Insurgent Citizenship on the Internet:
Pushing Back the Limits of the Public Sphere

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Abstract

This paper presents ongoing doctoral research on Internet-based movements of "insurgent citizenship" which redefine the right to free expression and communication in contemporary democracies. Since its inception, the Internet has been perceived and lived as a space of free communication and democratic experimentations, withdrawn from state sovereignty and the sanction of the law. Today, these founding utopias are still alive in the militant practices of citizen groups undertaking the critical functions of the public sphere while operating at boundaries of legality, and more specifically of communications law (e.g. press law, copyright). Through such practices, these insurgent movements challenge the existing power balance between civil society and the state within the public sphere. By analyzing three instances of insurgent citizenship on the Internet – a French website documenting police abuse, WikiLeaks and peer-to-peer file-sharing – as well as the repression they undergo, the article assesses the ability of representative regimes to recognize *de jure* (in law) and *de facto* (in practice) the structural transformation of the public sphere brought about by the Internet.

Keywords: Activism, Censorship, Civil Disobedience, Freedom of Expression, Internet, Public Sphere.

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> The press is an element once unknown, a power formerly unused. Introduced into the world, it is speech acting like thunder ; it is the social electricity. Can you annihilate it? The more you try to compress it, the more violent will be the explosion. Thus you must resign yourself to live with it as you live with the steam-engine.
>
> Chateaubriand.
> *Memoirs* (1841).

In the morning of May 24th, 2011, then-President of France Nicolas Sarkozy entered the large tent that had been put up on the site of the Tuileries gardens, in Paris. Sarkozy had come to give the opening speech of the eG8 forum, an event organized under the French G8 Presidency. He was about to call for a dialogue intended to overcome the latent opposition between, on the one hand, civil society movements inspired by the founding utopias of cyberspace – which saw the Internet as a space emancipated from traditional legal sovereignty – and, on the other hand, representative democracies keen on transposing the underlying principles of their communications law to this global information network. Weeks earlier, when the French government announced that it would hold such an event, it immediately sparked skepticism and hostility among civil society groups wary of a government "power grab" over Internet governance. So in his speech, President Sarkozy explained his approach:

> "The states we represent need to make it known that the world you represent [i.e. the Internet] is not a parallel universe, free of legal and moral rules and more generally of all the basic principles that govern society in democratic countries. Now that the Internet is an integral part of most people's lives, it would be contradictory to exclude governments from this huge forum. Nobody could nor should forget that these governments are the only legitimate representatives of the will of the people in our democracies. To forget this is to run the risk of democratic chaos and hence anarchy (. . .). A social contract cannot be drawn up by simply lumping together individual aspirations."

If the aim of the eG8 was to build trust between the activists, scholars and entrepreneurs attached to the open Internet and representative governments, it undoubtedly failed. The dominating theme of the event's media coverage was actually that of their antagonism. During the two days of the forum, speakers were often interrupted by members of the audience who wanted to denounce what they deemed to be a "political whitewashing" operation meant to overshadow the ongoing "Internet takeover" by governments. Against the French President's attempt to stress that policies aimed at regulating the Internet were carried on in the name of representative democracy – since they had been adopted by the "only legitimate representatives of the will of the people" –, many activists, scholars and entrepreneurs instead denounced Internet policies by invoking the very principles on which representative governments are based: democracy and the rule of law.

The work of socio-anthropologist James Holston on "insurgent citizenship" in Brazilian cities provides important insights to make sense of this ongoing conflict around the regulation of the Internet. Through this notion, Holston refers to "organized grassroots mobilizations and everyday practices" that aim to assert the equality of rights, to expand citizenship to new realms and which are found, writes Holston, "in struggles over what it means to be part of the modern state" [Holston, 1999: 47; 2008]. Such forms of political participation embody an "insurgent" citizenship because as they operate at the boundaries of legality, tend to "parody, derail or subvert state agendas," and challenge "established histories" of a unequal, "differentiated citizenship". Through his analysis of the criminalization of poverty, of getthoisation or of increased policing, Holston also shows that insurgent citizenship triggers a reaction from the elites, who seek to maintain the *status quo* through segregation and violence, which in turn contributes to eroding rights. If the notion of "insurgent citizenship" can throw light on the conflict between representative democracies and the Internet's militant groups, it is because in the same way as urban policy shapes the cities we inhabit, communications law shapes what Habermas calls the "public sphere". The flow of ideas, opinions, information and cultural artifacts from which we make sense of the world and articulate a vision of how it ought to be is shaped by bodies of norms, from press laws to copyright law, and their attached practices, from journalistic ethics to state secrets. Taken together, these norms fashion the democratic public sphere in ways which are increasingly challenged by "insurgent citizens" who use the Internet as a platform for political practices that extend the traditional limits of the public sphere. In so doing, these movements also aim to expand citizenship, becoming focal points in the conflict between representative governments seeking to transpose existing law to the the Internet and civil society groups critical of Internet regulation.

We start by presenting a historical perspective on the institutionalization of the public sphere within representative governments in Europe. This brief

overview will help us understand why some of the most innovative online social movements exert their right to free expression in a way that subverts the political and legal principles on which the public sphere is based. We illustrate our analysis by focusing on three militant groups: WikiLeaks, the infamous organization devoted to leaking secret information from anonymous sources; Copwatch, a website documenting and denouncing police abuse in France; and The Pirate Bay, the file-sharing platform allowing for the exchange of cultural works over the Internet. We argue that, insofar as they see their actions as legitimate democratic practices, these movements carry what French philosopher Claude Lefort called an "opposition of right", aiming to expand freedom of expression and communication to alter the power balance within the public sphere, hence embodying instances of "insurgent citizenship". We then turn to the reaction of states to the new "structural transformation of the public sphere" brought about by these insurgent movements, taking France as a prime example of how states seek to reassert the legal and political *status quo* through repressive policies. In turn, states' adamant response leads to the radicalization of insurgent citizenship and paves the way for a revival of actions of "electronic civil disobedience", as cyberactivists take advantage of the specific features of the Internet to challenge law enforcement. A conflict of legitimacy ensues, whose outcome will determine no less than the future of democracy, in Europe and beyond.

1 "Computers Are Coming to the People": The Internet and the Subversion of the Public Sphere

To understand Internet-based insurgent citizenship, it is first necessary to get a sense of how law contributed to the advent of a "differentiated citizenship" within the public sphere. After this brief historical account, we will turn to our three examples of insurgent citizenship and analyze the ways in which they challenge established notions of freedom of expression.

1.1 Origins and forms of differentiated citizenship in the public sphere

Jürgen Habermas' seminal history of the bourgeois public sphere tells how modern political regimes were built around an ideal-type of the public debate, in the conceptual space he calls the "public sphere" [Habermas, 1991]. According to the German philosopher, two trends played a role in the advent of the public sphere: one sociological and the other philosophical. On the one hand, the growing autonomy of a new social class, namely the *bourgeoisie* which, from the Renaissance on, emancipated from feudalism on a material level with the development of trade and progressively developed a form of "class consciousness". Habermas tells us about the spaces of sociabil-

ity where the grande bourgeoisie and humanistic nobility met in European cities; the cafés and salons in which this "empirical community of thought," as he calls it, turned increasingly politicized. The other foundational movement was the Reformation, which threw many of Europe's monarchies into a profound crisis. It gave rise to new political theories limiting the monarch's absolute sovereignty, and the "reign of Reason" was soon to be seen as the new requirement for the sovereign's political legitimacy. The sociological trend converged with the philosophical one, and soon public discussion was exerted *against* power. Civil society, formed by private bourgeois individuals engaged in the public sphere, was not only subject to power: it also became its opponent. For Habermas, modern representative governments finally emerged when this critical public sphere gained recognition through the protection of the rights to free expression and to free association, first in rudimentary form in the British Bill of Rights (1689) and later in the French Declaration of the Rights of Man and of the Citizen (1789).

However, despite their apparent universality, political rights were not equally distributed. According to the bourgeois ideology underlying early representative governments, it was the "public use of reason" which had to be protected, and so freedom of expression could only be that of an enlightened public. In 1673, English poet John Milton, often cited as one of the main historical figures to have opposed censorship, criticized a freedom of expression so large that it could "unsettle the weaker sort." To avoid such a risk, he favored the use of Latin in writings so as to ensure that important matters would "be discust amongst the Learned only." Likewise, for John Locke, arguably the main theorist of representative government, freedom of expression was only admissible for speculative debates, not for political nor even religious matters [Levy, 2004: 95-98]. Property and culture were both absolute requirements for participating in the public sphere, since according to bourgeois ideology only they could assert the full autonomy of the subject. Hence the distinction between passive and active citizens during the first years of the French Revolution, and later the census suffrage. Obviously, limits to freedom of expression were also used by the rulers to restrict access to the public sphere and to suppress dissent. Historians such as Edward P. Thompson for Britain or Raymonde Monnier for France have shown how, in the late eighteenth century, early forms of what we here term "insurgent citizenship" were already practiced by radicals in England or political clubs in the revolutionary Paris. These groups invoked the nascent right to free expression to criticize the ruling elites, and as a consequence underwent a violent repression.

Since then, despite the democratization of modern political regimes from the nineteenth century on – in particular through the adoption of universal suffrage –, the ideal of a bourgeois public sphere has served to legitimize rules limiting access to the public sphere. In theory, the progressive enlargement of the electoral base meant that representative political systems were

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breaking away from the "sovereignty of Reason" and instead embraced the "sovereignty of the People". But in practice, law and the repressive apparatus have turned out to be instrumental in ensuring that the elites would retain control over public discussion. In France for example, the parliamentary debates on the Law on the Freedom of the Press of 29 July 1881 provide a clear example of the fact that lawmakers were torn between two contradictory imperatives: ending prior restraint and state censorship on the one hand, but also ensuring that public discussion would comply with the ideal-type of democratic debate embodied by the bourgeois public sphere on the other [Droin, 2011]. As a consequence, while it is rightly remembered as a great liberal achievement of the Third Republic, the French Press law defines many offenses that aim to transcribe the bourgeois public sphere's weighted style and lays down a set of rules regarding the limits of acceptable criticism. Such prohibitions on speech have continued to play the role of keeping segments of the citizenry out of the public sphere, by banning specific opinions or certain forms of criticism of the established order. Machiavelli used to say that the Prince should be addressed "with Reserve and Respect." French and European law on freedom of expression carries on this adage by prohibiting, for instance, slander and defamation of the state, of its symbols as well as of public officials.

The mass media environment gave way to similar justifications for the regulation of the public sphere. The advent of radio and television have led to the expansion of a "functionalist" approach of freedom of expression – an extension which can be traced back to conservative interpretations of the criticisms addressed to democracy by American pragmatist philosophers [Carey, 1987]. In this view, the control of the public sphere by the elite was a necessary corollary to democracy so as to educate the masses. In Europe, similar conceptions can be found in the political discourses advocating state monopolies on radio and then television [Eck, 1991, Hargittai, 2000]. This situation led to what Habermas calls a "refeudalisation" of the public sphere by political power, replacing "critical publicity" with "manipulative publicity" in a media environment increasingly dominated by sophisticated techniques of political communication and agenda-setting [Qualter, 1985; Ellul, 1990].

The political economy of traditional means of communications also gave way to the development of a body of norms institutionalizing a hierarchical public sphere. In particular, legal provisions on civil and criminal liability have turned journalists and editors into the "trusted intermediaries" of the public sphere, as sociologist Dominique Cardon explains:

> "The traditional public sphere is the result of a long process of professionalization and domestication of speakers, which has given rise to a special status for public speakers (...). The traditional public sphere was public because information made

visible to everyone had been subject to prior selection by professionals obeying deontological norms that were constructed at the same time as the right to punish speech contravening these rules" [Cardon, 2009].

Such a special status is clearly visible in the case-law of the European Court of Human Rights (ECHR), which grants media organizations and journalists special protections on the condition that they also abide by specific "duties and responsibilities", as provided by article 10 of the European Convention of Human Rights, which protects freedom of expression. The Strasbourg court uses this notion of "duties and responsibilities" to remind those with access to the media their role in organizing the democratic debate, in particular by enforcing journalistic professional deontology [Oetheimer, 2008]. In this sense, the ECHR endorses a functionalist conception of freedom of expression, turning the media in an institutionalized "Fourth Estate" through which the state can shape the public debate. Legal doctrine reflects this evolution, as the "freedom to inform" – that of the media– and its limitations become the organizing principle of the public sphere.

Finally, another important reason for such functionalism is to be found in the advent of the "information society" and the subsequent liberalization of audiovisual media markets in Western Europe during the nineteen-eighties. High levels of corporate concentration and increased commercialization have given rise to sometimes contradictory policy objectives (e.g. democratic goals such as pluralism and cultural diversity versus industrial policy in the media sector). In this regard, many legal and media scholars have pointed to the incoherence and ineffectiveness of current regulatory regimes [Derieux, 2001; Hesmondhalgh, 2007; Humphreys, 1996; Gulyás, 2005; Zeno-Zencovich, 2008].

From this overview, we can conclude that differentiated citizenship in the public sphere derives from both the historic and normative grounds of the legal provisions restricting freedom of expression, as well as the hierarchic topology of the public sphere induced not only by traditional communications technologies but first and foremost by telecommunications and media policies. Internet-based insurgent citizenship rises against the unfulfilled promise of an inclusive public sphere in today's really-existing democracies.

1.2 From "informational liberalism" to the advent of radicalized public sphere

In 1990, almost thirty years after the first publication of his influential work on the public sphere, Habermas admitted that he had underestimated the importance of the "plebeian public sphere," that is to say the fact that non-bourgeois parts of the population also played the role of critics along side the bourgeois elite:

> "The culture of the common people," writes Habermas, "apparently was by no means only a backdrop, that is, a passive echo of the dominant culture; it was also the periodically recurring violent revolt of a counter project to the hierarchical world of domination, with its official celebrations and everyday disciplines." Habermas also asks "whether, and to what extent, a public sphere dominated by mass media provides a realistic chance for the members of civil society, in their competition with the political and economic invaders' media power, to bring about change in the spectrum of values, topics, and reasons channeled by external influences, to open it up in an innovative way, and to screen it critically" [Habermas, 1992: 427].

Today, because of its socio-political origins and of its technical features, the Internet has become a field of struggles carrying on this project of a plebeian, insurgent public sphere. Personal computing originated from the humanistic vision of great scientists in the post-Second World War era. At the time, computers were still gigantic and very expensive machines used in command-and-control applications within the military-industrial complex. But key American scientists – most notably Norbert Wiener, the main theorist of cybernetics, and a psycho-acoustician named J.C.R. Licklider – envisioned how computers could be turned into communications devices used to expand the modern individual's capacities. Within a few years, as computer research made great progress and in a social context marked with growing distrust toward the ruling technocracy among the nineties-sixties youth movements, counter-culture would help frame computers as a technology with the potential of liberating people's autonomy and creativity [Turner, 2006; Kirk, 2002]. As counter-cultural entrepreneur Stewart Brand (who acted as a nexus between computer research and counter-cultural circles) wrote in 1972 in an article for the magazine Rolling Stone: "Computers [were] coming to the People."

Many computers research communities instrumental in the development of personal computing and computer networks – and in particular the elaboration of the TCP/IP protocol (the main building block of the Internet) – were deeply influenced by cybernetic ideas and counter-cultural values. As a result, they coded decentralization and communicative freedom into the "network of computer networks" they were building. All along the Internet's technical and social construction, from early times to later movements in cyberculture such as hacker groups or free software communities, Wiener's cybernetic axiom equating the free flow of information with social "homeostasis" acted as a model. Benjamin Loveluck has termed this multifaceted philosophy "informational liberalism" [Loveluck, 2012]. Away from the "freedom *to* inform" of the media, informational liberalism sees the "freedom *of* information" as the basis of political autonomy. Informational liberalism is

also tainted by the American libertarian ethos of some charismatic figures of the Internet's history, such as Stewart Brand or John Perry Barlow, an American essayist, former lyricist for the famous rock band "The Grateful Dead" and a pioneer of early online communities. In 1996, Barlow published an emblematic text which he titled "Declaration of the Independence of Cyberspace". Addressed to the world political elite, this now iconic document opened with the following lines:

> "Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather. We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear (. . .). We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity" [Barlow, 1996].

By merging with deeply-rooted "mediactivist" movements critical of the traditional media and their perceived harmful influence on democratic processes [Cardon & Granjon, 2010], informational liberalism have paved the way for a project of reappropriation of the public sphere.

1.3   Insurgent democratic practices on the Internet

The subversive potentialities of online movements of insurgent citizenship ensues from the way in which they revisit the traditional functions of the public sphere (e.g. circulating ideas and opinions within civil society, criticizing power, etc.) with the radical legacy of informational liberalism. As cultural studies scholars have noted, the Internet has opened a space where citizen groups can act at the outskirts of the public sphere in an attempt to challenge dominant discourses and resist power [Dahlberg, 2007]. What is less often mentioned is the fact that such groups can use the disintermediation fostered by the Internet to challenge the legal provisions and social norms regulating the democratic debate, and hence the "domestication" of its participants. Here, we present three online social movements subverting the institutionalized channels that representative democracies have developed to regulate freedom of expression, claiming a new conception of the latter, and thereby constituting prime examples of online insurgent citizenship.

Copwatch, or the uncompromising denunciation of police abuse.
On the website "Copwatch", texts critical of the police are often illustrated
with photographs or videos shot on the street. They all aim to document and
denounce various abuses, such as violence during brutal arrests, provocations
of protesters by members of the force, or judicial permissiveness toward
several officers accused of corruption. The editors of Copwatch say they seek
to "provide critical tools to deconstruct the myth of a police force serving
the People." According to them, the goal is not to obtain justice against
individual officers, but to show "the result of a securitarian policy pushing
cops to do a dirty job, because they have numbers, orders, a hierarchy, . . . "
In this respect, copwatching undertakes a traditional function of the public
sphere, one usually performed by journalists or sociologists working on police
abuse. However, it also radically differs from these more traditional and well-
resourced participants of the public sphere in that it is the work of activists
who resort to immoderate and sometimes violent expressions against the
police. In fact, Copwatch's members make a claim of not abiding by any
"official" deontology. Even though most texts carry an analytical, if at times
satirical, style, some posts show plain rage:

> "We will not hesitate to use harsh terms against the police,
> because we think of this institution as the common tomb of
> mankind, the mass grave of evolution, the daily killing of both
> deontology and ethics. We will be unequivocal [in denouncing
> it]."

In some sections of the site, next to pictures or videos of on-duty police
officers which are perfectly legal in France, one can find the first and last
names as well as the position of dozens of (mostly high-ranking) officers,
extracted from police reports. In some instances, such data is completed
with screen-shots of their Facebook "profiles". In this way, Copwatch ac-
tivists seek to draw attention to the fact that several officers are members of
neo-nazi or otherwise nationalistic and xenophobic groups on online social
networks. They further justify the use of such personal data by claiming
that the targeted profiles are publicly available and that officers, as rep-
resentative of the police, should be treated as public figures accountable
to the public. However, such methods remain controversial, even among
proponents of copwatching, as they are deemed to be a disproportionate
infringement on the privacy of these police officers.

**WikiLeaks and the systematization of leaking to promote trans-
parency.** In late 2006, while working on the launch of WikiLeaks, Julian
Assange published an essay in which he theorized its role in the public
sphere [Assange, 2006]. In this text, he wrote that such an organization
should allow any person with access to confidential information a state tries
to conceal from its citizenry to decide in good faith that its release is of

public interest, and to anonymously leak it. Making secret but public interest information known to the public is undoubtedly an important function of the traditional media. For this very reason, the ECHR even elevated the protection of sources as the "cornerstone" of freedom of expression in the landmark 1996 case Goodwin vs. United Kingdom. But by systematizing this activity through Internet technologies and encryption techniques, WikiLeaks (and the many other similar organizations) brings the modern public sphere into uncharted territories. During the infamous "Cablegate" – when in December 2010 WikiLeaks and media partners started publishing thousands of US embassy cables –, French doctor, writer and former diplomat Jean-Christophe Rufin gave a blunt but accurate description of its subversive potential. In an op-ed in the French newspaper Le Monde, Rufin wrote:

> "[WikiLeaks] gives to a hitherto tailored activity an industrial dimension. This activity is the leaking of sensitive documents and confidential reports. It has always been carried on a small-scale by newspapers, some of which made it their specialty (. . .). With WikiLeaks, we enter another dimension, since leaks are now comprised of huge quantities of documents (. . .)" [Rufin, 2010].

Assange, on the other hand, defends such a radical approach to leaking state secrets. In his 2006 essay, he explains that systematic leaking is meant to exert enough pressure for states to eventually give up current undemocratic practices:

> "In a world where leaking is easy, secretive or unjust systems are nonlinearly hit relative to open, just systems. Since unjust systems, by their nature induce opponents, and in many places barely have the upper hand, mass leaking leaves them exquisitely vulnerable to those who seek to replace them with more open forms of governance" [Assange, 2006].

The Pirate Bay and the free sharing of culture. The same goal of fostering democracy trough the free flow of information (be it state secrets or cultural goods) is found in "free culture" and file-sharing movements, and in particular in the website "The Pirate Bay". Though it might first appear less relevant for emancipatory politics than Copwatch or WikiLeaks, The Pirate Bay is also an insurgent movement offering a radical reinterpretation of a traditional function of the public sphere. As a decentralized technical architecture and social community of users devoted to the circulation of cultural artifacts, it seeks to make widely available the songs and movies that we listen or watch for entertainment and information purposes, and which contribute to forming our world-views.

From its inception, the Internet has been hailed as a technology that could be turned into a universal library. It was to facilitate the collection

and dissemination of all of the digitized culture and knowledge produced by humanity, making it accessible worldwide. Thinkers and activists also saw its potential for disrupting the domination of media and cultural industries on the public sphere. In the early nineteen-nineties, American essayist Mark Dery advocated the use of new media technologies to engage the "semiological guerrilla warfare" first imagined by Umberto Eco:

> "Culture jamming should be directed against an ever more intrusive, instrumental technoculture whose operant mode is the manufacture of consent through the manipulation of symbols " [Dery, 1993].

The goal ? Restoring a critical dimension to passive reception by introducing "noise into the signal as it passes from transmitter to receiver, encouraging idiosyncratic, unintended interpretations", in order to disrupt the media and political elite's "Empire of signs".

However, as many scholars have pointed out, the endless extension of copyright and other "proprietary rights" on information have hampered the realization of this agenda [Aigrain, 2005; Benkler, 2006; Bollier, 2002; Boyle, 2007; Lessig, 2004]. If the Internet has succeeded in making culture more accessible, critical and participatory – as many argues it has –, it has done so to a large extent not *thanks to* but *despite* copyright law.

Today, the Pirate Bay has arguably become one of the most prominent avatars of an insurgent practice that echoes Dery's call. The Pirate Bay was founded in 2001 by a Swedish anti-copyright organization called the "Piracy Bureau" (*Piratbyrån*), and was later turned over to a small, informal and evolving group of individuals. Allowing people to share their Internet bandwidth to exchange cultural works via the BitTorrent protocol, the platform stands against the very idea of copyright. Instead, it aims to promote a "right to copy" as the building block of the knowledge commons advocated by the diverse "free culture movement" [Morell, 2011]. The Pirate Bay's spokesperson is a 34 year-old computer specialist named Peter Sunde. In many interviews, Sunde has given a clear explanation of the political motives of this organization that he co-founded, and which the movie and music industries accuse of indulging in "theft of intellectual property" and describe as "morally wrong." The politics of The Pirate Bay, says Sunde, lies in undermining the cultural industry's power and influence over the cultural world. An industry, he says, that is using copyright law to lock up culture and has "bombarded the world with Hollywood movies in order to get the American world view out." According to Sunde, The Pirate Bay serves the development of a more bottom-up and democratic cultural world. Violating copyright is seen as an act of political resistance:

> "I urge everyone to make sure that the entertainment industry does not profit from them anymore. Stop seeing their movies. Stop listening to their music. Make sure that you find alternative

ways to culture. Spread and participate in culture. Remix, reuse, use, abuse. Make sure no one controls your mind. Create new systems and technology that circumvent the corruption."

Each in their different ways, Copwatch, WikiLeaks and The Pirate Bay challenge the control over the public sphere of both representative governments and the traditional media ecosystem they have erected. Like other militant movements before them, these groups lay claim to the prerogatives of democratic sovereigns, reinterpreting freedom of expression under the new socio-technical paradigm brought about by the Internet and informational liberalism. In 1981, in *The Democratic Invention*, Claude Lefort rightly observed that a polity abiding by the rule of law is necessarily exposed to the "indeterminate nature of human rights" and confronted "with rights which are yet to be incorporated", as new citizen groups use existing formulations of rights (e.g. those of the French 1789 Declaration of the Rights of Man and of the Citizen) to advance new claims:

> "[The democratic state] is subject to a contestation whose goal is not just the tacit preservation of tacitly established pact, but which takes shape in places that power cannot entirely control (. . .). From the moment rights are posited as the ultimate reference, established law is fated to being questioned. It is increasingly at issue as collective wills or, if you prefer, social agents bringing new claims mobilize a force in opposition to that which tends to contain the effects of recognized rights. Where the law is being questioned, society, that is the established order, is under question" [Lefort, 1994: 69].

Insofar as the insurgent movements we have presented tend to frame their actions in the Internet-mediated public sphere as legitimate democratic practices, they engage in this exact same process, which Lefort called an "opposition of right" (*opposition de droit*). A process, he said, consubstantial to democracy, and through which these insurgent citizens aim to redefine the substance of the right to freedom of expression.

2 Representative Governments Strike Back: The Conflict Over the Redefinition of Freedom of Expression

By challenging differentiated citizenship in the public sphere, Internet-based insurgent citizenship come to embody an instance of "anti-power" [Holloway, 2002], that is to say a form of political action oriented toward resistance to domination ("power-over"), trying to defeat power relationships through criticism and irreverence from outside traditional and institutionalized democratic channels. In reaction, representative governments are

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using legal strategies aimed at marginalizing these movements and ensuring the preeminence of the institutionalized and domesticated public sphere. In turn, repression leads to an overt legal and political conflict involving various actors and revolving around one fundamental question: is the established doctrine of freedom of expression well-suited to an Internet-age democracy?

2.1 Internet insurgency and state repression

As insurgent citizenship unsettles the traditional legal and social balance of the public sphere, representative governments react with segregation and violence. They are unwilling to respond *de jure* (in law) and *de facto* (in practice) to the demands of these movements, as two diverging understandings of politics collide: Faced with such "organic" forms of political participation in the public sphere, states aim to reassert the supremacy of "institutional politics" as codified by the constitutional and legislative orders [Ogien & Laugier, 2011]. It is this latter view that Nicolas Sarkozy is defending when he argues for increased state control on the Internet in the name of the "general will" at the eG8 forum. So does Jean-Christophe Rufin in his piece on WikiLeaks, as he worries that such an instance of "anti-power" could eventually make representative governments ungovernable:

> "Citizen initiatives, in their multiple forms and in particular through thousands of organizations covering all fields of activity, have undoubtedly turn into a fifth estate in democracies. The last generation of citizen movements typified by WikiLeaks has the merit of representing an extreme and worrying manifestation of this fifth estate, one which raises the question of its own limit. Unruly by nature, multiple and evasive, impossible to unify and probably to regulate, this fifth estate is gaining a kind of power that threatens all others."

Here come back the perils of "democratic chaos" underlined by Nicolas Sarkozy, Internet-based insurgent movements being opposed to more compliant forms of citizen engagement. A risk of ungovernability invoked to justify repression.

Copwatch targeted by a blocking injunction. When Copwatch first went online in September 2011, French police unions immediately denounced it as an "anti-cop" website offending the reputation of police forces. Then-Minister of the Interior Claude Guéant decided to bring charges against it, and after a fast-track procedure, a Paris court ordered that the website be blocked by French Internet access providers. Besides violating the privacy of several police officers for publishing screen-shots of their social networks profiles, the authors of Copwatch were deemed to engage in slander because of the aforementioned quote comparing the police to the "common tomb

of mankind." They were also found guilty of defamation because of a text saying that the border police in the northern city of Calais "trained to hunt migrants, to humiliate them and torture them psychologically." Before, during and after the trial, Copwatch's authors managed to remain anonymous. Although such anonymity allowed them escape personal prosecution, it also meant that they were not able to show up in the court room to defend their actions, nor were they granted any legal representation during the proceedings. No one was able to make the case for their right to free speech or appeal against the ruling on their behalf. Later, the Minister defended the prosecution saying that, "to ensure police deontology, there is the judiciary, the hierarchy, the national commission for police deontology." By doing so, he was explicitly denying "ordinary" citizens the right to also play that role from outside institutional arenas by engaging in copwatching.

An attempt at the extra-judicial take-down of WikiLeaks. The political maneuvers against WikiLeaks in the aftermath of the Cablegate provide another example of the repression of insurgent citizenship. In a context where the Vice President of the United States Joe Biden said Assange was a "high-tech terrorist" and after US Senator Joe Lieberman called on any "company or organization that is hosting WikiLeaks to immediately terminate its relationship with them," WikiLeaks survival was in jeopardy. First his hosting provider Amazon (which besides selling books provides server storage services), then its domain name provider EveryDNS, and finally its payment system providers Paypal, Visa and Mastercard all unliterary pulled out of their business relationship with WikiLeaks. Just when the organization's leaked documents were attracting mass media coverage worldwide and without any judicial decision or even charges brought against it, WikiLeaks' very survival was at risk in the country of the First Amendment. In response, Assange and his team strove to ensure that WikiLeaks would remain accessible via other domain names and sought a new hosting provider. The website finally landed in Roubaix, France, in one of the data centers of the hosting company OVH.

In France however, the political elite was quick to follow its American counterpart. One member of the then-ruling party at the National Assembly denounced the "despicable methods" of WikiLeaks, a website which she said had "no place in the civilized Internet we ought to build." In a letter he chose to make public, Minister of the Digital Economy Éric Besson asked its services to let him know "as soon as possible what actions could be taken to make sure that this website is not hosted in France anymore, and that all the companies that have hosted it be, firstly, made aware of the consequences of their actions and, secondly, face their responsibilities." Considering that French law already provides a basic procedure for taking down allegedly illegal content from online servers, such a move had one clear purpose: pres-

suring OVH into following Amazon's example, taking the WikiLeaks site down in response to the government's extra-judicial demands. Luckily for WikiLeaks, OVH did not yield to Besson's pressure and, in the absence of a judicial decision to the contrary, declared that it would keep on hosting WikiLeaks. After its failed attempt, the French government nevertheless continued to resist WikiLeaks' growing influence in the public sphere. Asked by two parliamentarians about the content of US diplomatic cables mentioning a potential case of corruption of foreign officials by a French company in Turkmenistan, the Ministry of Foreign Affairs stated that it would not "comment on the content of the website WikiLeaks, nor to any press article referring to it." A posture seeking to exclude WikiLeaks from even the classical channels of democratic control.

The Pirate Bay and the old "war on sharing". The Pirate Bay's legal setbacks regularly make the news. But it is only one of the many actors of a twenty-year long legal battle around copyright infringements online. Almost as soon as the "realistic utopia" of turning the Internet into a universal knowledge commons, its commodified version was already being discussed in policy circles in Washington D.C., Brussels and at the World Intellectual Property Organization (WIPO) in Geneva. Shortly after the election of Bill Clinton as President of the United States, its charismatic Vice-President Al Gore was again pushing for his vision of "information superhighways". In 1993, to deliver that vision, Gore set up several working groups charged with making recommendations on adapting legislation to the digital revolution. One of them was specifically commissioned to make proposals on copyright, patents and trademarks. The head of this working group was Assistant Secretary of Commerce Bruce Lehman, also a former lobbyist for the movie industry. When it came to these topics, the orthodox view was the following: both globalization and the Internet were going to bring huge opportunities for American and other Western economies, but they also required new "intellectual property" laws to protect business models. After proceedings lasting over eighteen months, the group delivered a 250-page report calling for sticking to the *status quo*. It nonetheless put forward one key measure that would eventually be adopted in 1996 by WIPO, namely the introduction of legal provisions to secure the "Technical Protection Measures" developed by the industry ("TPM" are softwares attached to files and supposed to prevent copying). But when the file-sharing system Napster came along in 1999, it became clear that TPM would do little to help right-holders prevent their assets from being shared and reproduced all over the Internet.

Legal battles in courts and parliaments ensued to bolster repression. By 2005, both European Union (EU) member states and the US had not only adopted sanctions and enforcement mechanisms to target end-user, but also

civil and criminal provisions to sue intermediaries providing the technical infrastructures for file-sharing. On the basis of these laws, courts in at least ten EU countries have issued blocking injunctions against The Pirate Bay (in Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, Netherlands, Sweden and the United Kingdom). In their home country Sweden, the three founders of the platform have been sentenced to a shared fine of 2,740,900 euros and a year's imprisonment each. A few days after the Swedish Supreme Court confirmed their conviction in early 2012, Peter Sunde argued that The Pirate Bay was the victim of corrupt political and legal systems, prone to capture by private interests. "The problem here, he wrote at the time, is that we're allowing this dying industry to dictate the terms of our democracy. We allow them to dictate new laws (. . .) that forbid evolution." A syndrome of post-democracy often underlined by movements of insurgent citizenship.

2.2 Traditional counter-powers: Bound to the traditional doctrine of freedom of expression?

As shown by these examples and the debates at eG8, the repressive policies established by representative governments to counter insurgent practices on the Internet lead to important legal controversies. From advocacy groups to informal hacker collectives, from research institutions to trade organizations, many have denounced these measures as illegal for undermining fundamental rights and the rule of law. Whether they are specialized in Internet policy and come from the culture of informational liberalism – such as the San Francisco-based Electronic Frontier Foundation (the EFF was co-founded in 1990 by John Perry Barlow) – or more generally devoted to the defense of freedom of expression – such as Article 19 –, many Non-Governmental Organizations (NGOs) intervene in court proceedings to challenge enforcement mechanisms which they deem disproportionate.

Such criticisms have benefited from the support of key international organizations working on human rights, such as the United Nations (UN) as well as the Council of Europe or the Organization for Security and Co-operation in Europe (OSCE). In its 2011 report to the United Nations Human Rights Council, UN Special Rapporteur on freedom of expression Frank La Rue strongly criticized the type of website blocking measures that have multiplied in Europe since 2004, and which were used against both Copwatch and The Pirate Bay. According to the Special Rapporteur:

> "States' use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression (. . .). Even where justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal" [La Rue, 2011].

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Similar criticisms regarding the lack of safeguards and the disproportionate nature of blocking measures can be found in a 2011 report commissioned by the OSCE. The report further stresses that "indefinite blocking of access to websites and Internet content could result to 'prior restraint'." According to the report, "by suspending access to websites indefinitely, states can largely overstep the narrow margin of appreciation afforded to them by international norms and standards" [Akdeniz, 2011].

A few months after the Cablegate, the Council of Europe's committee of Ministers adopted a recommendation warning against the dangers of "privatized censorship" [Committee of Ministers of the Council of Europe, 2011a]. While it did not explicitly refer to WikiLeaks, the text was clearly adopted in response to the political pressures on the organization's hosting, domain name and payment system providers:

> "[The Council] alerts member states to the gravity of violations of [human rights] which might result from politically motivated pressure exerted on privately operated Internet platforms and online service providers, and of other attacks against websites of independent media, human rights defenders, dissidents, whistleblowers and new media actors."

Although traditionally less often regarded as raising human rights issues, copyright enforcement has also led to similar legal controversies. Echoing the claims of civil society movements, international organizations have expressed concern over the growing antagonism between copyright and freedom of expression. For instance, the Anti-Counterfeiting Trade Agreement (ACTA), initiated by the US, Japan, and the EU and which aimed at establishing higher global standards on copyright, patents and trademarks worldwide, was criticized by both Frank La Rue and Dunja Mijatović, the OSCE Representative on Freedom of the Media. Mijatović wrote to the President of the European Parliament saying that "ACTA might have a detrimental affect on freedom of expression and a free flow of information in the digital age." After an important civil society mobilization, ACTA was eventually rejected by the European Parliament in the summer of 2012.

However, while such opposition from international organizations points to the illegality under international human rights law of many measures aiming at enforcing the traditional limits of the public sphere, they remain quite limited in scope. This is because these institutionalized counter-powers are expected to assess such controversial policies against existing law and case-law. In other words, they operate in a constrained legal framework – the one attached to the traditional doctrine of freedom of expression – to build up a casuistic argumentation. So is the judiciary, and in particular constitutional courts, who have the role of protecting fundamental rights in the face of repressive measures carried on by the legislative and executive branches. While the latter regularly strike down over-broad and arbitrary enforcement

measures as disproportionate, they have so far refused to reexamine the traditional legal principles regulating the public sphere. Rather than softening communications law, which would have the effect of recognizing and gradually "legalizing" the practices of insurgent movements, the European Court of Human Rights tends to construe the Internet as a dangerous space calling for wider restrictions on freedom of expression [Tréguer, 2013]. In its still-emerging Internet-related case law, the majority of the court has held that the reprehensible nature of a contentious expression is greater if the said expression is published online rather than through others means of communication. From this premise – challenged by dissenting judges on the bench –, the court tends to strengthen the "duties and responsibilities" falling on public sphere participants when they communicate online. For instance, in its 2007 ruling in *Stoll v. Switzerland*, the court held that:

> "In a world in which the individual is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players, monitoring compliance with journalistic ethics takes on added importance."

The ECHR has also stressed that the same rules apply to all speakers, be they journalists, activist organizations, or even "ordinary" citizens. Hence, considering its jurisprudence in cases involving the publication of confidential diplomatic documents or insults to police officers, it follows that the court would rule against WikiLeaks or Copwatch.

At this point, the ECHR is similarly very unlikely to recognize The Pirate Bay as deserving its protection. After thea Pirate Bay's founders appealed to the Strasbourg court in order to challenge their condemnation by Swedish tribunals, the court issued a decision in March 2013 declaring the claimants' application inadmissible. The judges said that The Pirate Bay carried on a commercial activity and did not engage political expression. They consequently gave national authorities a greater margin of appreciation to restrict freedom of expression. Reacting to the decision, the NGO Article 19 expressed concern at "the Court's apparent reluctance to become the next battleground for advancing the right to freedom of expression against copyright claims." It bemoaned that the Court did not give "more weight to the role played by file-sharing services in fostering access to culture." Peter Sunde, who was one of the claimants, also denounced the court's refusal to review his case, pointing to a potential bias in the ruling since one of the judges sitting on the bench had been a legal advisor to the Swedish government on copyright enforcement.

As the right to free expression is increasingly exerted in the online environment, the ECHR remains so far attached to its traditional, functionalist approach of the public sphere. Confronted with legal cases involving Internet-based insurgent citizenship, the court will therefore likely decide in favor of excluding these movements from the democratic debate. In that

sense, the established legal doctrine surrounding freedom of expression on the Internet points to the limits of pushing the opposition of right brought about by Internet insurgent citizenship through judicial strategies: at this stage, the movements we have analyzed in this article should not count on the "judicial system's openness to protesting claims" to see their actions recognized as legitimate democratic practices [Agrikoliansky, 2010].

Could a change in legal doctrine occur in a foreseeable future? Recently, the British government introduced new rules to avoid disproportionate prosecutions of speech on online social media [Reidy, 2013]. However, this and similar endeavors remain isolated and limited in scope. The most significant initiative is perhaps the Council of Europe's recommendation on a "new notion of media" [Committee of Ministers of the Council of Europe, 2011b]. The recommendation calls on member states to acknowledge "new developments in the media ecosystem" due to "information and communication technologies and their application to mass communication," and to adapt their laws and regulation accordingly:

> "Media-related policy must therefore take full account of these and future developments, embracing a notion of media which is appropriate for such a fluid and multi-dimensional reality. All actors – whether new or traditional – who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection and provides a clear indication of their duties and responsibilities in line with Council of Europe standards."

While the document claims that such framework "should be graduated and differentiated according to the part that media services play in content production and dissemination processes," it also suggests conditioning traditional rights and privileges attached to freedom of expression (e.g. protection of sources) upon respect for "duties and responsibilities" and on a "commitment to professional media standards." In the end, although the Council of Europe's efforts to take into account the evolutions of the public sphere are rather innovative, these conditions seem overly restrictive to take account of the vast array of actors and communicative strategies populating the Internet. Without a more significant reform of the doctrine of freedom of expression, our political regimes will not accommodate the democratic practices inspired by informational liberalism.

2.3 The radicalization of insurgency: Toward outright disobedience

Despite the adamant response of European representative regimes to the opposition of right carried on by insurgent citizenship on the Internet, there is a tool that these movements can rely upon and that their predecessors

did not enjoy: the "free and open" Internet.

Although the Internet has a history of escaping law enforcement, Lawrence Lessig showed in the late nineteenth-nineties that its end-to-end architecture maximizing communicative autonomy could be undermined by legal and technical regulations enabling greater control [Lessig, 1999]. The past two decades have proved that governments in both democratic and authoritarian regimes can, and do, implement such policies [Goldsmith & Wu, 2006]. In that sense at least, Barlow's cyberlibertarian hopes have been short-lived. But in the early twenty-tens, the Internet still boasts architectural features that allow motivated activists with a technical know-how to defeat what they see as illegitimate repression on the part of states. The loose communities of engineers and computer experts that played a role in the development of technical tools used by insurgent citizenship are now exploiting the Internet features to ensure the resilience of such movements despite censorship measures. As a matter of fact, attempts at censorship actually have in many cases the paradoxical effect of giving the targeted information even more publicity, as it generates a public debate on the litigious content and as people start reproducing it in many different locations of the Internet to resist censorship. A phenomenon known as the "the Streisand effect", named after the American singer who in 2003 unsuccessfully tried to have photographs of her Malibu mansion removed from several websites.

In the case of Copwatch, from the moment the French government announced that it would bring charges to block the website, dozens of cyberactivists took upon themselves to create "mirror sites", that is to say perfect copies replicating Copwatch on other servers, with different IP addresses and different domain names and thus immune to the blocking measures. On its own website, the network of cyberactivists "Telecomix" – self-described as a "sociocyphernetic telecommunist feminist cluster of Internet and data loving bots and people (. . .) striving to protect and improve the Internet and defend the free flow of data" – set up an index of mirror sites to facilitate access to Copwatch. When I asked one member of the collective about the reason why he was taking part in this effort, he replied in the pure vein of informational liberalism:

> "Data must flow. We did it in Ivory Coast, in Egypt in Tunisia and elsewhere. Why wouldn't we do it in this case? (. . .) I don't agree with the tone used [by Copwatch authors], but I'm even more opposed to censorship."

To this day, thanks to mirror sites, Copwatch remains easily accessible through a simple query in a search engine.

A similar sequence had occurred during the Cablegate. In a matter of hours, in spite of the many hostile actions aimed at taking it offline, WikiLeaks arguably became one of the most resilient website of the whole Internet. Many people collaborated worldwide to create several hundreds of

mirror sites, each giving access to the diplomatic cables released by the organization. Meanwhile, cyberactivists operating under the banner of the informal group "Anonymous" launched denial-of-service attacks against Paypal, Mastercard, Visa, Amazon, and even the site of Senator Joe Liberman (denial-of-service attacks, or DoS, consist in flooding a server with requests, to the point of rendering it temporarily unusable, making a website hosted by this server inaccessible).

Lastly, The Pirate Bay has been subject to many blocking injunctions and its servers have been seized in various European jurisdictions. Nevertheless, the people in charge of its technical operation have always succeeded in avoiding prolonged inaccessibility. They even pride themselves on having created the "galaxy's most resilient BitTorrent site," a sentence that has become the site's motto. To escape censorship, they can count on the support of cyberactivist groups like Telecomix. In October 2011, a Belgium court overturned an earlier judgment and ordered that The Pirate Bay be blocked. Telecomix reacted by setting up tutorials explaining Belgian Internet users how to change the by-default settings of their computers, so as to stop using the domain name servers of their access providers and use that of Telecomix instead. Technical jargon aside, Telecomix effectively helped many users in Belgium circumvent the blocking measure. More recently, in the United Kingdom, a similar blocking injunction was rendered partly unsuccessful when cyberactivists set up so-called "proxy sites," allowing British residents to access The Pirate Bay via a detour server unaffected by the block.

By taking advantage of the Internet's distributed architecture to render the decisions of European judicial courts ineffective, such cyberactivist movements posit themselves as the heirs and guardians of the "free and open" Internet. Challenging the authority of the state in the name of protecting freedom of communication online, they take insurgent citizenship into the sphere of outright disobedience, thereby reinforcing the opposition of right carried on by the groups they defend. Rather than resorting to established legal paradigms to support the Internet's subversive public sphere participants, as traditional advocacy groups and international organizations tend to do, these cyberactivists reinterpret freedom of expression under the radical light of informational liberalism. In that way, they are able to provide more certain normative grounds for their actions, breaking away from the relative and restrictive approach of free speech that representative governments have developed over the last two centuries. In that sense, the disobedient actions of cyberactivists challenging Internet censorship "can be seen as manifestations of an emerging grassroots social force pushing the boundaries of liberal democracies and questioning the relationship between individuals and the state as well as the role of the state as the guardian of individual freedom" [Milan, 2012: 13].

Claude Lefort foresaw that the inability of a state to respond to an opposition of right would irremediably lead to a conflict of democratic legitimacy,

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and to disobedience:

> "The right that one asserts against the claim of power to decide,
> according to its imperatives, of the growth of its strength (. . .),
> affects the source from which such power draws the justification
> of its own right to demand the adhesion and obedience of all"
> [Lefort, 1994: 77].

As Lefort puts it, operating under the moral realm of human rights, democratic states cannot just decide of what is permitted or prohibited. Instead, they have to "produce the criteria of the just and the unjust." But by reacting disproportionately to the challenge of insurgent citizenship and undermining the rule of law, as both advocacy groups and international organizations claim, states necessarily fail to answer in the terms of "justice". They consequently expose themselves to being criticized for slipping toward arbitrariness. And they make civil disobedience appear as a legitimate act of resistance to protect *de facto* and against established law the new-found capacities of civil society in the public sphere.

Conclusion: Further Repression or Meaningful Reform?

What will be the fate of the opposition of right carried on by Internet-based movements of insurgent citizenship? As journalist Bernard Keans sums up, several outcomes are possible:

> "Eventually, elites either have to shift to a full-scale surveillance
> state like East Germany or Iran, inculcate self-censorship like the
> Chinese government or accept the power balance between citizens and their governments has shifted in favour of the former"
> [Kean, 2013].

So far, repressive escalation has arguably the upper hand in the legal battles surrounding freedom of communication on the Internet, since states have long reacted forcefully to online acts of civil disobedience [Manion & Goodrum, 2000]. Disobedient cyberactivists too come to embody an instance of insurgent citizenship exposed to state repression, whether through blocking measures, server seizures or indictments and prison sentences. In January 2012, the French Interior Minister asked a judge to let the government deal directly with access providers to block Copwatch's mirror sites. The judge rejected the request, invoking procedural issues and the lack of legal basis. Other cyberactivists have not been so lucky. In January 2013, a twenty-two year-old British student named Christopher Weatherland was sentenced by a London court to serve eighteenth months in prison for participating in the denial-of-service attacks against Paypal, Visa and Mastercard in defense of WikiLeaks. That same month, Europol was opening the brand

new European Cybercrime Center, based in La Hague. When asked about its priorities, the director of the center mentioned "hacktivism" along with state-sponsored cyberattacks and terrorist activities on the Internet.

Although certainly a very potent and useful component of the action repertoire of insurgent movements, disobedient actions challenging Internet censorship measures may not be sustainable. The Internet being a malleable socio-technical object, its design can assuredly further be altered through legal and technical regulations so as to enable greater control and repression. If the global, distributed Internet we know today and its democratic potential are to survive in the twenty-first century, the "cat-and-mouse" game played by cyberactivists will have to find a resolution through a legal reform.

In that regard, it is interesting to note that insurgent movements are increasingly working from within the traditional institutional channels of representative governments. Rather than just relying on resistance and disobedience, they aim at influencing the way law is made and the values it reflects – an approach pioneered by the Electronic Frontier Foundation as well as other advocacy groups stemming from the culture of informational liberalism, and who have already played an important role in legislative debates around freedom of expression on the Internet [Breindl, 2011; Horten, 2011]. In Iceland, WikiLeaks worked together with local organizations to launch an effort aiming at turning the country into a legal "safe haven" for free communications. More recently, Assange and his supporters created the WikiLeaks Party to run in the Australian legislative elections. Pirate Parties – whose main proposal include a reform of copyright and patent laws – have also been taking root in many Western European countries, although with varying degrees of success. In 2009, the Swedish Pirate Party nevertheless achieved to send two of its representatives to the European Parliament.

According to Gabriella Coleman, an anthropologist who has spent years studying free software communities and hacktivist groups, "all signs point to this type of traditional political activity becoming more common." But she stresses that they will "likely exist alongside" insurgent actions and "the loosely organized acts of disobedience, defiance, and protests that have also become more frequent and visible in the last few years." Institutional strategies will only serve to prolong the opposition of right in the more classical arenas of representative democracy, bringing the ethos of informational liberalism from underground cyberculture and insurgent citizenship to mainstream policy and legal debates. For her, through this two-legged approach to political change, "[geeks] are building one of the most vibrant civil liberties movements we've ever seen" [Coleman, 2012]. Time will tell. But as they reflect on the disintermediation and diversification of the public sphere induced by the Internet, the tenants of the *status quo* surrounding freedom of expression should meditate the warning professed by Chateaubriand. What he said of the press in the nineteenth century seems even more true today

about the Internet: As long as representative regimes persist in "compressing" through law and order the "democratic chaos" created by the evasive movements of insurgent citizenship, they will be unable to overcome the conflict of democratic legitimacy into which they are being dragged.

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