirror.wikileaks.info/leak/us-intel-wikileaks.pdf>). Note that due to the nature of the Wikileaks website, the links may not function at times.

assessing the impact of Wikileaks. In the fourth and final section, conclusions are drawn and an opinion is offered on the desirability of a project like Wikileaks.

1. Wikileaks & Habermas – the Public Sphere as the foundation of democracy

Wikileaks is a website dedicated to the publication of information that would otherwise remain secret. Usually, this concerns classified government documents, such as diplomatic cables, military footage or internal memos.³ How can ‘leaking’ certain documents lead to actual social or political change? Jürgen Habermas’ theory of the ‘public sphere’ can provide insights into this question.

According to Habermas, at a certain point in the development of modern democracies, a public ‘place’ for deliberation about politics and society came into being. This place was initially a physical place, such as a coffee house or a meeting place, but it can also refer to a (written) forum where ideas can be exchanged, such as a reader’s submissions section in a newspaper. The public sphere offers citizens a chance to discuss matters of public interest, i.e. matters that extend beyond their personal sphere of interest (‘private’ matters).⁴ Ideally, people partake in this discussion in a rational and critical manner, thus providing “convergence of politics and morality.”⁵ This requires that the discussion be free from censorship, control and distorting influences. However, under reference to Marx’ theory, Habermas describes how the public sphere gradually came to be dominated by economically powerful minorities.⁶ Through the mass media, these minorities – as well as governments and other public authorities – managed to exert an influence on opinion-making in the public sphere.⁷ Habermas elaborates on the importance of public opinion: people can be influenced using advertisement strategies, thus making them less critical of the established regime.⁸ PR became the main focus of a bureaucratic government: rather than suppress criticism, it became easier to pre-empt it by increasing government popularity through mass-media communication.

How does the ‘manipulation’ of the public come about? Why is a project like Wikileaks needed to incite the rational-critical debate? A central concept to the public sphere is the rise of a new social class, the bourgeoisie. As noted above, the bourgeois class that became increasingly predominant in early capitalist societies was the starting point of the development of a public sphere. Interestingly enough, Habermas notes already here that this implies an exclusion of the working class from this sphere – if not formally, then at least in practice.⁹ Due to the differences in education and available time and resources, the bourgeoisie managed to develop opinions and substantiate them with arguments, thus effectively excluding the working class from the public

³ For instance leaks concerning a CIA internal memorandum (http://www.wikileaks.org/wiki/CIA_Red_Cell_Memorandum_on_United_States_%22exporting_terrorism%22,_2_Feb_2010, last access: 12-12-2011), a classified US cable from the Reykjavik embassy on Icesave (http://www.wikileaks.org/wiki/Classified_cable_from_US_Embassy_Reykjavik_on_Icesave,_13_Jan_2010, last access: 12-12-2011) and the infamous ‘Afghan War Diary’ (http://www.wikileaks.org/wiki/Afghan_War_Diary,_2004-2010, last access: 12-12-2011).

⁴ J. Habermas. *The Structural Transformation of the Public Sphere*. Tran. T. Burger. Cambridge & Oxford: Polity Press, 1989. Print. p. 2

⁵ Habermas. p. 104

⁶ Habermas. p. 125: “The dissolution of feudal relations of domination in the medium of the public engaged in rational-critical debate did not amount to the purported dissolution of political domination in general but only to its perpetuation in different guise.”

⁷ Habermas., p. 193-196

⁸ Habermas., p. 216: “Consequently the [political] parties and their auxiliary organizations see themselves forced to influence voting decisions publicistically in a fashion that has its analogue in the way advertising pressure bears on buying decisions.”

⁹ A. Edgar. *Habermas: The Key Concepts*. London & New York:, 2006. Print., p. 126

debate. While late capitalism is characterized by the welfare state and voting rights for everyone, this change comes at a cost. The increasing complexity of society, as well as the reduction of taste and opinions to something purely subjective and beyond argumentation, have diminished the public sphere: it “is replaced by mass voting. Public opinion is reduced to a mere aggregate of individual, and subjective, preferences, rather than the open negotiation and debate of a common position.”¹⁰ This, in turn, makes the public sphere – or what is left of it – particularly vulnerable to manipulation by PR and advertisement strategies.

This process can be regarded as the central object of Wikileaks’ critique. The main notion of democracy – i.e. that political decision making is ultimately up to the people, all of which can use their vote to influence the process – is eroded once those in power can ‘manipulate’ the public into voting in a way that is preferable to them. Instead of being an open place for debate, “the public sphere becomes a setting for states and corporate actors to develop legitimacy not by responding appropriately to an independent and critical public but by seeking to instill in social actors motivations that conform to the needs of the overall system dominated by those states and corporate actors.”¹¹ Rational-critical debate as the foundation of the public sphere is lost. As the main cause of this, Habermas identifies the emergence of a “polycentric society of large organizations,”¹² in which political decisions are the result of bargains between the legislator and large interest groups. Individual concerns have no place in the political debate. They may be bundled into interest groups, but these groups have to bargain with the legislator to achieve influence, rather than achieving it through rational-critical debate. Aggregation in public interest groups does not preclude the possibility of such debate, but when these groups have an agenda of their own, i.e. retaining influence, things become problematic. The individual interests that the group was supposed to represent risk becoming disregarded in favor of pragmatic solutions negotiated by the leaders of the group.

Another problematic aspect of these public interest groups is that they become the main providers of the information that its members use to come to, for instance, a voting decision. Ideally, each individual member of the public critically reflects on information that is as objective as possible. But to an increasing extent, it draws its information from “powerful, well-organized information producers.”¹³ While this is not a problem in and of itself, it is difficult to guarantee independence of such large groups, particularly with a view to their necessity to bargain with the political elites to obtain influence. Habermas emphasizes the need for an open, critical debate, free of influences from large actors. Wikileaks attempts to facilitate this by making available information that is withheld from the participants in that debate, but which nonetheless is of importance to carry it out in a meaningful manner. The idea is that once this information becomes available to the public at large, they will take it into account when formulating an opinion about matters of public interest. In that way, it can be regarded as counter-publicity against the PR machines of the ruling elite.

In order to achieve rational-critical reflection on matters of public interest, Habermas states (citing Dewey) that “the essential need [...] is the improvement of the methods and conditions of debate, discussion and persuasion.”¹⁴ Contemporary politics, he argues, are dominated by the

¹⁰Edgar., p. 127

¹¹C. Calhoun. *Habermas and the Public Sphere*. Cambridge, MA: MIT Press, 1993. Print., p. 26

¹²J. Habermas. *Between facts and norms: contributions to a discourse theory of law and democracy*. Oxford., 1996. Print.p. 303

¹³Habermas., p. 380

¹⁴ Habermas. p. 304

political and economical elite not because the public debate is inaccessible for individuals, but because the agenda for debate is determined by these elites.¹⁵ Even though this is the inevitable result of expansive economic integration and a sheer increase of number in democracy's participants, the fact remains that the public sphere is not as 'public' as it ideally should be. Habermas offers a solution: according to him, individuals should unite to exert influence in the form of interest groups, political parties, etc., the conglomerate of which he calls 'civil society.'¹⁶ After all, the political centre is not as fast to pick up on social tensions and problems as are the individual citizens. In this sense, "the communication structures of the public sphere are linked with the private life spheres in a way that gives the civil-social periphery, in contrast to the political center, the advantage of greater sensitivity in detecting and identifying new problem situations."¹⁷ In short, the individual's access to the public debate should be achieved by coming together in civil society, but these organizations should not themselves become dominant in determining the political agenda.

This provides an interesting paradox that brings the individual no further to the public debate. But perhaps, association of individuals in civil society is no longer needed to express individual concerns to a large audience. I believe that there is one very important change that came about approximately a decade after Habermas' *Theory of Communicative Action*. While for Habermas the crucial point was for citizens to become united in civil society, the hurdle of access to the public debate has lowered substantially since the advent of the internet. It has become much easier to voice opinions and gather support for them than it has ever been before.¹⁸ Before the ascent of the internet, a person would have to obtain a platform to voice his or her opinion – such as the possibility to publish in a newspaper, or to speak at a large gathering. In the 21st century, everyone can easily make themselves be heard over the internet. Consequently, political leaders have become more sensitive to these opinions, or at least have developed means for monitoring these opinions. Is the internet indeed the fulfillment of Habermas' promise of a free and universally accessible public sphere?

Unfortunately, the answer is not yet. It is obvious that the internet facilitates easy communication between people. Its potential lies not only in advantage in terms of speed and scale, it has also made communication to a much larger public possible, freeing itself from traditional limitations imposed by cultural and spatial limitations.¹⁹ However, the internet thus far seems not to have become a global public sphere that is actually capable of influencing political decision-making. The main reasons for this are the lack of formalized institutional procedures that incorporate the outcome of the public debate in decision-making processes,²⁰ the lack of a common identity between the participants in this digital public sphere,²¹ and the quality of

¹⁵ "Only after a public "struggle for recognition" can the contested interest positions be taken up by the responsible political authorities, put on the parliamentary agenda, discussed, and, if need be, worked into legislative proposals.", Habermas., p. 314.

¹⁶Habermas., p. 367: "Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere."

¹⁷Habermas., p. 381

¹⁸ Blogs that quickly rose to immense popularity include www.huffingtonpost.com (Est. 54 000 000 unique monthly visitors), www.mashable.com (Est. 10 000 000 unique monthly visitors) or www.gawker.com (Est. 6 000 000 unique monthly visitors).

¹⁹J. Bohman. "Expanding dialogue: The Internet, the public sphere and prospects for transnational democracy." *The Sociological Review* 52 (2004): 131-55. Print., p. 134-135

²⁰P. Dahlgren. "The Internet, Public Spheres, and Political Communication: Dispersion and Deliberation." *Political Communication* 22.2 (2005): 147-62. Print., p. 152 and Bohman 2004 (op cit.), p. 146

²¹Bohman., p. 140

communication on the internet.²² Nonetheless, one undisputed contribution we owe to the internet is that it gave a place to several 'counter-spheres', i.e. fragmented groups that previously did not have a voice in the public sphere.²³ Building on that, most theorists agree that the internet has already brought about some improvements in the public sphere in that it makes it much more accessible, and that it may fulfill its true potential once its shortcomings are remedied.²⁴ Ideally, it will become a transnational forum where everyone can freely voice their opinion in rational debate, the outcome of which is taken into account in political decision-making.

Certainly, the internet has facilitated easier access of individuals to discussion forums and online interest groups. But it has lowered the threshold for participation to such an extent, that an 'information overload' occurred. As Calhoun puts it, "what happened was that in the expansion of access, the form of participation was fatally altered."²⁵ Habermas already noted that the ability to form an opinion that is based on arguments and can be debated is virtually absent in the participants of the public sphere during late capitalism.²⁶ These observations were made about the transition to modern democracy, but they apply to the advent of the internet, too. Having said that, the internet offers one important new possibility: it facilitates instantaneous global transmissions of information. This, too, can have a tremendous impact on the rational-critical debate. While the rational-critical debate, carried out online, is not yet realized, the *conditions for reflection* that this debate is supposed to facilitate are offered by Wikileaks, using the potential of the internet.

Catering to an increasing need for transparency, Wikileaks places online documents that are difficult to obtain by individuals. Some of these files are classified, while others may simply not be publicly available. Either way, Wikileaks' team feels that in order for people to form an opinion about what their government is doing, they need to be informed of certain facts. It therefore supplies them the information in the most factual way possible: by integrally posting the documents online, without amendments and with a minimum of accompanying text. The internet makes it possible to disclose this information on an unprecedented scale: "using the internet and its international organization, Wikileaks is another step in how globalization makes censorship of information by national governments increasingly difficult."²⁷

Habermas' theory is invaluable for understanding the conditions needed to make democracy work. The starting point for a democratic society is that each of its members may influence the decision-making process. But in order to come to a meaningful reflection on that process, a rational debate is required, in which all of society's members can participate. Ideally, there is a public sphere in which such a debate can take place. However, modern democracies are characterized by powerful agents (be they governments or large corporations) who exert an influence on the debate carried out in the public sphere. Wikileaks tries to remedy this by using the potential of the internet, not for facilitating the debate as such, but for making publically available information that is essential when one is to come to a critical reflection on the ruling elite (and for that reason is often not publically available). In the next section, a novel is discussed which shows that this can work, and how.

²²Dahlgren., p. 156 and B. Cammaerts and L. van Audenhove. "Online Political Debate, Unbounded Citizenship and the Problematic Nature of a Transnational Public Sphere." *Political Communication* 22.2017 (2005): 179-96. Print.

²³Dahlgren., p. 152 and Bohman 2004 (op cit.), p. 140

²⁴Dahlgren 2005 (op cit.), p. 160; Bohman 2004 (op cit.), p. 153; Cammaerts & van Audenhove 2005 (op cit.), p. 193

²⁵ Calhoun., p. 23

²⁶ Habermas., p. 314

²⁷ R. Tiffen. "Wikileaks and mega-plumbing issues: unresolved dilemma's revisited." *Global Media Journal Australia Edition* 5.1 (2011) Print., p. 2

2. *Freedom*: on the importance of information and awareness

Jonathan Franzen's *Freedom* (2010)²⁸ is a novel about living in the United States in the 21st century. It tells the story of the Berglund family, each member of which is facing a plethora of difficult choices in their lives as a result of the 'freedom' that is so important in contemporary American society. Throughout the novel, the reader gets the feeling that while individuals may enjoy a certain freedom as to the choices they make in life, the government has a near-unlimited freedom to do as it pleases as well.

The novel is of relevance for this subject, because it conveys a feeling of powerlessness to its readers. A powerful corporation is able to exploit Joey, the youngest of the Berglunds, and causes great damage to the environment. And yet, the characters seem unable to do something about it.

As the novel unfolds, it turns out that some things simply happen without any recourse to justice for the people involved. For the purposes of this paper, the main character of importance is Joey. Joey, The Berglunds' son, gets involved with LBI, an oil services company that was "scrambling for insider access to the new administration" (300). Through nepotism, LBI wins a contract to supply the US army with truck parts to be used for the war in Iraq. However, the job must be done fast and cheap, rather than decently, so Joey – who is not even 21 – ends up trying to find spare parts, lured in by the promise of earning \$600 000 and that "no eyebrows will be raised." (411) Upon finding out that the parts are worthless, he tries to inform his boss that using these parts is dangerous and may end up costing lives. "The stuff in Paraguay looks so bad, I don't think they're even going to accept it." "You leave that to me. I know the LBI people on the ground here. I can make it work. You just send me thirty tons, and then you can get back to reading poetry or whatever." (439) Tormented by guilt, Joey ends up calling the Vice-President of LBI, but all he can tell him is "I suggest you make the shipment right away. [...] You just need to remember that this is not a perfect war in a perfect world." (440) Forced into living up to his promise because of the huge debt he put himself in, Joey eventually ends up sending LBI the parts. And what he feared ends up happening: several American trucks break down, "leaving their contract drivers to be butchered by insurgents." (442)

Joey's story illustrates the importance of information in the public sphere. He is the linchpin between two worlds: if he complies with the contract, there will be casualties. If he doesn't comply, he loses all of his money and the savings of his wife. At the mercy of Bartles and LBI, politically and economically much more powerful actors than himself, he is silenced, even when he speaks to LBI directly. Going to court would mean getting sued for non-fulfillment of the contract (440). There seems to be no way to hold Bartles and LBI, who are clearly filling their own pockets at the cost of soldiers' lives, accountable.

Towards the end of *Freedom*, Walter, Joey's father, attends the opening of LBI's new body armor plant and is asked to give a speech. Upon finding out about the position that his son is in with LBI, he feels the urge to make some kind of stand against the company. He takes the opportunity to expose LBI:

"Just a couple of more things!" Walter cried, wresting the mike from its holder and dancing away with it. "I want to welcome you all to working for one of the most corrupt and savage corporations in the world! Do you hear me? LBI doesn't give a shit about your sons and daughters bleeding to death in Iraq, as long as they get their thousand-percent profit! I

²⁸ J. Franzen. *Freedom*. 1st ed. London: Fourth Estate, 2010. Print. Throughout the rest of this paper, page references to citations from this novel will appear in the text between brackets.

know this for a fact! I have facts to prove it! That's part of the perfect middle class you're now joining! Now that you're working for LBI, you can finally make enough money to keep your kids from joining the Army and dying in LBI's broken-down trucks and shoddy body armor!" (484)

Walter is hard-handedly taken off the stage and beaten up by an angry crowd. However, his effort was not in vain: a recording of his speech quickly circulates the internet, gathering Walter support for his initiative Free Space. This non-profit organization hopes to raise awareness of environmental issues amongst young people. It turns out that Walter's stand against a powerful corporation that engages in shady deals at the expense of lives inspired them to join his cause. Thanks to the internet, the news of this stand was able to reach an enormous audience and so Walter's attempt to expose LBI became fruitful.

This is reminiscent of what Wikileaks tries to achieve. Although it cannot hold powerful organizations legally accountable directly, it can expose them in the public sphere. In doing so, the public – in their capacity of voters and consumers – may attach consequences to what these corporations or governments do. The internet facilitates fast circulation of these documents, securing maximum impact of the information that Wikileaks chooses to disclose. The essence of what Wikileaks contributes, then, is making available to the public information that is otherwise inaccessible. Or rather, it provides whistleblowers with a platform to which they can safely and anonymously upload materials they feel should come to the attention of the voting public. The public may then choose to disregard this information, and probably not all leaks contain information that is vital to the rational-critical debate. But in any case, the information is available, so that if the public chooses to do so, it may take knowledge of it and take it into consideration.

3. Against Wikileaks: two critical observations

The point that this paper hopes to make, is that Wikileaks signals a new step in the evolution of Habermas' public sphere. With the infrastructure for free and accessible debate that the internet offers, it provides a need that is becoming increasingly essential for the rational-critical debate: information. Indeed, if Habermas is right in supposing that powerful corporations and governments hold a monopoly in disclosing information to the public, and are thereby able to influence the political agenda, then Wikileaks seeks to amend this imbalance in influence.

Two critical observations can be made, and are frequently made, in this context. Firstly, one might ask whether Wikileaks is not just another news organization. How do its activities differ from those of journalists? Secondly, the question arises what the role of the legal system is in this regard. In a time where PR damage can kill an enterprise – or a government – information can be very dangerous. The Robin Hood-style hacktivism that Wikileaks undertakes in seeking to expose powerful entities to the public at large can become questionable, because it is only a group of private persons. Who are they to decide what gets posted, and what not? Their leaks carry implications of wrongdoing. But is that not up to a court of law to decide?

3.1 Wikileaks & Journalism

A question often heard is how exactly Wikileaks differs from traditional sources of journalism, like papers and news programs. This difference has become particularly small since the rise of the Internet, which allows for much easier access to both news and sources. All major news organizations have websites and their online activities are starting to become more important for

their survival than their traditional, off-line products.²⁹ However, Wikileaks differs from traditional sources of journalism in two important ways: it only discloses raw information, rather than edited articles, and it relies solely on whistleblowers for its content.

As was already noted by Habermas, the mass media have become too influential in the public sphere. News organizations often have their own political agenda, and even if there are politically independent sources, the journalist himself always has an opinion. Wikileaks explicitly states that it does not filter the information it gets: all files they receive from their sources are put online. Admittedly, this may lead to an overload of information, but the possibility to examine every last piece of information is there for everybody. Therefore, Wikileaks and traditional news sources supplement, rather than overlap each other. Newspapers can write easily digestible articles about the information leaked, while the public always has the possibility to inspect the original materials themselves on Wikileaks' site. In fact, this is part of Wikileaks' strategy: it often coordinates leaks with major newspapers so that they can provide full coverage of the information disclosed.

In this respect, it is interesting to examine the leak of April 5th, 2010, called "Collateral Murder."³⁰ The leak consisted of a "classified US military video depicting the indiscriminate slaying of over a dozen people in the Iraqi suburb of New Baghdad – including two Reuters news staff."³¹ This leak is particularly significant, because prior to its disclosure by Wikileaks, Reuters had attempted to obtain the video via the Freedom of Information Act. They were unable to do so. The formal ways to obtain the footage did not yield any result, but Wikileaks was able to disclose the video despite this (albeit through illegal means). "Collateral Murder" therefore shows that Wikileaks can be used, and is actually being used, to get out information to the public that it cannot obtain through official ways, such as the Freedom of Information Act or court procedures. The video immediately received widespread media-coverage all over the globe.³² It met with some criticism, but even the most critical observers cannot but feel horrified when looking at the footage. Julian Assange himself said that if the killings were lawful under the rules of engagement, then the rules of engagement were wrong.³³ The statement reveals the purpose that WikiLeaks had in posting the video online: to raise questions as to the allegedly unbridled use of violence in Iraq. This already becomes clear from the accompanying statement on the website, labeling the killings as "indiscriminate" and titling the video "collateral murder." By disclosing this classified material, Wikileaks is trying to get the public to question these acts. The leaks are well thought-out for maximum impact: unlike other whistleblower websites,³⁴ Wikileaks actively seeks media

²⁹ This was one of the main findings of a special committee, appointed by the Dutch government to investigate the future of the traditional printed press industry. Cf. E. Brinkman. *De Volgende Editie: Adviesrapport Tijdelijke Adviescommissie Innovatie en Toekomst Pers*. The Hague, 2009. Web.

³⁰ Accessible via www.collateralmurder.com

³¹ *Ibid.*, main page.

³² Cf. for instance TIME Magazine ('*Combat Video: The Pentagon Springs A Wikileak*', 6 April 2010, accessible digitally via <http://www.time.com/time/nation/article/0,8599,1978017,00.html>), The Economist ('*The Most Dangerous Man in Iceland*', 11 June 2010, accessible digitally via <http://www.economist.com/blogs/democracyinamerica/2010/06/wikileaks>), The Guardian ('*Wikileaks: reaction to the collateral murder video*', 8 April 2010, accessible digitally via <http://www.guardian.co.uk/world/richard-adams-blog/2010/apr/08/wikileaks-collateral-murder-video-iraq>), Newsweek ('*What Combat Looks Like*', 7 April 2010, accessible digitally via <http://www.newsweek.com/2010/04/06/what-combat-looks-like.html>) or the New York Times ('*Iraq Video Brings Notice to a Web Site*', 6 April 2010, accessible digitally via <http://www.nytimes.com/2010/04/07/world/07wikileaks.html>). (last access: 29-07-2011)

³³ Citation from the article in TIME magazine, op. cit.

³⁴ Cf. for instance www.openleaks.org, www.wikispooks.com or www.balkanleaks.eu

attention to get the public to read their documents.³⁵ For instance, they repeatedly hosted press conferences prior to disclosure of documents so as to secure media attention. This makes Wikileaks fundamentally different from traditional journalism. It collaborates with traditional media to make the news more easily digestible for the public, while keeping the original files available online for the public to inspect.³⁶ These documents are not filtered, so while Wikileaks may co-operate with traditional media organizations, it fulfills a decidedly different role in the process of disclosure.³⁷

Another important difference is that Wikileaks relies completely on whistleblowers for its content. Essentially, it is no more than a safe platform for people to upload classified documents to. Technologically speaking, this was hitherto impossible: Wikileaks can guarantee anonymity because its team consists of hackers and mathematicians whose programming skills are unparalleled. For the first time, people can publish compromising material on the internet completely anonymously. An analogy has often been drawn with the disclosure of the Pentagon Papers in what came to be known as the ‘Watergate-scandal’. In that case, the whistleblower had to steal physical documents and in secrecy deliver them to a trust-worthy source. This was a dangerous operation and the number of documents that could be disclosed was very limited.³⁸ Wikileaks makes it much easier for people to disclose documents in an anonymous way. These people are what makes Wikileaks. And Wikileaks, in turn, gives these people a voice.

3.2 Wikileaks & legal accountability

Wikileaks tries to hold politically accountable those who would otherwise escape this accountability because their deeds may remain unseen by the public. In this context, the question may arise whether these agents – if their behavior is really as heinous as Wikileaks makes it out to be – should not simply be taken to court. After all, is it not up to the judge to decide what accused are guilty of and to punish them accordingly?

I believe that *Freedom* very elegantly answers this question. In the beginning of the novel, Patty, one of the novel’s main characters, remembers from childhood asking her father, a lawyer, to tell her about the adversarial system. “Sometimes the P.A. and the judge and I all have the same adversary. We try to sort out the facts and avoid a miscarriage. Although don’t, uh. Don’t put that in your paper.”³⁹ The answer reveals cynicism about how the system works: the lawyer, who is supposed to look out for his client’s best interest, underhandedly works out the case with the judge and the P.A., which bypasses the system of court adjudication with its intended safeguards for the suspect.⁴⁰ This practice is widespread, but the way in which Patty’s father describes it

³⁵ L. Lynch. "We're going to crack the world open" Wikileaks and the future of investigative journalism." *Journalism Practice* 4.3 (2010): 309-18. Print., p. 311

³⁶ B. Thomass. "Wikileaks and the question of responsibility within a global democracy." *European View* 10 (2011): 17-23. Print., p. 17

³⁷L. Lynch., p. 317: “In a moment when investigative journalism is recognizably in a crisis, Wikileaks holds itself up as a champion of principles many journalists hold dear – freedom of information and the sanctity of the source – yet embeds these principles in a framework of cyberlibertarianism that is frequently at odds with the institutional ethics of journalists and editors.”

³⁸ For a detailed account of the dangers and motives involved, see D. Ellsberg. *Secrets: A Memoir of Vietnam and the Pentagon Papers*. New York: Viking Press, 2002. Print.. The author of this memoir is the journalist who stole the Pentagon Papers.

³⁹ Franzen., p. 32

⁴⁰ Plea bargaining, which is referred to by Patty’s father, has been widely criticized on the grounds that it “unequivocally makes it easier to convict the innocent”, or at least that it “faces the innocent defendant with unconscionable coercion to enter into a plea.” For a critical analysis of the plea bargaining process and the parties

reveals that it isn't entirely fair. That the legal system does not function entirely as it should, becomes apparent later in the novel, when Patty is raped by Ethan, the son of the rich and influential Chester Post.

Inspired by her coach, Patty wants to press charges against Ethan. But her father advises against it: "The Posts can afford any lawyer in the country. And as soon as the accusation is made public, the worst of the damage to the defendant is over. He has no incentive to speed things along. In fact, it's to his advantage to see that your reputation suffers as much as possible before a plea or trial." (43). Apparently, the worst such a case can do is damage the reputation of a person. The real damage will not be the sentence, simply because there will not be one, even though the rape clearly took place: "the world will see an Exeter boy who's going to Princeton and was responsible enough to use contraceptives, and gentleman enough to leave the party and drive you home." (46)

In legal theory, several explanations are offered for the question why the legal system does not always seem to work as it should, in that it seems tipped in favor of powerful, rich agents. Shoshanna Felman accords this to the deprivation of a 'voice' of the weaker parties. Their 'stories' remain unheard, as modern legal discourse "cannot recognize our everyday languages because to do so would contradict the monologic hold which the legal discourse, to be authoritative, must maintain."⁴¹ The trial yields undesirable results, because there is no room for subjective experiences – only for legal grounds. The trial only answers to juridical questions. Put very briefly, that almost automatically favors richer agents over poorer ones, because they will be able to afford better lawyers. These claims are substantiated by legal sociologists, who carry out empirical research in order to assess the way the legal system works.⁴²

I believe that certain misdoings cannot be approached through legal proceedings. *Freedom* illustrates this well: initiating a rape trial would only lead to humiliation of Patty herself, while Joey finds himself in a situation where, if he goes to court, he himself will be liable to pay an enormous amount of damages. This is not to say that the legal system is completely inefficient, but only that it does not provide suitable solutions to every problem. For instance, political decisions can almost never be contested in court.⁴³ An in-depth analysis of these shortcomings of the legal system is outside the scope of the paper, but it is important to note here that *Freedom* points out that certain issues cannot be resolved legally. Certain agents can only be exposed publicly, like LBI which is eventually exposed by Walter. That is precisely what Wikileaks tries to facilitate.

4. Wikileaks' responsibility and credibility as the watchdog of the Public Sphere

Wikileaks tries to hold powerful agents politically accountable, by exposing them in the public sphere. Through disclosure of sensitive materials, it hopes to inform the public of secret agendas these agents may hold, thus stimulating the rational-critical debate. As we have seen, Wikileaks is not easily comparable to a traditional source of journalism, and seeks to address political issues

involved in it, see F. Hessick III and R. Saujani. "Plea Bargaining and Convicting the Innocent: the Role of the Prosecutor, the Defense Counsel, and the Judge." *BYU Journal of Public Law* 16.2 (2002): 189. Web.

⁴¹ W. Conklin. *The Phenomenology of Modern Legal Discourse*. Dartmouth / Ashgate: Hants, UK and Brookfield, USA, 1998. Print., p. 5. Cf. also S. Felman. *The juridical unconscious: Trials and Trauma's in the Twentieth Century*. Cambridge, MA and London, England: Harvard University Press, 2002. Print.

⁴² For a good overview of research carried out in this field, cf. R. Sandefur. "Access to Civil Justice and Race, Class and Gender Inequality." *Annual Review of Sociology* 34 (2008): 339-58. Print.

⁴³ The Bush administration has been widely criticized for its policy relating to, *inter alia*, the war in Iraq. Professor Francis Boyle is among those who believe he could legally be held responsible: cf. www.bushtothehague.org (last access: 12-12-2011). Bush was found guilty of war crimes by the war crime tribunal in Kuala Lumpur, Malaysia. But until Bush is extradited, nothing can be done with that verdict. Meanwhile, Bush enjoys full immunity for political decisions in the United States. In short, legal procedures are not adequate means to exert influence on political decision making.

that cannot be resolved through legal means. However, one question remains: why should Wikileaks have the authority to steal and disclose information? So far, the implication of my thesis was that Wikileaks is trying to strengthen the democratic system. But within such a system, is it acceptable that there is a group of people, whom it does not seem possible to hold accountable in any way, that posts sensitive information online?

The change Wikileaks brought, called 'radical' by some,⁴⁴ lies in allowing whistleblowers to disclose their content to an enormous public through the internet. Wikileaks itself may not remain unique for a long time to come (i.e. other initiatives similar to it may arise⁴⁵), but it has paved the way to a global public sphere.⁴⁶ This global public sphere will likely be a digital environment in which it will be increasingly difficult for governments and large corporations to keep things secret. Not only will they possibly be targeted by hackers, but the true danger comes from within: their own employees may 'turn rogue' and submit compromising documents to Wikileaks or similar sites. Subsequently, these files become available to everyone in the world who has access to Internet.

But these files are not classified without reason. Reasons of national security or economic interest may require that certain things be kept a secret.⁴⁷ All societies have posed some restrictions on the freedom to information.⁴⁸ This is particularly so in diplomatic relations, where secrecy guarantees that negotiations can be carried out candidly and without disruption.⁴⁹ In short, governments may very well have reasons to keep information confidential. As for corporations, as private entities, in most democracies they enjoy a right to privacy.⁵⁰ Disclosing this information therefore almost always amounts to a breach of rights. The question then becomes whether Wikileaks' proposed ends justify these means.

In *Freedom*, this more or less ethical aspect of disclosure does not play a large role. Certainly, Walter is immediately fired after he exposes LBI's secret (486). Almost any company that deals with sensitive information makes their employees sign confidentiality agreement, the breach of which will lead to a loss of your job and usually large sums of damages. In this way, companies are protecting their privacy rights by making it difficult and risky to make public information that they consider private. Walter is considered a hero for defying those risks (491), but only by a crowd of activists that reject the government and the perceived excesses of consumerism: "Among the young people he spoke to, the all-purpose epithet for everyone from George Bush and Tim Russert to Tony Blair and John Kerry was "shithead." That 9/11 had been orchestrated by Halliburton and the Saudi royal family was a near-universal article of faith." (493). The fact that

⁴⁴ Lynch., p. 311

⁴⁵ Already, several Wikileaks 'copycats' can be found on the internet: cf. for instance www.balkanleaks.eu or www.brusselsleaks.com. Cf. also footnote 34 above.

⁴⁶ Thomass., p. 18: "The fact that a similar website went online at the end of January 2011 [...] shows that Wikileaks is just the beginning or the symbol for the emergence of other such revealers of sources which will become ubiquitous."

⁴⁷ Cf. the statement of Hillary Clinton in reaction to the Cablegate leaks: "People of good faith understand the need for sensitive diplomatic communications, both to protect the national interest and the global common interest. Every country, including the United States, must be able to have candid conversations about the people and nations with whom they deal. And every country, including the United States, must be able to have honest, private dialogue with other countries about issues of common concern [...] We count on the space of trust that confidentiality provides. When someone breaches that trust, we are all worse off for it." November 29, 2010 – accessible digitally via http://blogs.state.gov/index.php/site/entry/clinton_statement_2010_11_29 (last access: 12-12-2011).

⁴⁸ Tiffen., p. 3

⁴⁹ Page, M. "Open Secrets Questionably Arrived At: The Impact of Wikileaks on Diplomacy." *Defence Studies* 11.2 (2011) Print., p. 236

⁵⁰ Cf. for Europe: European Court of Human Rights (ECHR) 16-04-2002, *Colas Est v. France*, Appl. No. 37971/97, paragraph 41.

he seriously damaged the company's interests is largely overlooked, while attention is drawn to the fact that he was able to mobilize young people and raise awareness amongst them of the damage LBI is causing to the environment.

The reason for this is that there is a strong argument to be made that in this case, the right to privacy or confidentiality that LBI – or any government that may be the target of Wikileaks – enjoys is not absolute. It can be outweighed by the public's right to be informed. If what Habermas writes about manipulation of public opinion by the ruling elite's PR machine is true, then the only way to generate 'counter-publicity' is to disclose information that disproves the idealized image these agents are able to create of themselves.⁵¹ Needless to say, these agents will not disclose this information themselves. The only way to get this information out, then, is to expose it in violation of legal norms protecting them. But the problem is that it is impossible to assess the content, importance and impact of a leak before it takes place, so that the question whether the leak justified a breach of rights of the concerned institution can only be answered after the facts.

Above, I argue that Wikileaks provides a valuable contribution to democracy. This assumption implies a justification of the means it uses to disclose the information it deems relevant. This justification has two grounds: the belief that discretionary powers to keep things secret on behalf of governments are too wide, and the belief that Wikileaks is a trustworthy and responsible source of information. As for the first ground, this is the judicial complementation to the grip that large organizations have on the public sphere, discussed above.⁵² Today's popular skepticism is insufficient to adequately scrutinize the government, and the latter keeps it that way by making sensitive information that could lead to scrutiny confidential.⁵³ To put it simply, Wikileaks exposed too much information that many people felt should have been public from the beginning.⁵⁴ Admittedly, the 'sensationalist' value of this news may have added to that. And yet, I believe the opinion that these things should have been public is wide-spread.⁵⁵

As for the second ground, if one is skeptic about the secrecy that large organizations make use of, then it becomes easier to give an organization like Wikileaks the benefit of the doubt when assessing their trustworthiness. After all, they are taking steps to combat the secrecy that keeps organizations immune (to an extent) from public scrutiny. A major factor in this regard is the fact that Wikileaks only publishes raw data.⁵⁶ It relies on traditional news sources to interpret this data and present it to the public in a digestible manner (whether that is critical of Wikileaks or not), while keeping the data itself available for inspection. Moreover, Wikileaks is itself to a large extent

⁵¹ J. Habermas. *The Habermas reader*. Ed. W. Outhwaite. Oxford., 2007. Print., p. 40

⁵² R. Marlin. "Propaganda and the ethics of Wikileaks." *Global Media Journal Australia Edition* 5.1 (2011) Print: "Just as power is information, one can see power trying to control information." P. 4

⁵³ Page., p. 241

⁵⁴ Cf. for instance the Collateral Murder leak, discussed above: the repeated attempts by Reuters to obtain the video, as well as the public reaction to it, indicate that this information – about what 'really' goes on in Iraq – is apparently of interest to the public. A similar reaction followed the disclosure of the 'Guantanamo Files': cf. J. Margulies, "What Wikileaks Hath Wrought: What did they tell us about Guantánamo? Exactly what we wanted to hear," *The New Republican* April 2011 2011: 12-12-2011 <<http://www.tnr.com/article/politics/87520/wikileaks-guantanamo-bay-national-identity>>

⁵⁵Tiffen, p. 2: "Certainly – by the end of 2010 – Wikileaks had made bigger impact than anyone, with the possible exception of Assange, could have imagined. Moreover apart from the specific leaks that had come forward, the organization embodied some changes that are likely to be enduring."

⁵⁶ It can be argued that this data, too, implies a selection of and an emphasis on certain facts and therefore is not 'raw.' While this may be true, "in a context where such facts and imagery are obscured or ignored completely, the leaked material favours truth in the overall balancing, and importantly so." Tiffen, p. 5.

responsible for its credibility. Following the Cablegate leak, many people thought it had fallen into mere ‘gossip’ and leaks that did not actually add anything to the public debate.⁵⁷ Wikileaks cannot afford to have many ‘failed’ leaks if it is to sustain its credibility, apart even from the continuous attacks on the personal credibility of Assange and his team. It will have to prove its credibility through its work.⁵⁸ If it fails to do so, the public will likely disregard its further activities, and so its impact on the public domain will become minimal.

In conclusion, Wikileaks was justified in leaking the documents it did. Most often, this concerned information that the public should have been informed of, if it is to come to a rational-critical debate in the public sphere. The fact that this information seems indispensable to the functioning of democracy automatically legitimates Wikileaks. As long as the information it discloses is relevant, it will remain a trustworthy source of information. But once it loses this credibility, the impact that it has on the public sphere will be lost.

Conclusion

Jerome Frank, a famous legal philosopher, once wrote that increasingly constructive doubt is the sign of advancing civilization. However, modern-day governments, like big corporations, have become experts of public relations, pre-empting any criticism by positing themselves as rightful leaders. How is constructive doubt to arise when that is the case?

In my thesis, I examined Habermas’ theory of the public sphere. As a theoretical foundation for the functioning of democracy, it holds that there should be a place, free from external influences, where the public can have a rational-critical debate about matters of public concern. But the public sphere does not function as Habermas envisioned it: PR machines of large and powerful agents determine the agenda of the debate, so that there is little opportunity for criticism to arise.

This is exemplified in *Freedom*, the novel I chose to discuss in relation to this problem. In the book, Walter exposes a large corporation in public – in violation of several contractual and even constitutional safeguards the corporation may enjoy. Although illicit, the information that Walter chose to disclose had great impact. Many young people were mobilized to join his cause, previously oblivious to what LBI was actually up to. Information played a crucial role in raising that awareness. Wikileaks tries to raise awareness of political issues in precisely the same way: by disclosing information that it feels is unrightfully withheld from the public.

Can it? I believe that at the very least, it has attempted to, albeit not without raising new questions. Using the potential of the internet to become a global public sphere in which people can freely express ‘constructive doubt’, it wants to offer people the information it needs to come to reasoned criticism. In essence, a movement like Wikileaks is an expression of resentment with a democracy that has become governed by bureaucracy and secrecy. In order to do so, it has to place itself outside of this system. Wikileaks and initiatives like it are therefore *by definition* undemocratic. But as long as the information it discloses is relevant, it may yet retain the trust of the public.

For now, it is fair to conclude that Wikileaks signals the new step in a global public sphere. Transparency of governments and corporations is one of its foundations: those who do wrong will

⁵⁷ “Perhaps Wikileaks would have more legitimacy if their whistle blowers were more accountable, and more selective in what they choose to disclose, with particular reference to gross abuses of power, which do not merit in any way, being kept secret from the electorate,” Page, p. 241.

⁵⁸ “We can expect a sustained attempt to discredit the Wikileakers, taking the form of giving widespread attention to faults and foibles of those involved in the activity, and paying maximal attention to harms resulting from ill-considered and unjustified leaks. The risks are great, and entail a need for circumspection and ethical sensitivity on the part of the Wikileakers,” Marlin, p. 6

be held accountable, not through court, but by suffering PR damage. Recently, President Obama has been backing away from use of the phrase 'war on terror.' Apparently, it had gotten a nasty connotation. Wikileaks has helped bring this to light. It remains to be seen whether Wikileaks can effectuate an actual influence on politics. For that, it would have to actually mobilize all those concerned citizens. Until we find out, we can only applaud it for offering them a chance to become mobilized.

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