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The Human Right to Free Internet Access

ABSTRACT In 2016, the United Nation's General Assembly adopted a non-binding resolution regarding 'The Promotion, Protection and Enjoyment of Human Rights on the Internet'. At the heart of this resolution is the UN's concern that 'rights that people have offline must also be protected online.'¹ While the UN thus recognises the importance of the Internet, it does so problematically selectively by focusing on protecting existing offline rights online. I argue instead that Internet access is itself a moral human right that requires that everyone has unmonitored and uncensored access to this global medium, which should be publicly provided free of charge for those unable to afford it. Rather than being a mere luxury, Internet access should be considered a universal entitlement because it is necessary for people to be able to lead minimally decent lives. Accepting this claim transforms our conception of the Internet from a technology to that of a basic right.

In the affluent world Internet access is so readily available that it is easy to forget how fundamentally it shapes our lives. Very many opportunities are created or enhanced by the Internet including free, instant, worldwide communication; access to traditional and social media; and 24-hour shopping and services that render traditional storefronts unnecessary. Yet the Internet does more than simply provide new services; it also offers possibilities to promote and enhance crucial human interests.

In this paper I argue for a human right to Internet access on the grounds that the Internet is necessary (or at least of crucial importance) to enable the realisation of human rights and the promotion of democracy. According to this human right, Internet access must be free in the sense of 'unmonitored and uncensored' and provided 'publicly' or 'free of charge' to those who cannot afford it. While being mindful of the potential harms attached to Internet use (see section four), my claim is that the Internet is not a mere efficiency-enhancing technology but a medium for transforming human existence in an unprecedented way, which (as the UN puts it) 'by vastly expanding the capacities of individuals [...] contributes to the progress of humankind as a whole.'²

If this is correct then universal access is a justified entitlement, making lack of access an unjustifiable deprivation.

To make this argument, I will first outline a minimalist conception of human rights. The advantage of such a minimalist conception is that the rights it justifies will also be acceptable to more complex theories of human rights. In the main section of the paper I will present three arguments to justify a human right to free Internet access: (1) It is necessary for individuals to meaningfully influence global players who make global rules; (2) In an increasingly global and virtual world it is already uniquely effective for the realisation of important political human rights (free speech, free association, and information); and (3) If it would be governed appropriately, it would be extremely effective in protecting other basic human rights (i.e. life, liberty, and freedom from torture). Of course, to justify a moral right one not only needs to show that it would protect some important interest; one also has to show that the duties it would impose are justifiable. In section three, I thus argue that realising the human right to free Internet access would not be too demanding. In final sections, I consider the duties entailed for states, corporations, and the international community, and permissible restrictions of Internet use.

1. Preliminaries: the characteristics of human rights

In this section, I will outline a minimalist conception of human rights. I take the individual elements of this minimalist conception to be fairly standard and uncontroversial. While there are disagreements between philosophical theories of human rights, I employ a standard view that takes them to be *moral* rights. With this conception in place, subsequent sections will show that Internet access satisfies the conditions for being a human right.

According to John Tasioulas, international human rights law's 'integrity as a department of international law consists in the fact that it is *primarily concerned with giving effect to universal moral rights, insofar as it is appropriate for international law to do so through the technique of*

*assigning a uniform set of individual rights to all human beings.*³ Moreover, as Joseph Raz explains, for the existence of a moral right it must be shown that a person has an interest that is morally important and urgent enough to generate a moral duty in others to respect or help realise this right of that person.⁴ Moral human rights accordingly are based on universal human interests that are important and urgent enough to generate negative duties of non-interference and/or positive duties of provision in others. Crucially, these interests must be morally important enough to justify the costs that accrue to others in fulfilling their negative duties and/or positive obligations that help protect or realise the (human) right in question.

All moral human rights must meet two criteria:

1. Human rights are based on ‘basic [universal] interests’⁵ that are essential for a minimally decent life. As James Nickel explains, ‘human rights are not ideals of the good life for humans; rather they are concerned with ensuring the conditions, negative and positive, of a minimally good life.’⁶ These basic interests encompass fundamental welfare concerns such as the means of subsistence, physical security, and shelter, which give rise to basic social rights. However, mere material means are insufficient because a decent human life cannot be one of disregard and discrimination. Minimal decency thus also requires important provisions for protecting people’s equal moral status (such as political and civil rights).⁷ Determining which human rights and provisions exactly are needed for a minimally decent life requires ‘practical reasoning, backed up often by empirical inquiry.’⁸ The argument in this paper is an example of such practical reasoning in that it argues that in our digital age, universal free Internet access has become a sufficiently urgent interest to justify a regarding human right because such access is now necessary for securing important features of a minimally decent life.
2. The minimalist nature of human rights is partly due to the second criterion they must fulfil. Human rights must be appropriate matters of international concern in the sense

that if the primary addressee of these rights claims – the right-holder’s state – is unwilling or unable to guarantee these rights, the international community of states is called upon to act as a secondary guarantor.⁹ This ‘two-level model’¹⁰ of human rights is reflected in their origin as international standards introduced after the Second World War in reaction to the crimes against humanity committed by Nazi German and Japan against minorities within their own society or their occupied territories. That human rights are matters of international concern distinguishes them from domestic constitutional rights. A political community might, for instance, decide to cut funding for and reduce its provision of medical services. However, as long as the minimal care provisions required by the human right to health are guaranteed, the community is not liable to criticism (or interference) from the international community. The higher the standards that human rights entail, the more difficult it is for states to avoid failing them and to become liable to external criticism. This explains why in our unequal world human rights can only be minimal moral international norms so that all states can be reasonably expected to fulfil them.

These two criteria constitute a minimal account of human rights. They include only what is essential for a decent human life. As such, the criteria are also compatible with theories of human rights that take these to protect something more complex than elements of a decent life, such as James Griffin’s personhood-based view of human rights.¹¹ According to our two minimalist criteria, then, we only can have moral rights to things that are sufficiently important that their guarantee would justify imposing obligations and costs on others. This does not mean, though, that my individual interest in something (e.g. health) must be important enough to justify the creation of the entire system required to promote it (e.g. an entire health care system). In line with Tasioulas’ view (and contra theorists such as Allen Buchanan¹²), for the purposes of this paper a moral human right can be based on an individual person’s interest only if that interest is important enough to justify ‘the right-holder’s *proportionate share of the costs* of securing his

right as one among many other right holders who also benefit in the same way from the system.’¹³

This point is important as it explains how the interests of many people, taken together, can justify rights claims to social structures as extensive and expensive as legal systems, health care systems, public schools, and (as I will argue) Internet access.

I argue that free Internet access should be considered a universal moral and human right because in a digital age it is essential for the protection and promotion of other well-established human rights. As such, the justification of this human right rests on its importance for realising, in particular, Article 19, §2, of the International Covenant on Civil and Political Rights, which states that

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.¹⁴

Importantly, while I argue that the justification of the human right to free Internet access is purely instrumental as it is necessary for realising other human rights (and is thus a derivative right¹⁵), the content of this right is properly *sui generis*. Internet access is a *sui generis* right because it is not reducible to, or encompassed by, any other individual right. Internet access is not simply a version of other rights i.e. either free speech, or free assembly, or free information, although it does digitally enable access to these rights. Indeed, my argument is that these rights are no longer fully realisable without Internet access in a virtual global context.

Internet access is also a *sui generis* right because it fulfils functions that could not be exercised by alternative means (i.e. newspaper comments, locations dedicated to public speaking, public gathering places, or public libraries). There is nothing conceptually suspect about justifying a unique or *sui generis* right purely on the basis that it enables the realisation of other rights in

unique ways. Another right with the same structure is the human right to literacy.¹⁶ Literacy is a non-substitutable way for people to learn and develop as human beings. Similarly, Thomas Christiano's instrumental argument for the human right to democracy is based on democratic regimes' uniquely positive record of respecting essential human rights (Christiano 2011). In the same way, Internet access is a unique and non-substitutable way for realising fundamental human rights such as free speech and assembly.

With this minimal account of moral human rights in place, the rest of this paper will explain why unimpeded universal access to the internet should be considered a universal moral right and be enshrined in international law.

2. The moral justification of the human right to free Internet access

My argument in this section is that free Internet access is a pragmatically necessary condition of enabling secure access to other, uncontroversial basic human rights such as free speech and free assembly.

One might think that basic human rights can be exercised without Internet access. However, this underestimates just how much the Internet has transformed the ways we communicate, interact, acquire information, and how necessary these new possibilities are for realising other human rights. I argue that this is true in at least three instances: First, the Internet is the most effective means for individuals to influence and hold accountable 'global players' (including global governance institutions and multi-national corporations (MNCs)). Second, in a virtual world some forms of freedom of expression and assembly today can only be accessed via the Internet, such that those without Internet access are unjustifiably disadvantaged in their exercise of these rights. Third, if free Internet access would be universally guaranteed and better governed, it would be of crucial importance for protecting basic human rights, for instance in revealing violations of human rights and in supporting political engagement, association and mobilisation

(e.g. the #MeToo movement). Taken together the Internet is both necessary for the exercise of some key human rights and a uniquely expedient tool for democratic empowerment. As such, the value of Internet access justifies a distinctive right; one which is not reducible to other rights (e.g. freedom of expression).

2.1 The Internet is the most effective way to meaningfully hold accountable global players

The Internet, unlike other mass media, is a uniquely democratic medium. Television and radio separate ‘senders’ and ‘receivers’ of information whereas the Internet allows all to be both, and with unprecedented speed and at little cost. This enables individual and group interaction and communication on a global scale, which is why most who are able to use it do so.

It is standardly held that, in order to live minimally decent lives, individuals must have a meaningful say in rules they fall under, and hold to account those that make such rules.¹⁷ Article 21.1 of the Universal Declaration of Human Rights expresses this thought by stating ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.’¹⁸ Given their status as moral equals, people should not simply be rule-takers but have some meaningful influence on the rule-making processes which govern their lives. However, in our world there are a number of powerful global governance institutions (such as the UN, the World Bank, the IMF, and the WTO) that are not democratically authorised, and which individual citizens cannot directly influence or hold accountable.

Thus, the first justification of the human right to free Internet access is that without such access many individuals lack a *meaningful* way to hold accountable supranational rule-makers and to influence supranational institutions. ‘Offline’ options of lobbying global rule-makers are available, e.g. in traditional forms of non-virtual resistance (such as rallies). However, such protests are by nature ‘local’ and even such local forms of protest increasingly require Internet access to access relevant information, raise awareness, and coordinate action. If individuals lack

Internet access, they are at a structural disadvantage to global players who negotiate international treaties and laws with the help of Internet communication. Moreover, without Internet access it is much harder for individuals to stay informed about the issues at stake in supranational negotiations, and to effectively organise internationally to hold international rule makers accountable.

To illustrate, consider the EU-wide protest against the European and American negotiation of the Transatlantic Trade and Investment Partnership (TTIP) between 2013 and 2016. The treaty was opposed by many European citizens, unions, NGOs, and civil society groups, who objected to the secrecy of the negotiations, the intended use of investor-state dispute settlement courts, and proposed changes to workers' rights, environmental protection, and food safety standards. Protest took the form of rallies of hundreds of thousands of individuals, but information about TTIP was shared via the Internet. The 'STOP TTIP' campaign (an alliance of 500 European organisations), for instance, took the form of an on-line European Citizens' Initiative which collected over 3 million signatures.¹⁹ The protest put enormous pressure on the EU and national governments to uphold EU standards in these negotiations, which were extended and then halted by President Trump. Protest against TTIP could have been possible offline, but it is reasonable to suggest that the costs of informing individual citizens offline (i.e. via leaflets, radio and television messages) would have significantly restricted the campaign. Information sharing, protest coordination, and direct forms of protest online on this scale, at this speed, and with this force, was only possible because many EU citizens had access to the Internet.

MNCs are also major global players whose profit-driven operations have pervasive effects on the lives of people around the globe. While global governance bodies can theoretically be influenced by citizens of democratic states through their national governments, the route to influencing MNCs is less clear. Again offline protest is possible – customer activism and boycotts existed before the Internet – but the Internet provides unprecedented ways for customers,

employees, and others affected by MNC operations effectively to hold accountable, and transnationally, these global players. An example such online coordinated action is the case of Nestlé versus the Ethiopian government in 2002. The multinational demanded 6 million USD in compensation for the nationalisation of a company by a previous Ethiopian military government in 1986. After being inundated with thousands of emails in response to an Oxfam report on Nestlé's claim, the multinational withdrew its demands, and in 2003 accepted the 1.5 million USD that Ethiopia offered, which Nestlé subsequently invested in three charitable projects in Ethiopia.²⁰ Similarly effective was the international protest organised by Greenpeace in 2010 against Nestlé/KitKat's use of palm oil and the destruction of the rainforest. The campaign video was watched over 1.5 million times and more than two hundred thousand emails were sent. Nestlé/KitKat ultimately agreed to use rainforest-sustainable palm oil.²¹ A final example is the 2014 case of Greenpeace lobbying LEGO to stop distributing its products at Shell gas stations. Key were a Twitter campaign, a YouTube video (viewed over 6 million times) and over one million protest emails, resulting in LEGO not renewing its contract with Shell.²² Campaigns like this are becoming standard and more effective. As researchers of online campaigns assert, 'online protests do hurt. Firms can expect to suffer financial, reputational, and sales damages when an online protest campaign mobilizes consumers successfully.'²³

When it comes to meaningfully lobbying and holding accountable global players, Internet access is becoming necessary. This is because Internet access exponentially increases individuals' opportunities to participate in attempts to influence powerful global actors and to organise themselves locally and globally. While having Internet access is not an official channel that provides formal opportunities to influence global players, it is an unprecedented and effective means by which individuals can collectively exert influence. Those who lack such access are excluded and disenfranchised such that they lack a say in the making of the rules they must obey, and which shape their life chances. Because the ability to hold accountable those who make the

rules that govern our lives is a constituent of a decent human life, and because Internet access offers a meaningful channel of accountability and influence in the global sphere, Internet access should be recognised as a universal entitlement.

2.2 The Internet is a necessary means for exercising other crucial human rights

The second argument in support of Internet access as a basic human right is that it is necessary for exercising some of our basic political rights (e.g. free expression and assembly). The Internet has changed how people communicate and the way politics is done to such an extent that not having access to this medium constitutes an objectionable limitation of opportunities regarding the ability to exercise free speech and to associate with others.

Two examples illustrate this claim. In 2005, two Australian activists founded GetUp, an online movement platform promoting political initiatives by providing ways for citizens to contact their representatives in order to enable ongoing political engagement, rather than one-off participation in political protests. Today the GetUp movement has more than one million members (more than all Australian political parties combined) and has influenced the outcome of national elections, has won a landmark ruling in Australia's highest court promoting voting rights, and helped to pass legislation protecting refugees and the environment.²⁴ The second example is that of Beatriz Ehlers, a student of the municipal Friedenreich School in Rio de Janeiro, who successfully organised a protest against the city's government. The school, which serves underprivileged and handicapped students, was selected for demolition by the city government to make space for sporting venues for the Rio Summer Olympics 2016. Ehlers used an online tool called *Panela de Pressão* (pressure cooker) that enables citizens to identify and lobby political decision-makers in order to protect her school. Thousands signed up and the local government reversed its plans to demolish the building within 72 hours of the website's launch.²⁵ Other forms of engagement are possible, but the Internet provides unprecedented and effective opportunities for rapid and widespread political engagement in a virtual age.

In places where the Internet is not widely available, the rights to free speech and assembly can be met equitably in other ways (e.g. by letter-writing, public events, political party membership and so on). However, once Internet is widely available, a lack of access objectionably excludes people from political life and opportunities.²⁶ Speaking at a town hall meeting is an entirely different way of exercising free speech than using Twitter or blogging.²⁷ The difference between those with and without Internet access could be compared to those in a crowd who have megaphones and those who do not. Yet, having Internet access is not just about more effective free speech, but in a virtual world about having equal opportunities to being politically active: not having Internet access excludes people from the very forums and platforms in which much of today's political debate takes place, and in which most of the politically relevant information is shared.

This point can be made in two different ways. One is to understand Internet access as a necessary means for ensuring the adequate 'worth' of basic political freedoms for everyone. John Rawls distinguishes between formally equal liberties and the worth that these liberties have for people depending on their means to realise them.²⁸ Rawls points out that the realisation of formally equal freedoms depend on other means such as money, influence, and knowledge. While it is generally acceptable that people do not have precisely equal means to make use of their basic freedoms (i.e. that their basic freedoms are of different worth for them), Rawls argues that the state must ensure that its institutions are set up to ensure for all 'a fair opportunity to take part in and to influence the political process.'²⁹ On this view, it is not enough that people have formally equal basic freedoms; they also must have an acceptable amount of resources to make use of these freedoms. What exactly constitutes 'an acceptable amount' is of course a matter of debate. But in a virtual age, being able to access the Internet (alongside democratic structures, a basic public education, free information, and a social minimum) is arguably part of a set of adequate resources for exercising the basic liberties of free speech and association.

Alternatively, access to the Internet can be understood as a type of positional good. These are ‘goods with the property that one’s relative position in the distribution of the good affects one’s absolute position with respect to its value.’³⁰ One example of a positional good is electoral votes, where the value of my share of the votes depends on your share. Another example is educational degrees. The value of having a university degree for my job prospects will vary depending on how many of my competitors have the same or a better degree. Similarly, the availability of the Internet directly affects freedom of speech and the right to free assembly because having access enormously increases the value that these freedoms have for a person. Empirical studies also suggest that Internet use leads to increasing public demand for democratic forms of government, thus indirectly Internet access further promotes the importance of basic political rights.³¹

Presenting basic political liberties as positional goods might seem odd, but the idea that Internet access influences the importance of some basic freedoms makes sense when we consider how the Internet has transformed the ways in which we exercise these rights. Most fundamentally, the Internet has lowered the costs of accessing, generating, and sending information, and has exponentially extended our potential community. We ‘go online’ for information and to communicate via social media. We still send and receive information in traditional ways, and mass media (radio, TV, and newspapers) do reach large populations, but these express the opinions of comparatively few people. The Internet removes barriers to global information exchange, and so extends the exercise of free speech and (‘virtual’) assembly.

The Internet has thus transformed the ‘worth’ of some of our basic political liberties. To deny the necessity of Internet access for the exercise of our freedoms and for leading a minimally decent life in a digitalised society is to ignore the transformative nature that the Internet has had on the way we live, work, communicate, and interact with each other. Exercising free speech and obtaining information has become heavily dependent on having access to the Internet. Accordingly, the relative value that these freedoms have for people without Internet access has

decreased. Internet access has to be a human right because it is a necessary condition for having adequate opportunities for exercising important liberties that are part and parcel of a minimally decent human life.

2.3 Internet access is a potentially reliable protection of vital human rights

The third argument for the right to universal Internet access is that – properly realised and protected – Internet access would be an extremely powerful instrument for protecting a range of core human rights, such as those to life, liberty, freedom from torture, and bodily integrity.³² This would strengthen the idea that Internet access is itself a human right because it would be a unique tool for the protection of vital human interests. Thomas Christiano partly grounds his argument for a human right to democracy in an analogous fashion. He argues for a right to live in a democratic state because ‘democracies are normally necessary and reliable in protecting fundamental human rights of personal integrity.’³³ Free and universal Internet access can be instrumentally important in a similar way.

At first glance Internet access might seem an unreliable way to protect life, liberty, and bodily integrity. Consider, for instance, the largely unsuccessful Arab Spring revolutions. These were labelled ‘Twitter Revolutions’ because of the use of social media platforms for disseminating information, coordinating large groups of people, and reporting on government violence.³⁴ Yet, their example does not undermine the case for the human right to free Internet access because, on the one hand, no single right is sufficient on its own for protecting basic interests and, second, rights can only be effective if they exist in an environment that is supportive of them. I will consider these in turn.

First, Internet access alone does not guarantee the protection of rights to life, liberty, and bodily integrity and may even be used against it. In the Arab spring, Internet access was not free but curtailed in significant ways. Dictatorial regimes used surveillance technologies (created by

companies based in the West) to monitor online activities and to persecute their opponents. This imported technology enabled regimes to cut Internet access and to interfere with Internet use.³⁵ Moreover, the international community was largely unwilling to actively support the insurgents, and to fulfil its responsibility to protect their human rights. The Arab Spring revolutions are therefore not good examples for evaluating the Internet's potential to protect basic human rights.

Second, and more importantly, the fact that Internet access alone is insufficient for protecting human rights does not undermine its value. Democratic institutions, for instance, depend on internal support and the absence of undermining efforts in order to provide reliable protection of basic human rights. If there are forces at work within or outside a democracy that are determined to destabilise it, democratic institutions will be incapable of safeguarding basic rights. Historical instances of such failures include: the end of the German Weimar Republic in 1933, the overthrow of Salvador Allende's democratic regime by Augusto Pinochet in 1973, the overturn of the democratically elected Iranian government and the installation of the Persian Shah in 1953, and the return of Egypt to an autocratic regime in 2013. In all of these cases the democratic institutions either collapsed due to a lack of popular support, or because of interference from domestic or external adversaries. Any social arrangement (be it a democracy, a functioning legal system, a free press, or the Internet) can only function as a reliable protection if it is not actively undermined, and if it has the support of crucial internal and external forces. It is therefore not surprising, nor a decisive argument against Internet access, that it cannot on its own reliably guarantee core human rights.

Conversely, the Internet *would* be a much more expedient and reliable instrument for safeguarding crucial human rights if the right was realised and other conducive social arrangements were established (e.g. a functioning democracy and an international community willing to counteract violations of human rights). When determining whether Internet access is important enough to warrant recognition as a human right, the crucial question is how valuable

it would be if other conducive arrangements would obtain: can the Internet make an indispensable contribution to the protection of human rights in a well-functioning democratic state, when the international community actively supports the struggles of an oppressed people against their oppressor?³⁶ What the Arab Spring revolutions showed is that the Internet did provide new ways of reporting on crimes committed by governments.³⁷ It enabled the creation and global dissemination of a much more detailed record of government atrocities than even before. If the international community were willing to end such rights violations, such information shared online would prove vital.

A further example of the Internet's efficacy for the protection of human rights is its use in documenting unjustified police violence against African Americans in the US. The ability to publicise excessive police force via the Internet enables injustices to be highlighted and kickstarts public debates about racism and the basic liberties of minorities. The ability for individuals to film, post and share on the Internet is far more extensive than the previous technologies allowed e.g. via television. Videos of police brutality are also not always aired on TV even if they are available (the US Federal Communication Commission, for instance, has rules about what can be shown). The Internet makes it more difficult to prevent the spread of incriminating material and evidence.

Another example of the new possibilities the Internet offers for protecting human rights in democracies is the #MeToo campaign that 'outs' sexual harassment of women by powerful men. Most of these reports have been enabled by the Internet, both as a medium to share and because the sharing of similar instances encouraged women to participate. We cannot estimate how many of such violations of basic rights would have been publicised offline, but we can safely say it would have been far less.

Finally, the Internet's role in protecting important political human rights and promoting governmental accountability is evidenced in empirical studies, and is a reason that the UN

promotes Internet access.³⁸ Studies and reports confirm that Internet access provides new and efficient ways to promote human rights in democratic states as well as the rights of those who struggle against oppressive regimes. Such democratic empowerment can only be enhanced by universal unconditional access.

In conclusion, Internet access is not merely a luxury for those who can afford it. It is instead highly conducive to a multitude of crucial human interests and rights. Internet access is a uniquely effective way for lobbying and holding accountable global players like global governance institutions and multi-national corporations. In our digitalised societies, Internet access is also necessary for some core human rights to be of adequate relative value (or worth) for their possessors. And finally, Internet access can provide a uniquely effective means for promoting government accountability and protecting human rights in conjunction with other arrangements (such as democracy and a vigilant international community). The upshot of these considerations is that we have weighty reasons to accept the idea that free Internet access should be considered a human right because it is necessary for ensuring minimal decent lives in the digital age. The current and potential benefits of such universal Internet access are important enough to create a *moral* obligation for states and the international community to create laws to ensure that everyone can ‘go online’.

3. The costs of universal access and the obligation to provide it

The preceding arguments demonstrate that Internet access is highly valuable for the realisation for other crucial human rights. However, as explained above, in order to justify a moral right, an interest not only has to be important to the presumptive right-holder; it must also justify imposing duties on others. Not every interest whose realisation would be good for persons can ground a right due to the costs its realisation would impose on others. Given this, one might grant the importance of Internet access, yet deny that this establishes a human right to Internet access due to the unreasonable costs of its provision. In this section, I respond to this worry

and argue that universal Internet access would not be unreasonably burdensome once we get clear on what it would require. The strong interests that each individual has in having access to the Internet thus can justify the proportionate costs that a right to access would require.

In order to evaluate the costs of universal internet access, it is first important to understand the size of the challenge it poses. The UN's International Telecommunication Union estimates that by the end of 2018, 51 percent of the world's population of 7 billion people already had access to the Internet.³⁹ While many people in the poorer parts of the world are still without Internet access, their number is decreasing as technology becomes cheaper. This said, data shows that the spread of the Internet has slowed in recent years, suggesting that universal access will not occur 'naturally' without intentional promotion.⁴⁰ The human right to free Internet access would provide the normative foundation for such action.

In order to appreciate the reasonableness of the costs of universal access it is important to note that being able to access politically important opportunities on the Internet (such as blogging, obtaining information, joining virtual groups, or sending and receiving emails) does not require the latest information technology (such as a glass fibre connection or access to a 5G network). Web-capable phones can allow people to access these services, and public Internet provisions (e.g. via public libraries) can help get people online where individual domestic access is initially too expensive.⁴¹ In this respect, the human right to Internet access is similar to the global right to health. As Jonathan Wolff explains, the latter cannot require globally the highest possible medical treatment, as many states are too poor to provide such services and thus would face impossible demands.⁴² Instead, poor states are called upon to provide basic medical services and to work toward the progressive realisation of higher quality health care delivery. Similarly, poor states (that should be supported by the international community) should initially offer locations with public Internet access and develop IT infrastructure with a view to progressively increase the available provision. Thus, the human right to free Internet access can provide a globally feasible

minimal standard of access in the same way in which the human right to health describes a basic global standard of mandatory health care provision.⁴³

Some data on the costs of universal access support its feasibility. According to the NGO ‘The World Wide Web Foundation’ (founded by the inventor of the World Wide Web, Tim Berners-Lee) ‘affordability [for individuals] remains one of the most significant, *but solvable*, obstacle to [universal] access.’⁴⁴ For the WWW Foundation, Internet access is affordable if 1 Gigabyte of data costs no more than 2 percent of average monthly income. In its ‘Affordability Report 2018’, the Alliance for Affordable Internet estimates that currently 2.3 billion people are without affordable Internet access.⁴⁵ In part what is required for achieving global Internet access are investments in infrastructure. The WWW Foundation thus calls upon governments to promote access via free public provision in libraries, schools, and via Wi-Fi hotspots. Further, governments should design national broadband plans with clear plans for increasing IT infrastructure.⁴⁶

A number of important political institutions have publicly committed to ensuring universal access for their populations and are thus convinced that this goal is affordable. The Indian state of Kerala has declared universal Internet access a human right and aims to provide it for its 35 million people by 2019.⁴⁷ Likewise the European Union has launched the WiFi4EU initiative which aims to provide ‘every European village and every city with free wireless Internet access around the main centres of public life by 2020.’⁴⁸ Third, global Internet access is part of the UN Sustainable Development Goals. The UN demand that states ‘honour their commitment, expressed inter alia in the Millennium Development Goals, to facilitate technology transfer to developing States, and to integrate effective programmes to facilitate universal Internet access in their development and assistance policies.’⁴⁹ Many democratic developing states currently do not enable affordable Internet access for large parts of their population. The UN’s call for developed nations to aid less fortunate societies indicates that the human right to Internet access meets the

second criteria of human rights mentioned above, that human rights have to be appropriate matters of international concern.

However, some of the main obstacles to universal Internet access are not related to missing and costly infrastructure. First, in some cases it is monopolies and a lack of competition on the supply side that makes access expensive. Here, increased competition among providers could bring down the costs of access. Second, it is often the lack of literacy or basic computer skills that prevent people from using the Internet even where it is available. Realising the human right to literacy⁵⁰ would thus eliminate a significant barrier to global Internet access. Third, as the WWW Foundation report explains, there is also a noticeable gender-based inequality with respect to access with men globally being 33 percent more likely to have Internet access than women.⁵¹ Thus, if states would realise the UN's Sustainable Development Goal of gender equality, universal Internet access would face considerably less obstacles. These points all demonstrate that barriers to global Internet access often are not related to gaps in expensive IT infrastructure. Given the limited minimal provisions the right requires, and the fact that the right needs to be justifiable in terms of the proportionate costs of its realisation per individual right holder, the costs of the technological basis of universal access do not pose an objection to the idea itself.

These arguments for the affordability of the human right to free Internet access outline clear and feasible positive duties that states have toward their citizens. The UN, for instance, states that there is a duty for states to ensure 'universal access to the Internet [by developing] concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of population.'⁵² This also implies a positive duty to fund the costs of Internet access for those who cannot afford it where this is affordable. Internet access should be 'free' in a means-tested way. In affluent societies, Internet access should be considered part of the social minimum. That is, everyone should be entitled to an adequate Internet connection,

just as in many advanced societies all citizens are entitled to a telephone connection. Such legislation is already in place in some countries.⁵³ All states are thus called upon to devise a progressive online development strategy, to make proper investments in their Internet structure, and to provide the help to poorer states that they committed themselves to by signing up to the UN Sustainable Development Goals to develop a minimally necessary infrastructure and provide the education for their citizens that is required for universal access.

Besides these positive obligations to provide access, the interest in Internet access also justifies negative duties prohibiting undue interference in individuals' use of the Internet. This idea is core to the UN's 2011 special report on the importance of the Internet and subsequent 2016 resolution, which requires Internet access to be 'unrestricted', 'uncensored', and 'unmonitored' by governments or other bodies. The UN asserts that "rights that people have offline must also be protected online, in particular freedom of expression"⁵⁴ and that states have a duty 'to ensure that Internet access is maintained at all times, including times of political unrest.'⁵⁵ Further, the UN's Special Rapporteur 'considers cutting off users from the Internet, regardless of the justification provided [...], to be disproportionate and thus a violation of article 19, paragraph 3, of the International Covenant of Civil and Political Rights.'⁵⁶ The UN position shows political awareness at the highest level of the importance and the potential of the Internet for exercising other human rights.

Moreover, the human right to free Internet access requires of states to prevent the proliferation of technology that allows for the censorship and surveillance of online activities - technologies produced largely in Western countries. States have moral obligations to regulate the business activities of domestic information communication technology companies that sell such tech. As Ben Wagner points out, 'it has been well documented that the vast majority of Internet censorship and surveillance technology employed in the MENA [Middle East and North Africa] region stems from Europe and North America.'⁵⁷ The EU and the US bear particular

responsibility for the spread of sophisticated technology used by authoritarian regimes as they have the power to prevent such sales. They have a duty to ‘use sanctions, export controls and other policy mechanisms to prevent the “worst of the worst” human rights invasive technologies getting into the hands of oppressive regimes.’⁵⁸

If these negative obligations were fulfilled by states, free Internet access would already be more effective in protecting human rights. It is no coincidence that according to Freedom House’s *Freedom of the Net 2018* report,⁵⁹ the worst autocracies are also the ones that restrict Internet access for their subjects the most. As the UN report points out, the Internet’s speed, worldwide reach, and relative anonymity has ‘created fear amongst Governments and the powerful.’⁶⁰ Restrictions of Internet access by autocratic states can be taken as proof of the power and of the democratic empowering potential of this revolutionary medium. As Clay Shirky argues with respect to Internet-based communication platforms, ‘the best practical reason to think that social media can help bring political change is that both dissidents and governments think they can.’⁶¹

Finally, there are a number of ways in which violations of the human right to free Internet access could be answered. While the UN confirms that shutting down the Internet constitutes a violation of human rights, the international community does not have to react to such an offense with coercive measures, which would likely be disproportionate. Besides preventing the proliferation of ‘the worst of the worst human rights invasive technologies’, states and companies can incentivise other states in different ways to respect the human right to Internet access. Companies can, for example, refuse to cooperate with the censorship requirements of undemocratic governments and choose to forgo business in these states.⁶² Furthermore, the strength of the Internet lies in the global connections it provides and there are non-coercive ways of preventing human-rights violating regimes from making use of this advantage. AFRINIC (the African Network Information Center, regional Internet registry for Africa), for instance, has

recently announced that it will no longer give out new IP addresses to African countries that cut off Internet access to (part of) its populations.⁶³ While this list of responses is incomplete, it shows that there are non-coercive ways for the international community to protect universal Internet access.

4. Regulating the human right to Internet access

I have argued that free Internet access is extremely conducive to the realisation and protection of essential human rights and should thus itself be considered a human right. However, it is nonetheless important to avoid cyber-utopianism (i.e. the ‘naïve belief in the emancipatory nature of online communication that rests on a stubborn refusal to acknowledge its downsides’⁶⁴). On the contrary, any argument for the human right to Internet access has to be aware of the significant harms attached to Internet use.

The Internet can undermine individual rights and enable harmful practices. For example, it enables mass-surveillance, undermining privacy rights,⁶⁵ and makes censorship and control of populations easier (consider, for example, the ‘Great Firewall of China’).⁶⁶ There are further risks and harms given it is privately owned and orientated to profit. This both limits access and distorts virtual discourse to serve commercial imperatives.⁶⁷ Indeed it has been suggested that such imperatives promote fake news, racism, misogyny,⁶⁸ cyber-bullying, image-based abuse, and perhaps threaten the foundations of deliberative democracy.⁶⁹ Taken together the Internet arguably promotes ‘surveillance capitalism,’ a ‘new form of information capitalism [that] aims to predict and modify human behaviour as a means to produce revenue and market control.’⁷⁰ Given this, there are many harms and costs attached to the use of the Internet. However, the claim I defend is about the empowering potential of the medium: that Internet access is valuable and necessary for securing crucial human rights and for democratic engagement in a virtual age. Indeed, a right to access will address some of these harms. For instance, surveillance and coercion by states violate the right.

As Internet use is embedded in contemporary life, non-engagement is not an option. Accordingly, focus should be on how to regulate the Internet. Analogously, insufficiently regulated democratic decision-making is problematic in the real, non-virtual world as it can lead to e.g. the tyranny of the majority, or the rule of campaign funders. However, the imperfections of democracy do not lead us to abandon it, but to improve it. Our attitude towards the Internet should be the same.

In order to promote human rights in the manner suggested above the Internet requires more regulation and governance than is currently in place. However, regulation is needed not to limit *access*, but rather to regulate *use*. Few rights are absolute and the right to access and use the Internet is no exception. Obvious restrictions are extensions of familiar limits of freedom of opinion and expression to the online world: child pornography, and hate speech that incite violence and discrimination should be prohibited online just as they are offline.⁷¹ There are other online behaviours and dangers that might require regulation. Cyber-bullying, the spreading of false ('fake') news, the use of social bots to manipulate voters, and the mass surveillance on the online activities of unsuspecting citizens - even by democratic states, all call for regulation. The precise legal nature of these restrictions are yet to be determined, yet the harms of current Internet *use* do not undermine the arguments for *access*. The aim of this paper is to justify free Internet access as an independent human right, not to address the clear harms which are evident and emerging in current use.

5. Conclusion

I have argued that we have good reason to regard free Internet access as a human right. Internet access is not merely a luxury for those who can afford it but instead necessary for individuals to lead minimally decent lives. I have given three arguments for this. First, without Internet access people lack meaningful ways to influence the global powers who set key rules and structures. Second, our basic freedoms including free expression, freedom of information, and freedom of

assembly are undermined in a virtual culture if others have access to the Internet and we do not. Third, if properly instituted, the Internet could be a unique and reliable instrument for the protecting of basic human interests and rights such as those to life, liberty, and physical integrity. In light of the benefits and opportunities it offers, Internet access fulfils the minimalist criteria for being recognised as a human right:

- (1) Internet access helps secure elements of a minimally decent life (which requires both basic material necessities and equal status);
- (2) Internet access is an appropriate matter of international concern in the sense that the international community is called upon to promote and protect free access to this medium. The International community is further called upon to help provide Internet access everywhere.

I have argued that such provision need not be unreasonably burdensome and that the costs can be justified. The Internet is so important for communication, interaction, and accessing basic goods that to deny part of humanity access is to deny people the opportunity for a minimally decent life.

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⁶ James Nickel, *Making Sense of Human Rights* (Oxford: Wiley-Blackwell, 2007), p. 138.

⁷ See David Miller, 'Grounding human rights', *Critical Review of International Social and Political Philosophy*, 15, 1 (2012): 407-427; Matthew Liao, 'Human rights as fundamental conditions for a good life' in R. Cruft, M. Liao & M. Renzo (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), pp. 80-100; Tasioulas 2015 op. cit.

⁸ Tasioulas 2017 op. cit., p. 87.

⁹ See e.g. Thomas Christiano, 'An instrumental argument for the human right to democracy', *Philosophy & Public Affairs*, 39, 2 (2011): 142-176.

¹⁰ Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press 2009), Chapter 5. Beitz is agnostic as to whether human rights are universal moral rights. He understands human rights as international standards that are primarily determined by human rights practice. However, theories that understand human rights as universal moral rights are generally compatible with the idea that human rights are matters of international concern (see Matthew Liao, Adam Etinson, 'Political and naturalistic conceptions of human rights: a false polemic?', *Journal of Moral Philosophy*, 9, 3 (2012): 327-352; Liao op. cit.).

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- ²⁹ Rawls op. cit., p. 197.
- ³⁰ Harry Brighouse, Adam Swift, 'Equality, priority, and positional goods', *Ethics*, 116, 3 (2006): 471-497, at p. 472.
- ³¹ See Erik C. Nisbet, Elizabeth Stoycheff, Katy E. Pearce, 'Internet use and democratic demands: a multinational, multilevel model of internet use and citizen attitudes about democracy', *Journal of Communication*, 62, 2 (2012): 249-265.
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- ⁵⁰ UNESCO op. cit., §11.
- ⁵¹ WWW Foundation op. cit., p. 9.
- ⁵² United Nations 2011 op. cit., p. 22.
- ⁵³ See, e.g., the German telecommunication law, according to which Internet access is part of the basic services that all citizens are entitled to (see Bundesnetzagentur, *Telekommunikationsgesetz VI*, §78, <https://www.gesetze-im-internet.de/tkg_2004/BJNR119000004.html#BJNR119000004BJNG001700000>. Published 29 November 2018. Accessed 3 September 2019). This means that the state guarantees Internet availability within all of its territory. Further, part of the universal minimal social welfare budget everyone is entitled to is designated to be spent on telecommunication services.
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