WikiLeaks, privacy, territoriality and pluralism. What does matter and what does not?

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Intro

Whistle-blowing is about revealing secrets of public importance. Thanks to WikiLeaks, we learnt about a classified US military video showing a 2007 attack by helicopters that killed a dozen people in Baghdad, including two Reuters reporters. In 2009 we were told about secret internal documents of one of the Icelandic major banks assessing the credit risk of its largest clients. In 2010 Cablegate started, proving a “yawning discrepancy between US words and actions.” The leaks continue.

Whistle-blowing is nothing new. Some argue it started as early as in 1863 in the US with the adoption of the False Claim Act that deals with financial fraud. Ordinary Americans became entitled to protection and some reward in return for disclosure of misbehaviour.

Whistle-blowing develops. It is the Internet that brought its new global potential. The substance is the same, but the form has changed.

The WikiLeaks saga has drawn a lot of media attention in the past few weeks. From time perspective one cannot help to notice some remarkable developments with regard to privacy, territoriality and pluralism, hidden behind the witch-hunt for Julian Assange.

Privacy

Privacy matters. As a principle, WikiLeaks accepts anonymous submissions in order to protect the whistle-blowers. However, they used to publish the leaks without interference. Experience taught them to remove the identifying details to shield innocent people. They started to pay more attention to privacy.

Furthermore, upon submission of any leak, currently “our journalists analyse the material, verify it and write a news piece about it describing its significance to society.” They consider whether and when to publish the material. Nowadays it is not about publishing everything on the Internet. Step by step, they are becoming regular journalists themselves.

In addition, let us briefly recall the Selistö v Finland Judgement of the European Court on Human Rights (16 November 2004) in which the Court found that journalists that quote official documents have no special duty to check these sources. Leaking official documents requires attention to privacy of the innocent, but no due consideration of the rights of governments.

 Territory

Space matters too. Such sensitive material must be hosted and managed in a country where the protection of media and of the freedom of expression is relatively strong. Having considered
Belgium and the US, among others ("forum shopping"), Julian Assange chose Sweden. (Nobody could predict that Sweden’s high priority for transparency will be "confronted" with stringent laws on sex acts.) But after Cablegate, WikiLeaks was forced to reconsider this choice. Several Internet service providers refused to host their content. Major financial institutions ceased to process payments for WikiLeaks. For the time being, it found its safe harbour in Switzerland.

Tony Judt correctly observed that “politics is a function of space – we vote where we live and our leaders are restricted in their legitimacy and authority to the place where they were elected.” Needless to say, any laws are limited to a given territory or territories. Ideas like WikiLeaks will come to an end when there is no single safe harbour left for them. But it is hard to imagine so.

It is not surprising that Julian Assange actively took part in drafting the Icelandic Modern Media Initiative – a “new legislative regime to protect and strengthen modern freedom of expression.”

**Pluralism**

And pluralism matters as well. Until recently WikiLeaks remained a monopolist. Those whistle-blowers who wanted to anonymously reveal wrongdoing had no other place to go. The last few months brought a substantial change.

The split in WikiLeaks might result in the launch of OpenLeaks (as of today still not in operation). It is noteworthy that it would substantially differ from WikiLeaks. Put simply, the difference is that only limited stakeholders would have access to the leaks (e.g. media entities, labour unions, NGOs, etc.) and it would be their decision whether, when and how to make them public. In case the leaked material is not published in a time designated by the source, it “can be sent to other media outlets.” The responsibility shifts to these media publishers.

Moreover, the media recently reported the launch of some national leaks organisations, e.g. in Indonesia or in Czech Republic. Also thematic whistle-blowing portals could be possible – BrusselsLeaks and BalkanLeaks have already been opened. New initiatives are just a matter of time. Whether these “competitors” survive or not is a separate question, but at least someone thought about pluralism in supply of leaked information.

**Witch-hunt (What does not matter)**

What does not matter in this debate is the witch-hunt against the media used by WikiLeaks: the Internet, accessible to all and accessible through time. These qualities make new media more powerful than newspapers that come at a price and are often thrown away. The protection given to new press media does however not depend on accessibility criteria. The European Court in *Karhuvaara & Iltalehti v. Finland* (16 November 2004) rightly granted protection to the publication of non-intimate facts with societal relevance in large scale newspapers: the fact that larger media took over news that already appeared in smaller media is in itself no reason to find a wrong or a problem in terms of the Convention. The fact that WikiLeaks is everywhere and readable by all is no objection.

What also does not or should not matter is the witch-hunt against Julian Assange. Regardless of what happened in these two Swedish bedrooms, the trial of Assange is not the trial of WikiLeaks. It is rather easy to shut down the messenger. He became a target for law enforcement in the US and in Sweden. The Americans put a lot of effort into finding grounds to accuse him of conspiracy, yet the Swedes seem not to be interested in prosecuting him for the alleged disclosure of state secrets. “Even if Julian Assange turns out to be guilty as charged, it should not distract from frightening beauty of his creation,” to quote The Times. And he is still committed to publishing secret documents.

**Outro**
Whistle-blowing develops. Technology brought new potential and its new era has just started. WikiLeaks-like ideas try to respond to the challenges. Criticism concerning privacy forced them to move closer to journalism. In their quest for finding the most media-friendly country they resort to forum shopping. And a successful example of WikiLeaks has encouraged others to launch their own whistle-blowing organisations. On the opposite side of the barricade, public authorities try to strengthen their control over sensitive information.

No matter what the future will bring, these developments prove that whistle-blowing crossed the point of no return.

Tags: OpenLeaks, pluralism, privacy, territoriality, Wikileaks

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