

Refereed article

Do You Want to Know a Secret?

Wikileaks. Freedom. Democracy.

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Abstract

This article examines Wikileaks under reference to Habermasian democratic theory, using an analysis of Jonathan Franzen's novel "Freedom" (2010) to support its argument. The author argues that Wikileaks is significant in two ways. Firstly, it may strengthen democracy as it attempts to facilitate a global public sphere that is transparent. Secondly, it addresses feelings of frustration that arise out of an inability to hold certain agents legally accountable for their policies and acts. The article concludes with observations on the legitimacy of Wikileaks itself as a 'global watchdog.'

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 its 'leak' relating to the war in Afghanistan.²

When this article went to press, Wikileaks was surrounded by silence.³ However, I believe that even if Wikileaks does not come back the way it was when it gained notoriety throughout 2009 and 2010, it is nonetheless a phenomenon worth studying. This is the case for two reasons: in the first place, it uses the potential of the internet as a 'global public sphere' in an unprecedented way. By exposing the 'censored injustices' it speaks of, it aims to achieve transparency and freedom of information in political deliberation. But this exposure has other effects as well. In the second place, it makes an important contribution to

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¹ www.wikileaks.org (accessed on 15 July 2011).

² The leak took place on 25 July 2010 ('Afghan War Diaries', see <http://wardiary.wikileaks.org>).

³ See f.i. The Economist, *Wikileaks: Out of time and money*, accessible digitally via <http://www.economist.com/node/21536578> (accessed on 1 April 2012).

accountability of politically powerful agents. This is particularly so because these agents are often immune from legal prosecution, meaning that they are perceived to be ‘above the law’ in the sense that they can get away with anything. While Wikileaks may not be able to change that, we will see that – in line with Habermasian political philosophy – it tries to at least hold these agents accountable by publically exposing them. The Bush administration serves as a prime example of this as it is being widely criticised for its foreign as well as domestic policies but is immune from legal prosecution.⁴ The scope of this article is limited to what is perhaps the most controversial part of its legacy: the war in Iraq.

This article aims to examine these two claims. It does so from a law & literature (L&L) perspective. The L&L movement rose to prominence after James Boyd White’s *The Legal Imagination* received widespread attention. The movement has its roots in the United States, although there are also continental scholars who adopt this perspective when conducting legal research. Perhaps the most well-known form of L&L scholarship is “law as literature,” which assumes that legal texts and opinions are in themselves a form of literature. Thus, they can be subjected to literary analysis.⁵ This article, however, takes a different approach. Written from a law *in* literature perspective, it assumes that literature and literary theory may contain valuable lessons for legal studies. Literature may reflect commonly held opinions on law and the legal profession. Moreover, literary theory can often be used to better understand concepts that are of importance to legal scholars, such as democracy.⁶ The claims that I make in this article are based on the hypothesis that there is a commonly felt resentment against powerful agents that can seemingly get away with anything. Obviously, strictly legal sources cannot substantiate this claim as it is an empirical one. Relying on empirical studies to prove it, however, is also not desirable as ‘resentment’ is a very subjective term. Therefore, I chose to rely on literature as an expression of contemporary culture, representing commonly shared values, ideas or opinions in the author’s surroundings. For this reason, Jonathan Franzen’s *Freedom* (2010) was selected for the analysis. Not only is it a contemporary novel, it also deals with attitudes towards the legal system. I believe that this can be a springboard to illustrate my claims about the law.⁷

The article starts with a brief introduction to *Freedom*. It will then proceed to analyze Habermas’ theory of the public sphere and the potential of the internet for this theory, thereby investigating the first claim. Next, it will discuss the legal accountability – or the lack thereof – of the Bush administration. The article will end with some observations on the position of Wikileaks as a global watchdog.

⁴ Cf. for instance M. Haas. *George W. Bush, War Criminal?* Westport: Praeger Publishers 2009.

⁵ See J. Gaakeer, *De waarde van het woord: een studie van het werk van James Boyd White in het perspectief van Law and Literature*, Gouda: Quint 1995, p. 42ff, who gives an overview of prominent writers in this field.

⁶ B. Rockwood, *Law and Literature Perspectives*, New York: Peter Lang 1996, p. 13: “These works can be assessed by the degree to which they accurately inform the public of legal and ethical issues and choices, and by how they reflect, or help create, the climate of opinion towards the law.”

⁷ This is not the place to offer an in-depth introduction to L&L scholarship. For readers that are interested in learning more about the movement, I refer to T. Morawetz, ‘Law and Literature’, in: *A Companion to Philosophy of Law and Legal Theory*, ed. D. Patterson, Oxford: Wiley-Blackwell 2010; J. Gaakeer, ‘Literary-legal Remedies, an account of Law and Literature in practice’, *Bar-Ilan Law Studies* 2002-18, pp. 1-2; and, for a more critical – but very famous – account, R. Posner, *Law and Literature*, Cambridge, MA: Harvard University Press 2009 (3rd Ed.).

I. *Freedom*: Of Ordinary People and Their Dilemmas

Jonathan Franzen's *Freedom* (2010)⁸ 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 particular relevance for this article, 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 anything 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 article, the main character of importance is Joey. Joey, the Berglunds' son, gets involved with LBI, an oil services company that is "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 the assurance 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. But when he contacts his boss, it turns out that he is not at all responsive to his concerns. "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 had feared ends up happening: several American trucks break down, "leaving their contract drivers to be butchered by insurgents." (442)

Joey 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 his wife's savings. 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 being sued for non-fulfilment 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.

I believe that it is precisely this dilemma that makes the novel a contribution to the discourse on democracy and accountability. The feeling of powerlessness that holds Joey in its grip is recognisable: what can a single individual do against a powerful company?

II. Wikileaks & Habermas – the Public Sphere as the Foundation of Democracy

The backdrop for the answer to this question is the contemporary constitutional democracy. How does democratic theory work in practice in the new millennium? The work of Jürgen Habermas, one of the last century's most influential political thinkers, may shed some light on this.

⁸ J. Franzen. *Freedom*, London: Fourth Estate 2010. Throughout the rest of this paper, page references to citations from this novel will appear in the text between brackets.

II.1 An Introduction to Habermas' Political Philosophy

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).⁹ Ideally, people partake in this discussion in a rational and critical manner, thus providing "convergence of politics and morality."¹⁰ 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.¹¹ Through the mass media, these minorities – as well as governments and other public authorities – managed to exert influence on opinion-making in the public sphere.¹² Habermas elaborates on the importance of public opinion: people can be influenced using advertisement strategies, thus making them less critical of the established regime.¹³ 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 necessary 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 already notes here that this implies an exclusion of the working class from this sphere – if not formally, then at least in practice.¹⁴ 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 debate. The effects remained visible when voting rights were formally extended beyond the bourgeois class. 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."¹⁵ 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 whom

⁹ J. Habermas, *The Structural Transformation of the Public Sphere*, Cambridge & Oxford: Polity Press 1989, p. 2.

¹⁰ Idem, p. 104.

¹¹ Idem, 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."

¹² Idem, p. 193-196.

¹³ Idem, 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."

¹⁴ A. Edgar, *Habermas: The Key Concepts*, London & New York: Routledge 2006, p. 126.

¹⁵ A. Edgar, *Habermas: The Key Concepts*, London & New York: Routledge 2006, p. 127.

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 instil motivations in social actors that conform to the needs of the overall system dominated by those states and corporate actors.”¹⁶ The rational-critical debate as the foundation of the public sphere is lost. Habermas identifies the emergence of a “polycentric society of large organizations,”¹⁷ in which political decisions are the result of bargains between the legislator and large interest groups as the main cause of this. 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 favour 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, the public draws its information from “powerful, well-organized information producers.”¹⁸ 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 information that is withheld from the participants in the rational-critical debate available, but which is nonetheless 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.

II.2 The Internet as a Global Public Sphere?

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.”¹⁹ Contemporary politics, he argues, are dominated by the political and economical elite, not because the public debate is inaccessible to individuals, but because the agenda for debate is determined by these elites.²⁰ 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

¹⁶ C. Calhoun, *Habermas and the Public Sphere*, Cambridge, MA: MIT Press 1993, p. 26.

¹⁷ J. Habermas, *Between facts and norms: contributions to a discourse theory of law and democracy*, Oxford: Oxford University Press 1996, p. 303.

¹⁸ *Idem*, p. 380.

¹⁹ J. Habermas. *Between facts and norms: contributions to a discourse theory of law and democracy*, Oxford: Oxford University Press 1996, p. 304.

²⁰ “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 1996, p. 314.

which he calls 'civil society.'²¹ After all, the political centre is not as fast to pick up on social tensions and problems as the individual citizens are. 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 centre, the advantage of greater sensitivity in detecting and identifying new problem situations."²² In short, the individual's access to the public debate should be achieved by coming together in civil society, but these organisations should not become dominant in determining the political agenda themselves.

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 the crucial point for Habermas 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.²³ 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 have at least developed mechanisms to monitor them. In fact, it is unthinkable that any modern political campaign would not make use of the internet and social media. Does this mean the internet is indeed the fulfilment 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 not only lies in the advantage in terms speed and scale, it has also made communication with a much larger public possible, freeing itself from traditional limitations imposed by cultural and spatial limitations.²⁴ However, so far the internet does not seem 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 formalised institutional procedures that incorporate the outcome of the public debate in decision-making processes,²⁵ the lack of a common identity between the participants in this digital public sphere,²⁶ and the quality of communication on the internet.²⁷ 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.²⁸ Building on that, most theorists agree that the internet has already brought about some

²¹ J. Habermas. *Between facts and norms: contributions to a discourse theory of law and democracy*. Oxford: Oxford University Press 1996, 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, distil and transmit such reactions in amplified form to the public sphere."

²² Idem, p. 381.

²³ 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).

²⁴ J. Bohman, 'Expanding dialogue: The Internet, the public sphere and prospects for transnational democracy', *The Sociological Review* 2004-52, pp. 131-55, pp. 134-135.

²⁵ P. Dahlgren, 'The Internet, Public Spheres, and Political Communication: Dispersion and Deliberation.' *Political Communication* 2005-22.2, pp.147-62, p. 152 and Bohman 2004, supra note 24, p. 146.

²⁶ Bohman 2004, p. 140.

²⁷ Dahlgren 2005, p. 156 and B. Cammaerts & L. van Audenhove, 'Online Political Debate, Unbounded Citizenship and the Problematic Nature of a Transnational Public Sphere', *Political Communication* 2005-22, pp. 179-96.

²⁸ Dahlgren 2005, p. 152 and Bohman 2004, p. 140.

improvements in the public sphere in that it makes it much more accessible, and that it may fulfil its true potential once its shortcomings are remedied.²⁹ Ideally, it will become a transnational forum where everyone can freely voice his 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."³⁰ 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.³¹ 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 realised, 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 documents online that are difficult to obtain by individuals. Some of these files are classified, while others may simply not be publicly available. Either way, the 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 with the information in the most objective 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. Precisely because of the internet, "Wikileaks is another step in how globalisation makes censorship of information by national governments increasingly difficult."³²

The way in which online circulation of information can influence society is exemplified by *Freedom*. Towards the end of the novel, Walter, Joey's father, attends the opening of LBI's new body armour 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 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 armour!" (484)

Walter is forcibly removed from 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 support for Walter's initiative 'Free Space'. This non-profit organisation hopes to raise awareness for environmental issues amongst young people. It turns out that Walter's stand

²⁹ Dahlgren 2005, p. 160; Bohman 2004, p. 153; Cammaerts & van Audenhove 2005, p. 193.

³⁰ Calhoun 1993, supra note 16, p. 23.

³¹ Habermas 1996, supra note 20, p. 314.

³² R. Tiffen, 'Wikileaks and mega-plumbing issues: unresolved dilemma's revisited', *Global Media Journal Australia Edition* 2011-1, p. 2.

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 precisely what Wikileaks tries to achieve. Although it cannot directly hold powerful organisations legally accountable, 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 information that is otherwise inaccessible available to the public. 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 in the knowledge and take it into consideration.

III. Wikileaks & Legal Accountability

III.1 The Failure of the Trial

If we accept that Wikileaks tries to make a contribution in the realm of politics by advancing transparency in the public sphere, then how is it related to legal accountability? Situations in which leaked documents can be used as evidence in a court of law notwithstanding, I believe that Wikileaks can and should be seen as a reaction to structural shortcomings in the justice system. The reasoning here is simple: if the Bush administration cannot be held legally accountable, it should at least be held politically accountable. Certainly, 'leaking' documents on a large scale is something fundamentally different than taking someone to court, and frustration over politics is not the same as being denied legal standing to challenge certain practices. And yet, these sentiments share the same source: discontent over the way in which certain powerful agents can seemingly get away with anything. Recall Joey's situation in *Freedom*. He is stuck in a position in which he cannot do anything, either legally or politically, about LBI's malpractices. Therefore, I believe that if we are to come to a meaningful understanding of Wikileaks and its potential, it is important to investigate what is 'wrong' with trials.

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." (32) 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.³³ This practice is widespread, but the way in which Patty's father describes it 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.

³³ Plea bargaining, which is referred to by Patty's father, has been widely criticised 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 involved in it, see F. Hessick III & R. Saujani, 'Plea Bargaining and Convicting the Innocent: the Role of the Prosecutor, the Defense Counsel, and the Judge', *BYU Journal of Public Law* 2002-16, p.189.

Inspired by her coach, Patty wants to press charges against Ethan. 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 a person’s reputation. 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) Clearly, something is not right if it is pointless and even damaging for a rape victim to initiate proceedings.

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 favour 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 recognise our everyday languages because to do so would contradict the monologic hold which the legal discourse, to be authoritative, must maintain.”³⁴ 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, a trial almost automatically favours richer agents over poorer ones, because they will be able to afford better lawyers. The lawyers are experts in developing a legal narrative and the judge only takes that into account. But what lies at the heart of the trial – the subjective experiences of the parties themselves – is all too often disregarded.³⁵ These claims are substantiated by legal sociologists, who carry out empirical research in order to assess the way the legal system works.³⁶

I believe that certain misdoings cannot be approached through legal proceedings. *Freedom* illustrates this well: initiating a rape trial would only lead to the 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. An in-depth analysis of these shortcomings of the legal system is outside the scope of the article, 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.

III.2 Accountability of the Bush Regime

The ‘failure of the trial’ is exemplified by the difficulties involved in holding president Bush and his staff legally accountable for what are widely perceived to be war crimes. While the administration was criticised for several aspects of its policy (see the introduction and the

³⁴ W. Conklin, *The Phenomenology of Modern Legal Discourse*, Brookfield: Ashgate 1998, 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.

³⁵ Interestingly, this is increasingly being taken into account by so-called ‘Problem-Solving Courts’. These courts take a humanitarian approach to adjudication by focusing on the individual and his ties with the community. Much has been written about this; cf. f.i. J.L. Nolan, *Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement*, Princeton: Princeton University press 2009 or A. de Savornin Lohman, ‘Rechtspraak op weg naar een duurzame samenleving: verbindende rechtspraak’, *Tijdschrift voor Coaching* 2009-4, pp. 42-45.

³⁶ 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* 2008-34, pp. 339-58.

literature cited there), the focus of this section will be on the war in Iraq. The invasion of Iraq was controversial in the first place because of the uncertainty about the motives for the invasion.³⁷ In a more general sense, the war is criticised for the way in which the US disregarded human rights in the course of the conflict. It is argued, for instance, that causing tens of thousands of casualties without a just cause is disproportional to whatever reasons there may have been for the invasion, rendering the invasion in clear violation of the international laws of warfare.³⁸ The way in which the US acted in defiance of the UN Security Council, because it was unacceptable that they could be constrained by other states to start a 'just' war, is also seen as highly problematic, especially because in this way there can be no meaningful international framework safeguarding the world against aggression by more powerful states.³⁹ Most importantly, it is felt that the way in which the US government treated Iraqi citizens was "colonial," discriminatory and unjust.⁴⁰

Clearly, there seem to be grounds to at least start a criminal investigation. Indeed, many people, whether scholars or bloggers, argue that this should happen.⁴¹ But what are the legal instruments that enable you to actually do so? Prosecution of the Bush administration is problematic in the first place because of far-reaching state immunities granted in the United States legal system. Section 5 of the Military Commissions Act of 2006⁴² stipulates that:

No person may invoke the Geneva Conventions, or any protocols thereto, in any habeas or civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Services, or other agent of the United States, is a party, as a source of rights in any court of the United States or its States or territories.

This effectively places any US official outside the scope of application of the Geneva Conventions, the main international instrument for the law of warfare.⁴³ In other words, the Bush administration cannot be held accountable before an American court for any of the acts committed in relation to the War on Terror.⁴⁴ Seeing as the United States have not ratified

³⁷ It was speculated that the real reason for the invasion may have been Iraqi oil: cf. J. Duffield, 'Oil and the Iraq War: How the United States could have Expected to Benefit, and might Still', *The Middle East Review of International Affairs* 2005-2. The official reasons for the invasion, i.e. Iraq's alleged possession of weapons of mass destruction, are also questioned: "Much of the claim revolved around the assertion made repeatedly by Bush administration officials and even in the National Intelligence estimate, deemed dubious by many of us back then and now known even by many Bush supporters to be specious, that Iraq obtained some of the elements to manufacture weapons of mass destruction from an African country." cf. J. Corlett, 'US Responsibility for War Crimes in Iraq', *Res Publica* 2010-2, pp. 227-244, p. 229.

³⁸ *Idem*, p. 231.

³⁹ W. Mansell, 'Goodbye to all that? the Rule of Law, International Law, the United States, and the use of Force', *J.L. Soc'y* 2004-4, pp. 433-456, pp. 438 and 453.

⁴⁰ P. Ali, 'I Am Iraq' - Law, Life and Violence in the Formation of the Iraqi State', *Utrecht Law Review* 2002-2, pp. 4-28, p. 19: "Similar to earlier forms of racism in the colonies, the social rationality underpinning this imperial project regulated how protecting life and putting to death were distributed and made acceptable, and it determined who would benefit from the occupiers' goals."

⁴¹ Cf. Corlett 2010, *supra* note 37, p. 240 or A. Gilbert, 'Are American war crimes above the law?', *Democratic Individuality*, 1 February 2012, accessible digitally via <http://democratic-individuality.blogspot.com/2012/02/are-american-war-crimes-above-law.html> (accessed on 1 April 2012).

⁴² Act to authorise trial by military commission for violations of the law of war, and for other purposes, Public Law 109-366, 120 Stat. 2600 (2006).

⁴³ The most important Geneva Conventions in this respect are the 1929 Third Geneva Convention relative to the Treatment of Prisoners of War, and the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

⁴⁴ M. Welch, 'Sovereign Impunity in America's War on Terror: Examining Reconfigured Power and the Absence of Accountability', *Crime Law Soc Change* 2007-3, pp. 135-150, p. 141: "The MCA reconfigures

the Statute of the International Criminal Court (ICC), it is also not likely that president Bush or any other American citizen can be prosecuted at the ICC in the Hague.⁴⁵ It has been argued that the ICC may nonetheless assume jurisdiction because some of the crimes that the US government is charged with in relation to the war in Iraq were perpetrated in countries that have ratified the statute.⁴⁶ Apart from that, national courts could also assume jurisdiction to try U.S. officials: recently, former president Bush had to cancel a trip to Switzerland because he might be arrested by human rights groups and forced to stand trial in Geneva.⁴⁷ In fact, Bush and Tony Blair have already been convicted by the war crimes tribunal in Kuala Lumpur, Malaysia.⁴⁸ But until they are extradited, the judgment will have no effect whatsoever. More than anything, these attempts make painfully clear the lack of accountability of former president Bush. It simply does not seem likely that anyone, American or non-American, will be able to effectively try Bush or any high-ranking government officials, if only for political reasons. The U.S. government has made it clear that if necessary, it will use force to recover any U.S. national from custody in the ICC.

The conclusion is that the former Bush regime could do whatever it pleased in Iraq without fearing scrutiny by a court of law. By many, this was felt to be an injustice. I believe that Wikileaks was able to offer a platform to these people who wanted to expose these “censored injustices” as Wikileaks calls them. The Bush administration may escape the jurisdiction of a court, but at least it can be held politically accountable by being exposed to the public. In this respect, it is interesting to examine the leak of 5 April 2010, called “Collateral Murder.”⁴⁹ 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 members of the Reuters news staff.”⁵⁰ 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. Again, the system of legal safeguards turned out flawed as in practice Reuters was simply unable to exercise its rights under the Freedom of Information Act. Formal ways to obtain the footage did not yield any result, but Wikileaks was able to disclose the video despite this. “Collateral Murder” therefore shows that Wikileaks can be used, and is actually being used, to get information out 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.⁵¹ It met with

and recentralized power in the war on terror in ways that gut due process and meaningful judicial oversight”.

⁴⁵ M.M. Hakki, 'War Crimes and the War in Iraq: Can George W. Bush and Tony Blair be Held Legally Responsible?', *International Journal of Human Rights* 2006-1, pp. 3-17, p. 10.

⁴⁶ Professor Francis Boyle has filed a complaint with the Prosecutor of the ICC: see <http://www.bushtoth Hague.org/> (accessed on 29 July 2011).

⁴⁷ <http://www.reuters.com/article/2011/02/05/us-bush-torture-idUSTRE7141CU20110205> (accessed on 29 July 2011).

⁴⁸ They were found guilty of ‘crimes against peace.’ Kuala Lumpur War Crimes Tribunal 22 November 2011, Criminal Proceeding no. 1-CP-2011 (*Chief Prosecutor of the Kuala Lumpur War Crimes Commission v. George W Bush & Anthony L. Blair*), accessible digitally via http://www.brussellstribunal.org/pdf/Extempore_Judgment_KL_War_Crimes_Tribunal.pdf (accessed on 1 April 2012).

⁴⁹ Accessible via www.collateralmurder.com.

⁵⁰ Ibid, main page.

⁵¹ 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

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.⁵² 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, labelling the killings as “indiscriminate” and titling the video “collateral murder.” The idea is that if people are so visually confronted with the injustice carried out on the other side of the world, they will not accept it. Even if the Bush administration cannot be held legally accountable for these acts, it can at least be exposed to the public at large.

This is just one example of critical attention that was drawn to the Bush regime by Wikileaks.⁵³ The effect of these ‘leaks’ is identical to the circulation of Walter’s video in *Freedom*; it opens the eyes of the people to ‘censored injustices’ in hopes that they will raise their voice against them. This brings us back to Habermasian democratic theory: democracy works if a well-informed public can deliberate on its government in a transparent public sphere. Wikileaks uses the potential of the internet to create a *global* public sphere, or at least the foundations for a public sphere on a global scale. And by making this sphere more transparent, it holds those who have something to hide accountable. Even if it is not in a court of law.

IV. Wikileaks’ Responsibility and Credibility as the Watchdog of the Public Sphere

As previously mentioned, 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. However, one question remains: why should Wikileaks have the authority to steal and disclose information? So far, the implication of this essay is 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, posting sensitive information online?

The change Wikileaks brought about, called ‘radical’ by some,⁵⁴ lies in allowing whistleblowers to disclose their content to an enormous audience through the internet. Wikileaks itself may not remain unique for a long time to come (i.e. other initiatives similar to it may arise⁵⁵), but attempts to pave the way for a global public sphere.⁵⁶ This global

<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> (accessed on 29 July 2011).

⁵² Citation from the article in TIME magazine, supra note 51.

⁵³ For other examples, see f.i. the ‘Afghan War Diary’ (accessible digitally via http://wikileaks.org/wiki/Afghan_War_Diary_2004-2010, accessed on 1 April 2012) or the ‘Gitmo Files’ (accessible digitally via <http://wikileaks.org/gitmo/>, accessed on 1 April 2012). Both ‘leaks’ generated considerable negative attention for the Bush administration.

⁵⁴ L. Lynch, ‘We’re going to crack the world open’: Wikileaks and the future of investigative reporting,’ *Journalism Practice* 2010-3, p. 311.

⁵⁵ Already, several Wikileaks ‘copycats’ can be found on the internet: cf. for instance www.balkanleaks.eu or www.brusselsleaks.com.

⁵⁶ B. Thomass, ‘Wikileaks and the question of responsibility within a global democracy,’ *European View* 2011-10, pp. 17-23; 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.”

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 the 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.⁵⁷ All societies have posed some restrictions on the freedom to information.⁵⁸ This is particularly so in diplomatic relations, where secrecy guarantees that negotiations can be carried out candidly and without disruption.⁵⁹ In short, governments may very well have good reasons to keep information confidential. As for corporations, as private entities, in most democracies they enjoy a right to privacy.⁶⁰ 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 a confidentiality agreement, the breach of which will lead to a loss of their job and usually large sums of damages. In this way, companies protect their privacy rights by making it difficult and risky to make information that they consider private public. 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 he seriously damaged the company's interests is largely overlooked, while attention is drawn to the fact that he was able to mobilise young people and raise awareness amongst them for 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 idealised image these agents are able to create of themselves.⁶¹ Needless to say, these agents would 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

⁵⁷ Cf. Hillary Clinton's statement 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." 29 November 29 2010, accessible digitally via http://blogs.state.gov/index.php/site/entry/clinton_statement_2010_11_29 (accessed on 12 December 2011).

⁵⁸ Tiffen 2011, supra note 32, p. 3.

⁵⁹ M. Page, 'Open Secrets Questionably Arrived At: The Impact of Wikileaks on Diplomacy.' *Defence Studies* 2011-2, p. 236.

⁶⁰ Cf. for Europe: *Colas Est v. France*, Decision of 16 May 2002, [2002] ECHR, at 41.

⁶¹ E. Outhwaite, *The Habermas Reader*, Oxford: Oxford University Press 2007, p. 40.

it takes place, which is why 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 the 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 organisations have on the public sphere, discussed above.⁶² Today's popular scepticism is insufficient to adequately scrutinise the government, and the latter keeps it that way by making sensitive information that could lead to scrutiny confidential.⁶³ To put it simply, Wikileaks exposed too much information that many people felt should have been public from the beginning.⁶⁴ Admittedly, the 'sensationalist' value of this news may have added to that. And yet, I believe that the opinion that these things should have been public is widespread.⁶⁵

As for the second ground, if one is sceptical about the secrecy that large organisations make use of, then it becomes easier to give an organisation 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.⁶⁶ 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, to a large extent Wikileaks itself is responsible for its own 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.⁶⁷ Wikileaks cannot afford to have many of such 'failed' leaks if it is to sustain its credibility, even apart from the continuous attacks on the personal credibility of Assange and his team. It will have to prove its credibility through its work.⁶⁸ If it fails to do so, the public will likely disregard its further activities, and so its

⁶² R. Marlin, 'Propaganda and the ethics of Wikileaks,' *Global Media Journal Australia Edition* 2011-1, p. 4. "Just as power is information, one can see power trying to control information."

⁶³ Page 2011, supra note 59, p. 241.

⁶⁴ 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 (accessible digitally via <http://www.tnr.com/article/politics/87520/wikileaks-guantanamo-bay-national-identity> (accessed on 1 April 2012)).

⁶⁵ Tiffen 2011, supra note 32, 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 organisation embodied some changes that are likely to be enduring."

⁶⁶ 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 2011, p. 5.

⁶⁷ "Perhaps Wikileaks would have more legitimacy if their whistleblowers 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 2011, supra note 59, p. 241.

⁶⁸ "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 2011, supra note 62, p. 6.

impact on the public domain will become minimal. In fact, as this article is being published, Wikileaks has become 'dormant' (see introduction). Perhaps it was silenced by credit card companies that cut them off from financing.⁶⁹ Perhaps it happened because Assange was in jail. Either way, this does not detract from the significant contribution that Wikileaks made to transparency and accountability of political institutions. This contribution will serve as a lasting example for others.

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 'leaking' it as Wikileaks does.

Conclusion

Jerome Frank once wrote that increasingly constructive doubt is the sign of advancing civilisation.⁷⁰ 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?

Habermas' theory of the public sphere is a useful paradigm for answering that question. 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 mobilised 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. But it does more than that: it holds those who cannot be held legally accountable politically accountable for deeds that are widely perceived to be criminal. In doing so, it acts as a surrogate 'judge' for these agents, exposing them to the public sphere for doing things they meant to keep secret.

I believe that in this way, Wikileaks has attempted to 'fix' particular elements of modern democratic society, albeit not without raising new questions. Using the potential of the internet to create a global public sphere in which people can freely express 'constructive doubt', it aims to offer people the information they need to come to reasoned criticism. In essence, a movement like Wikileaks is an expression of resentment towards 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.

⁶⁹ Cf. for instance J. Ball, 'The Bankers' blockade of Wikileaks must end', *The Guardian*, 24 August 2011, accessible digitally via <http://www.guardian.co.uk/commentisfree/2011/oct/24/bankers-wikileaks-free-speech> (accessed on 1 April 2012).

⁷⁰ J. Frank, *Law and the Modern Mind*, Transaction Publishers: New Brunswick NJ 1930, p. 261.

For now, it is fair to conclude that Wikileaks signals the next step towards a global public sphere. Transparency of governments and corporations is one of its foundations: those who do wrong will be held accountable, not through trial, but by suffering PR damage. Recently, President Obama has been backing away from use of the phrase 'war on terror.' Apparently, it had obtained a nasty connotation. Wikileaks has helped bringing about that change. It remains to be seen whether movements like Wikileaks can exert an actual influence on politics. For that, it would have to actually mobilise all those concerned citizens. Until we find out, we can only applaud it for offering them a chance to become mobilised.