

Is There a Human Right to the Internet?

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Received: October 22, 2012 Accepted: October 26, 2012 Online Published: November 29, 2012

doi:10.5539/jpl.v5n4p15 URL: <http://dx.doi.org/10.5539/jpl.v5n4p15>

Abstract

This paper argues that there is not a human right to the Internet. It presents five commonly made arguments for a human right to the Internet, and it shows how they all fail. This paper approaches the discussion from a position that holds human rights as instrumentally necessary things for membership in a political community and goes on to argue that although Internet access is instrumentally valuable for membership, it should not be seen as a human right in and of itself because it is not necessary for membership. Instead, its denial should be seen as a potentially urgent threat to a more basic list of human rights, namely the human right to assembly, where there may exist negative duties not to cause urgent threats at a human rights level.

Keywords: human rights, international law, internet, technology policy, urgent threats

1. Is There a Human Right to the Internet?

Humanity has seen a major increase in the number of people accessing the Internet in the twenty first century. From 2000 to 2011, the number of humans with access to the Internet has increased by approximately 480%, for a total of over 2 billion Internet users. Nevertheless, about 70% of humanity does not have Internet access, and a large body of literature has taken heed to address this “global digital divide” (Note 1).

Concerns with the digital divide have raised questions about the moral demands of information and communication technology (ICT), and the purpose of this paper is to contribute to this discussion by asking whether the Internet is a human right. A number of things are often said about ICTs and the Internet:

- The Internet is good for democracy, as it helps build credibility in government and it facilitates public participation (Norris, 2001; Wellman, B., Quan Haase, A., Witte, J., & Hampton, K., 2001).
- The Internet helps protect against human rights violations (UN Human Rights Council, 2011).
- The Internet empowers its users to participate in global economic and social activities (Norris, 2001).

There are good reasons for supporting these claims, and it would seem there is good reason for welcoming the proliferation of ICTs and the number of humans with access to the Internet. However, these points do not establish why we should consider the Internet to be a human right. They are simply values without significant argumentative weight.

As of late, there have been several assertions of the Internet’s status as a human right. Tim Berners-Lee, inventor of the World Wide Web, recently likened Internet access to water access at a MIT symposium (Note 2). In Estonia, Finland, France, Greece and Spain, Internet access has already been proclaimed a fundamental right. Earlier this year, the United Nations (UN Human Rights Council, 2011) published a special report on the status of the Internet as a human right, claiming it is a fundamental right of all humanity. Nevertheless, no arguments have been put forth that ground claims to a human right to the Internet in contemporary human rights theory.

The goal of this paper is twofold. First and foremost, this paper argues that there is not a human right to the Internet. It presents five commonly made arguments for a human right to the Internet, and it shows how they all fail. Second, this paper will propose a method for conceptualizing things that are important, such as the Internet, in human rights discourse without claiming that these things are human rights in and of themselves. This is important because of the growing problem of human rights inflation. Human rights inflation refers to the eroding expansion of human right claims that threaten to undermine the value of human rights and their function as protectors of a specific set of urgent norms. A rather inflated claim to a human right that is often cited is a human right to one month paid vacation time. Paid vacation time, like the Internet, is not a human right, and this paper will help clarify why this is so.

In sum, this paper argues that the denial of valuable things such as Internet access might be seen as urgent threats to a more basic list of human rights, where there may exist negative duties not to cause urgent threats at a human rights level. It will go on to argue that Internet denial is an urgent threat to a human right to assembly, so although Internet access is not a human right in itself, it may demand negative duties not be denied.

This paper is structured as follows. Section two provides an overview of contemporary human rights theory, and it will explain the tenants of two major schools of thought: the orthodox approach and the political approach. Section three discusses the nature of the Internet and how it should be conceptualized in a human rights discussion. Section four critically assesses five arguments for a human right to the Internet, and it shows how they all fail. Section five discusses the difference between human rights and urgent threats to human rights, and it puts forward an argument that the denial of the Internet is an urgent threat to the human right to assemble. Section six concludes.

2. The Idea of Human Rights

Before looking specifically at arguments for a human right to the Internet, it will be useful to establish some background on human rights. There are two principle questions when it comes to human rights. The first is “What do human rights protect?” And the second is “What qualifies something as a human right?” Understanding where we stand in relation to these questions is crucial for making basic claims to human rights. There are two dominant schools of thought that attempt to pinpoint what human rights protect: the orthodox and the political (Note 3). This paper explores five commonly made arguments for a human right to the Internet, three of which apply to the orthodox approach (sections 4.1, 4.2, and 4.3) and two to the political approach (sections 4.4 and 4.5).

Each approach takes a different stance on what human rights are supposed to protect, but both approaches operate under the idea that a human right should protect particularly urgent things. One way of determining particularly urgent things in both approaches is through truth-based reasoning (Note 4). For example, let’s say that, for whatever reason, we consider self-determination to be intrinsically valuable and worthy of protection as a human right. This follows that anything that is instrumentally necessary for self-determination should be protected as a human right (Note 5). If it were shown that democracy, for example, was instrumentally necessary for self-determination, then democracy would be a human right.

By the standard of the orthodox approach, the validity of a truth-based reasoned argument is enough to show that something is a human right. By the political approach, however, the claim in question must also be shown to be urgent by a standard of global public reason. More will be said on global public reason in section 2.2, which is dedicated to the political approach. Another key difference between the approaches is that they disagree on what is intrinsically valuable and worth protecting with human rights. The next two subsections are dedicated to these differences.

2.1 The Orthodox Approach

The main underlying feature of the orthodox approach is that it describes the nature of human rights as being moral rights that are possessed by all human beings by virtue of their being human. Human rights apply to all people equally regardless of their nationality, religion, etc., and it holds these rights to be pre-institutional, where no legal institution needs to exist to declare or protect these rights in order for them to exist (Gewirth, 1982; Donnelly, 2003; Griffin, 2008).

The orthodox approach typically appeals to a concept of natural rights. By this account, human rights claims can be made by proclaiming human rights as unalienable truths endowed to all humans by God, and some modern-day scholars maintain that a theological grounding for human rights is still necessary (Wolterstorff, 2008). However, grounding need not depend on God per say, but all orthodox approaches take a stance that holds that at least some norms are essential features valuable to the human being, then it determines sets of human rights based on these features.

The orthodox approach has two major offshoot schools of thought that attempt to pinpoint which intrinsic values are important enough to be protected by human rights, and both of them claim to protect features of basic human interest (Note 6). The first is the idea of personhood (Griffin, 2008), which maintains that human beings should be seen as “agents”, and human rights should guarantee this agency. There are three features of personhood: autonomy, minimum provision, and liberty. For Griffin’s personhood approach, only rights that protect agency can be considered human rights. The second is the idea of basic capabilities (Sen, 2004; Nussbaum, 1997). This is similar to personhood except that human rights are seen as a guarantor of the freedom brought on by capability, which is the state of having “freedom of effective choice”. By this approach, human rights should limit

themselves as guarantors of these basic capabilities. Both approaches share the concept that the importance of these values is applicable to human rights “as such”. However, the orthodox approach need not be limited to these two conceptualizations of what is intrinsically valuable. Arguably anything that is of basic human interest can be said to be intrinsically valuable.

The orthodox approach suffers from two major drawbacks (Note 7), so any argument for a human right to the Internet from this approach might be flawed from the onset. First, it lacks fidelity to a list of rights that could be found in a real-world list of human rights, such as the UN Declaration of Human Rights. This is because deriving a list of rights from what is “essentially human” will either result in a list of rights that is overly minimal or too large to take seriously. For example, if what is considered necessary to be human is limited to preservation of bodily integrity, then the list of human rights will tend to only be a handful. On the other hand, if what we consider a more demanding list of things (e.g. education, freedom of speech, good working hours, etc.) as necessary for being a human, then the corresponding list of human rights will be too large. The list will be either too large or too small because it is easy for us to imagine that there might be norms we consider important enough to include in a list that do not have to do with bodily integrity, and it is easy to imagine that we might not consider some things we highly value (e.g. one month paid vacation time) as human rights (Note 8). In other words, just because something might be valuable does not mean it is a human right. Second, the orthodox approach is highly susceptible to parochial (particularly Western) opinions of what is necessary to protect as a human right. Every political community might not share the qualifications of personhood and basic capabilities, yet they can still be claimed to be human rights by the orthodox approach. Because of these two problems, arguments for human rights that derive from the orthodox approach often suffer attacks to their initial premises about what should be considered intrinsically valuable. This is reflected in the arguments for a human right to the Internet made in sections 4.1, 4.2, and 4.3.

2.2 The Political Approach

The second approach is known as the political approach to human rights, and it emphasizes the practical nature of human rights in the politics of international relations (Note 9). This approach holds that human rights exist in virtue of the governing institutions themselves, and that human rights have a particular role in the political relationship that exists between these institutions (Note 10). For example, the political approach might claim that human rights exist as a type of “status check” of political legitimacy for a government in the international arena (Rawls, 1999; Cohen, 2006), or violations of human rights might function as justificatory measure for intervention by the international community in the domestic realm (Rawls, 1999; Raz, 2007; Beitz, 2009). For a right to be a human right by the political approach standard, it must have some practical weight on the international level. This differs from the orthodox approach because the orthodox approach views human rights as a form of natural rights, while the political approach rejects this idea and attributes the existence of human rights to the political system itself (Note 11).

The political approach says that human rights come from a “proper subset” of the rights required by justice in liberal and “decent” societies, so they are a “special class of urgent rights” (Rawls, 1999: 79) (Note 12). Decent societies are those that do not have principles of equality and freedom built into the legal system as with liberal societies but instead have a legal system founded on a conception of “common good” that sets standards for justice and imposes obligations on everyone in the society to protect the “proper subset” of demanded rights (Rawls, 1999: 59). In doing so, a decent society is accepted as an equal in the global society of states, and it can hold other states accountable for not meeting the standard of the “proper subset” of rights, which are justified by reference to reasons that both liberal and decent people can be expected to understand and accept.

A decent society need not be just by liberal standards to qualify as a protector of human rights because human rights are grounded on a concept of global public reason, which is “a shared basis for political argument that expresses a common reason that adherents of conflicting religious, philosophical, and ethical traditions can reasonably be expected to share” (Cohen, 2006: 226). This is a standard under which we can interpret which norms are urgent enough to be considered human rights, and it provides terms for justification and argument in discussions of the conduct of political societies and their institutions. By the political approach, the most important criteria for determining a human right is that the interest protected by the right is sufficiently important enough to be regarded as politically “urgent” by a standard of global public reason (Note 13). To be considered urgent by a standard of global public reason, the interest in question needs to be shown as urgent for any decent society in the society of peoples. In other words, the norm protected by a human right must be intrinsically valuable for any political society in the society of peoples. Global public reason thus leaves a sense of non-parochial openness to the debate of what is inherently valuable because it finds the highest common denominator in a world of different perspectives.

As a potential intrinsically valuable norm, Joshua Cohen (2006) has proposed that human rights are best viewed as norms founded on a concept of membership in an organized and decent political society (Note 14). In terms of the political approach, membership is considered intrinsically valuable because it is an essential feature of any political community in the society of peoples. A society of peoples abides by an institutional account of justice-raising institutions and the obligations created under those institutions. If we consider state institutions to be non-voluntary and coercive and if we assume that those living under these institutions have a duty to obey these institutions (Note 15), then protecting membership is also protecting the special relationship between the individual and the justice-raising institutions. In other words, if we accept the conditions for decent societies in the global society of peoples, then a presupposed right of the individuals living in decent and liberal societies is the right to be included as members in those societies. This is a fundamental feature of any decent society, so it can be considered urgent by a standard of global public reason. Thus, membership is intrinsically valuable by this account.

Human rights should be seen as a set of membership rights that are instrumentally necessary for membership. However, because this conception of membership is built on global public reason, things that are instrumentally necessary for membership are sure to vary between political societies (this, in fact, was Cohen's (2006) reason for arguing against democracy as a human right). Cohen says that membership minimally requires a society that has collective self-determination, which means the institutions governing the population of the state work in the interests of those it governs. Cohen (2006: 233) has three broad criteria of collective self-determination: (1) the political process of a society represents the plural interests of those subjected to the laws created by the process; (2) those subjected to those laws have the right to object or appeal the laws; and (3) the institutions should justify any laws created or actions they take. The key to Cohen's approach is that he is trying to avoid having to make subjective judgments about particular features that are necessary for membership. Instead, through his three criteria for collective self-determination, which might be considered the minimum criteria for membership in a decent society, he is leaving the qualification of human rights to global public reason, which is meant to interpret specific cases of possible instrumentally necessary things for membership. This paper will accept these three criteria as the conditions for collective self-determination, so the conditions for self-determination are the minimum criteria for membership in a political society.

There are at least two reasons why Cohen's grounding of human rights in membership is particularly suitable (Note 16). First, it is faithful to the condition of fidelity (Cohen, 2006: 238). Second, it is non-parochial because it grounds human right claims on the idea of global public reason. Since global public reason is a conglomerate of different perspectives and reasons behind human right claims, it can be said to be better suited in avoiding biases and parochialism. This is because it does not make a claim to human rights from an abstract concept of natural rights or a subjective concept of the good life, and it instead makes claims that are inherent of the reality of a global society of peoples. The concept of membership, the special relationship between an individual and his state, is an inherent feature of any political society, so grounding human rights as protections of membership in a political society does not come from a conception of the good life or natural rights. For this, arguments deriving from this approach more readily avoid the problems of the orthodox approach, and, at least for now, the political approach seems to be the best suited theory for conceptualizing human rights and constructing a corresponding list of human rights.

3. The Idea of the Internet

Before addressing the arguments for a human right to the Internet, it is also necessary to define the nature of the Internet and what it would mean to have a right to the Internet. Moreover, it will be useful to locate the defined nature of the Internet in a more general list of human rights.

3.1 Connection and a Right to the Internet

The Internet can best be understood through an idea of connection. On a very general level, the Internet connects its users because the users have the possibility of exchanging information with each other. Connection is a state of being, and to be connected means to be in a state where communication is possible. Communication is an action, and it is the deliberate exchange of information.

When an individual has access to the Internet they are connected to others who have access to the Internet. The reason those with Internet access are connected is because they share the same spatial-temporal location (Note 17). Sharing the same spatial-temporal location is necessary for connection (Note 18). For example, let's say X and Y are both at the park today at noon. X and Y are connected because they are in the same place at the same time. If X was there at 10am and Y was there at 2pm, then their temporal location would not match and there would be no connection. Having access to the Internet is like having access to a virtual park. The users are

connected because they are in the same place at the same time. Therefore, having a right to Internet access means having a right to be connected to everyone else with access to the Internet on the Internet. It is a right to be in the virtual park that is the Internet.

Comparing Internet access with having access to a virtual park is useful because it points out three reasons why we might place special importance on being connected to others via the Internet, in general and in relation to other ICTs. First, being in a park gives an individual the possibility of communicating with others in the park *right now*. It might be said that because I can send and receive postage that I am connected to everyone else in the postage system, but this would underplay the feature of immediacy that we value about the Internet. Second, being in a park gives an individual the possibility of communicating with others in the park in a multitude of meaningful ways. Having a telephone, for example, limits its user to the possibility of audio communication, but the Internet, on the other hand, lets users communicate in ways comparatively parallel to being together in physical person. Third, being in a park gives an individual the possibility to communicate with a large number of people at the same time. It is clear that no other widely used ICT in existence can direct a message to at most a few other individuals simultaneously (Note 19). Therefore, this paper defines connection as a special kind of possibility of communication, one similar to that of having the possibilities of communication and levels of expression in physical person.

3.2 Duties Associated with a Right to the Internet

There are at least three scenarios where a right to the Internet might come under threat, which illustrates what sort of duties can be associated with having a right to the Internet (Note 20). First, if a state, without providing sufficient justification, removes Internet access for part or all of its population. Second, if a state, without providing sufficient justification, prevents ICT development so that its population is unable to initiate access to the Internet. Third, if a state, for reasons beyond the state's control, is unable to provide its population with ICTs and other infrastructure required to access the Internet.

Rights can be said to demand two types of duties: positive and negative (Note 21). Two negative duties associated with the right to the Internet are (1) the government has an obligation not to reduce Internet access and (2) the government has the obligation not to interfere with the proliferation of ICTs and infrastructure required to access the Internet. Two positive duties associated with the right to the Internet are (3) the government must encourage conditions where Internet access and ICT proliferation can occur and (4) the government must provide its population with ICTs and other infrastructure required to access the Internet (Note 22). Of course, not all these duties might apply, and this paper argues that currently only negative duties might apply in the case of Internet access.

3.3 Putting a Right to the Internet in Context with Other Rights

There are a number of ways a claim to a human right to the Internet can be incorporated into the current human rights framework. One way is to derive it from some other basic human right. There are a number of rights that might be used to claim a right to the Internet.

A potential right that might be used as a base of the argument is the right to communicate. Discussion surrounding the right to communicate during the 1970s and 1980s in internal talks of UNESCO, which was argued in a context of Cold War communication system rivalry, particularly with the rise of satellite communication networks. In short, it was claimed that the global broadcasting of the two world superpowers would drown any opinion from other smaller nations (d'Arcy, 1969). The right to communicate has no formal standing, nor is it clearly defined. However, it does include a number of other basic associative rights under one field of "communication" (Unesco, 1980: 173). The right to communicate tries to encompass association rights, information rights and "global" rights, which was claimed to represent things such as freedom of choice and culture. So by guaranteeing a right to communicate it can also be claimed that we are guaranteeing a number of other rights that are associated with communication. However, this is not helpful for forming a basis of an argument for a human right to the Internet because communication's definition is so vague. Without having a distinct idea of what communication is, it becomes difficult to pinpoint the features we might consider urgent enough to be considered human rights. Moreover, there is a lack of contemporary literature on the right to communicate, both in academia and public discourse, so it does not seem useful as a candidate to base any rights claims because doing so would maintain little fidelity to current human rights practice. Nevertheless, an argument that could be made from a right to communicate approach will be considered in section 4.1.

Another right used as a basis for claims to a human right to the Internet often derive from a right to expression (Note 23). Although this is the most cited in public discourse, the right to expression is not the most suitable basis for an argument for a right to the Internet because a right to expression is principally used to describe what

can be said in particular circumstances, so this would not be a proper match for the right to the Internet. Having a right to the Internet is about having access to a particular place (e.g. the virtual park), not about what may be said or how it may be said. The Internet in itself is not a new form of expression, such as speaking or painting, but it is a new place where forms of expression can be heard. However, this is not to say that the Internet cannot play an important role in expression. After all, because everyone with access to the Internet is connected, there is the possibility of communication between them, so any form of expression delivered on the Internet has the potential of being received by a large number of people. That said, this paper does not advocate a right to the Internet from the idea of a right to expression, but it does still consider one argument regarding the right to expression in section 4.4.

Being connected with others in physical person is equivalent to being assembled with those connected. By connecting with each other in the virtual park that is the Internet, users are assembling with each other. Therefore, the most viable option to be used as a basis of a claim to the right of the Internet is the right of assembly (Note 24). To have a right of assembly means that one has the right to come together with others. When people are assembled the possibility of communication is open. Therefore, it would seem that any argument that wants to pinpoint the exact function of the Internet in its discussion will adopt the right to assembly as the basis for its claims. This is not to say that the right to assembly is the only basis that can be used, but considering the nature of the Internet, the right to assembly is probably the most effective at avoiding confusion over the nature of the Internet itself. Section 4.5 explores an argument for a human right to the Internet based on a human right to assembly.

4. Arguments for a Human Right to the Internet

There are five arguments commonly made in public discourse for a human right to the Internet. Two of these arguments derive from the orthodox approach, and two derive from the political approach. This section will examine them in turn.

4.1 The Communication Argument

The first is the Communication Argument, and it is the line of argument taken by advocates of the right to communication mentioned in section 3.3. By their standard, the right to communicate comprised a number of different norms that could be said to be valuable, such as freedom of expression, culture and opinion. Advocates of the right to communicate claim that these norms are fundamental in that they are prerequisite of all human rights in general, and it is claimed that man has a basic biological need to communicate (d'Arcy, 1969). The use of natural rights justification qualifies this argument as part of the orthodox approach.

In terms of an argument for a human right to the Internet, it makes a general claim that there is an intrinsic value to communicate based on natural right grounding, it notes the importance of the Internet as a communication technology, and it concludes that Internet access must be a human right because of its importance as a communication technology. This argument for a human right to the Internet would look like this:

A) Communication is intrinsically valuable. **B)** The Internet is instrumentally valuable for communication. **C)** Anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, **D)** there is a human right to the Internet.

There are two things wrong with this argument. The first resides in premise **A)**. This point is claiming that communication is an especially urgent norm to protect because it is intrinsically valuable as a human need. In other words, communication is an essential feature of what it means to be human. This is false because there are obvious cases where this might not be true. For example, a hermit who wants to live alone in the forest without contact with the rest of humanity cannot be said to value communication as a necessary feature of being human. Claiming communication as a basic human need and intrinsically valuable seems to prescribe an objective conception of the good life.

We can technically stop here, but it is also worth pointing out the second problem, which is present in premise **B)**. This point maintains that the Internet is instrumentally valuable for communication, but it is not instrumentally necessary. Even if we accepted premise **A)**, just because the Internet is valuable for communication does not show why it is important enough to be regarded as a human right. As argued in section 1.1, just because something is valuable (e.g. good vacation time) does not mean it is a human right. The Communication Argument therefore fails to show that there is a human right to the Internet.

4.2 The Autonomy Argument

A second argument that can be made in favor of a human right to the Internet by the orthodox approach is the Autonomy Argument. By this argument, autonomy takes a definition that is closely parallel to that of Joseph

Raz's (1986: 373). His account claims that a fundamental feature of autonomy is the presence of choices and options to an individual that do not regard his most basic needs, and this definition of autonomy can be associated with the prescribed intrinsic values of Sen and Griffin (Note 25). He illustrates this by his "man in the pit" example, where a man is stuck in a pit for his entire life with enough food to live, and his only choices are when to eat and when to sleep. For Raz, this man is void of autonomy because his only options are those that concern his most basic of needs (Raz, 1986: 373).

The same might be claimed of living in the contemporary world without Internet access. The Internet provides its users with considerably more ideas and opportunities, as they have the possibility to connect with a number of people they would not have normally had. This point is often suggested by literature on the digital divide, and it is comparable to almost any argument that claims that not having the Internet is like not having some basic need (Note 26). If we put such a claim, such as the liking of the Internet to water access, in context with the concept of autonomy, then the nature of the argument unfolds. For example, if someone does not have water access and must spend all their time seeking out water, then it is clear that this person would be in a similar situation to that of the man in the pit. In short, water access is instrumentally necessary for autonomy. But can the same be said about the Internet? The autonomy argument looks like this:

A) Autonomy is intrinsically valuable. **B)** The Internet is instrumentally necessary for autonomy. **C)** Anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, **D)** there is a human right to the Internet.

There are several problems with this argument. Premise **A)** claims that autonomy is intrinsically valuable, but it is not clear about how many options one needs in order to be fully autonomous. Moreover, some people might hold some options as useless while others necessary, so there also is no consensus on option priority. More generally, someone might not value autonomy as an intrinsic value in the first place. For this, we should not accept premise **A)**. The argument is also hindered by premise **B)** because it is not clear that the Internet is necessary for autonomy. It is clear that the Internet gives its users more options, but we would probably not consider these users the only autonomous people in the world. Autonomy is about having options to do things beyond supporting one's immediate basic needs. It is doubtful that the Internet is necessary to provide for those most basic needs or that it is in itself one of these basic needs. Therefore, premise **B)** does not hold, so this argument fails on two fronts.

4.3 The Equality Argument

At this point, advocates of digital divide literature might claim that the Autonomy Argument has misinterpreted their position. While digital divide literature does emphasize individual autonomy as a norm to protect, it does this from a position that holds relative autonomy as the value in question (hence the digital divide). In other words, it is not necessarily urgent to be individually autonomous, but it is urgent when some individuals have more options than others. The digital divide is urgent because the Internet gives its users many more options relative to those that do not have Internet access. Applying this to an argument for a human right to the Internet, we arrive to the Equality Argument (Note 27):

A) Equality of options is intrinsically valuable. **B)** The Internet is instrumentally necessary for equality of options. **C)** Anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, **D)** there is a human right to the Internet.

Equality does have an important place in human rights theory (Buchanan, 2010) (Note 28), so it might be reasonable to believe that premise **A)** is true. However, placing equality of options as an intrinsically valuable norm would undoubtedly be culturally parochial. Perhaps the most obvious example where equality of options is not intrinsically valuable is in a traditional Islamic society, such as Saudi Arabia. Equality of options in Saudi Arabia is obviously not valued because there are certain groups (i.e. aristocracy, women) who may have a certain level of options that differ from other groups. This applies to both political and economic status. For example, it might not be acceptable for a non-aristocrat in Saudi Arabia to hold a particular public office, and it might also not be acceptable for a woman to establish a business or participate in other socioeconomic activities. For this, any intervention by the international community on these grounds might be seen as parochial and paternalistic. Because of this parochial hint, it does not seem that equality of options is an appropriate intrinsic value to protect through human rights, thus premise **A)** causes the argument to fail.

4.4 The Expression Argument

Turning to the political approach, there are a number of things that could be said to be instrumentally necessary for membership that can also be connected to Internet access, and this section considers two. First and foremost,

the Internet is likened to an idea of the right to free expression. The UN Declaration of Human Rights even associates information media with free expression in Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (UN, 1949). Since the right to free expression is an associative right and a minimal level of expression is needed to meet the membership criteria, claiming a human right to the Internet might be possible if the Internet can be shown to be necessary for expression. An argument from this approach would look like this:

A) Membership in a political community is intrinsically valuable. **B)** Some level of free expression is instrumentally necessary for membership. **C)** The Internet is instrumentally necessary for free expression. **D)** Anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, **E)** there is a human right to the Internet.

Premise **A**) was already advocated in section 2.2. Premise **B**) must also be true, because if members of a political community are unable to express themselves even on the most basic level then it is not guaranteed that their interests will be taken into account in political decision making because there is no chance to object or appeal the decisions. This said, it is not clear that the Internet is necessary for free expression, **C**). As shown in the definition of the Internet in section 3.3, the Internet is not a form of expression; it is a means for forms of expression to be heard. Therefore, the only time we could say that the Internet is instrumentally necessary for expression is if there was no other place people could express themselves. Since this is not the case, premise **C**) is false and the argument fails.

4.5 The Assembly Argument

A second line of argument from the political approach is arguing for human right to the Internet from an idea of assembly. As shown in section 3.3, the Internet is best viewed in terms of a right of assembly, so the corresponding assembly argument probably has the clearest avenue for success. An argument from this approach would look like this:

A) Membership in a political community is intrinsically valuable. **B)** Some level of assembly is instrumentally necessary for membership. **C)** The Internet is instrumentally necessary for assembly. **D)** Anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, **E)** there is a human right to the Internet.

Once again, premise **A**) will be accepted according to arguments in section 2.2. However, premises **B**) and **C**) need to be proven true.

It seems quite intuitive that assembly is required for membership, **B**). To illustrate the basic need for assembly, let's consider a political society with no ICTs, so assembly is only possible between human beings that share the same spatial-temporal location in physical person. Let's say the government of this imaginary state decides to relocate an individual into the middle of the forest so he cannot make contact with other members of the political community. To relate this to the definition above, the individual's spatial-temporal location relative those in his political community has been changed and blocked. Nevertheless, the government still has the power to govern this individual because it could at any time interfere in his affairs. The individual, however, has no means to leave the forest and is thus stuck there by the hand of his government. This is a case of exclusion, as this individual is being denied the possibility of assembling with his political community. Without the possibility of assembling with his political community, the individual has no guarantee that his interests will be taken into account in any political decisions because he has no possibility to communicate those interests. This is important to note because the possibility of assembly with his political community is initially required to be part of the political community, and this shows that assembly is presupposed in all three criteria of collective self-determination. Without being able to assemble, an individual is virtually asleep and at the mercy of his government. Therefore, **B**) is true.

However, it still is not clear what minimum standards of assembly need to be met in order to satisfy membership. Of course, in the example above, a complete removal of the possibility to assemble with the members of one's political community could be considered exclusion, but what sort of possibilities of assembly does one minimally need to be part of the political community in the first place? For the membership criteria to be fulfilled, the three conditions of collective self-determination need to be met. Therefore, one must have the possibility to assemble enough with the political community so that (1) his interests are accounted for in the political decision making process, (2) he can object or appeal the decisions, and (3) he is able to receive justification for any actions taken by the government. Of course, the minimum possibility of assembly required to meet these criteria are sure to vary between peoples. In short, there is likely no consensus in global public

reason that claims that the possibility of assembly needs to be at the level as that provided by Internet access. Therefore, we cannot accept premise C), that the Internet is instrumentally necessary for assembly, so this argument fails as well.

Nevertheless, it might be easy to imagine a world where there is a consensus by a standard of global public reason that says that the level of assembly provided by access to the Internet is necessary for assembly in the first place. This world, however, would undoubtedly be almost universally dependent on Internet access for regular functioning to the level that if someone did not have Internet access, then their interests would not be accounted for. While many economically developed countries might be approaching this state, it is clear that the entire world does not yet share this position (Note 29).

5. Urgent Threats

It has been shown that a number of arguments for a human right to the Internet fail, but it still might be easy for us to imagine that denying Internet access would result in global outcries of human rights violation. This is because there is something particularly urgent about the denial of the Internet at the human rights level, which is because we consider the Internet so valuable. But is this sense of urgency caused by the denial of the Internet indicative of a human rights violation?

The question will be best informed by returning to the discussion of human rights qualification. So far, it was argued that membership is intrinsically valuable and worthy of protection via human rights, and it has been shown that some level of basic associative rights, such as expression and assembly, are instrumentally necessary for membership. Anything instrumentally necessary for membership is a human right, so there exist human rights to expression and assembly.

One problem with this, however, is that it is not clear to what extent we have rights to things instrumentally necessary for membership. For example, does having a human right to assembly literally mean everyone has a right to be with others anywhere at any time? Obviously not. The extent of these rights that everyone can be said to have is on a sliding scale based on what is considered necessary for membership by a standard of global public reason. This said, it is clear that there is a human right to at least some assembly because otherwise the most minimal levels of collective self-determination would be violated. In other words, everyone requires at least some minimal capacity to assemble with others in their political community in order to be a member of a political community. Since a minimal capacity exists for instrumentally necessary things for membership, then human rights demand at least some positive duties because we could not meet the minimum requirement without whatever the human right protects. Therefore, governments have a positive duty to provide a capacity to assemble with others in the case that there does not exist the capacity to minimally assemble with others. The same can be said about anything that is instrumentally necessary for membership.

Where does that leave things that are valuable for the capacity to exercise a human right but are not inherently instrumentally necessary for membership, such as the Internet? The reason we might make human right claims for things that we find valuable is that we find them valuable for something that is instrumentally necessary for membership. Let's consider the relationship between a major city piazza and the human right to assembly. A direct violation of a human right to assembly might be a law against associating with others so that the minimum level of assembly cannot be met. But what if a government decided, without justification, to demolish the major city piazza? We can imagine that there would be a strong level of backlash on the part of the country's population. Nevertheless, there is more than one place they can assemble with each other, so it does not need to be in the piazza. Indeed, the piazza is not instrumentally necessary for assembly. However, to say that everything about this situation is fine in regards to a human right to assembly would be a dangerous misunderstanding of the urgency caused by the action of the government. Indeed, there is a sense of urgency because we perceive this action as being a threat to the human right to assembly because the government, without justification, reduced its population's capacity to exercise their right to assemble. A right is considered threatened when a government, without justification, reduces its population's capacity to exercise the said right.

If global public reason is appropriate for determining the requirements of the membership criteria, then it is also suited for determining threats to the membership criteria caused by a denial of something instrumentally valuable for the capacity to do something that is instrumentally necessary for membership. Any reduction in the capacity to exercise a given right might be seen as a threat to that which the right protects, and if that right holds necessary importance in the membership criteria, then it might be considered urgent. This is because global public reason is sensitive to potential threats to the membership criteria, so threats to the membership criteria might be seen as politically urgent in themselves by a standard of global public reason. Therefore, we must give due consideration to claims where human rights are perceived as being threatened but not directly violated.

A problem with this analysis, however, is that it remains unclear when a particular threat to a human right is urgent. For example, if a government were to take away a yearly two-month paid vacation period, then would we be able to claim that this is a violation of our right to assemble because without time off from work we are losing some capacity to assemble? Probably not. The action of the government must have a clear threatening effect on a human right by a standard of global public reason for it to be considered an urgent threat to that human right. Returning to the example above, what if the government were to instead demolish a major city piazza where it was common for people to assemble with each other? The piazza in itself is valuable for assembly, and public reason recognizes the importance of that piazza for assembly. The thing in question must have a clear and valuable connection to a human right by a standard of global public reason in order for its denial to be considered an urgent threat to that human right.

Urgent threats take a subsidiary role in human rights and a direct role in claims of human rights violation. To illustrate, is there specifically a human right to not have one's major city piazza demolished? Obviously, any human rights document won't bother to list every possible urgent threat to its core human rights. But human rights, like any legal tool, are meant to be open-ended, interpretable and adaptable to a variety of different cases where a sense of urgency relative to that right might be felt. If on a theoretical level a connection between some object and a core human right is made, then the grounding of a human rights claim regarding the denial of the object is established. After that, any punitive action taken for the violation of that human right would need to be justified by the international community. An urgent threat to that right is the justification for the punitive action. Therefore, a government were to demolish a major city piazza without justification, then the international community could use that urgent threat as justification for any measures taken against the government on the grounds that it violates their populations' right to assembly. Thus, the object whose denial warrants the urgent threat is not a human right in itself, but it may possess negative duties not to have it denied because its denial can be used as evidence of a human rights violation.

Objects whose denial result in urgent threats to human rights are not the same as human rights because urgent threats only demand negative duties. If something is instrumentally valuable and denying it would result in an urgent threat to that which it is valuable for, then it could only demand negative duties not to be denied. It would be negative and not positive because the urgency is not felt until it is denied. Therefore, urgent threats only demand negative duties not to be caused. Human rights, on the other hand, and as argued above, require at least some positive duties because an absence of that which human rights protect would be urgent in and of itself, regardless of the action of a government.

Returning to the argument at hand, it would be hard to deny that, although the Internet is not instrumentally necessary for assembly, the Internet is very instrumentally valuable for the capacity to assemble. After all, it gives users the possibility to assemble with a large number of other users very quickly. An urgent threat argument regarding the Internet comes in two parts and looks like this:

Part one: **A)** Membership in a political community is intrinsically valuable. **B)** Assembly is instrumentally necessary for membership. **C)** Anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, **D)** there is a human right to assembly.

Part two: **E)** The Internet is instrumentally valuable for the capacity to assemble by a standard of global public reason. **F)** The unjustified denial of something that is instrumentally valuable for the capacity to exercise a human right by a standard of global public reason is an urgent threat to that human right. **G)** Anything whose denial results in an urgent threat to a human right possesses negative duties not to cause the urgent threat. Therefore, **H)** there exist negative duties not to deny the Internet.

Everything in part one of the argument was proven true in the previous section. Therefore, the argument is valid. Part two starts with a premise **E)** that claims that the Internet is instrumentally valuable for assembly by a standard of global public reason. We can intuitively accept that any human being would recognize that a large gathering place is instrumentally valuable for the capacity to assemble, and the Internet is precisely that. Nevertheless, there are two pieces of empirical evidence that suggest that this is recognized by global public reason. First, in a recent global survey done by the British Broadcasting Corporation (BBC 2010), over 70% of respondents claimed that the urgency of Internet denial should be protected at a human rights level. Second, in recent cases where the Internet has been denied without justification, such as in the 2011 revolutions in several Middle Eastern countries, a number of organizations and states officially expressed concern and condemned the denial of Internet access (Note 30).

I argue for premises **F)** and **G)** at the beginning of this section, so I will also accept them as true. Therefore, although there is not a human right to the Internet because the Internet in itself is not instrumentally necessary

for membership, there exist negative duties not to deny the Internet, **D**), on the basis that its denial would be an urgent threat to the human right to assembly.

6. Conclusions

One of the biggest complaints when it comes to human rights qualification is that there is a tendency for human rights inflation. In short, qualifying too many things as human rights contributes to a lack of force in human right claims. This paper has offered a subtle solution to this problem. We should stop calling things we value human rights and instead connect them as urgent threats to more basic human rights, those instrumentally necessary for membership in a political community.

A human right has both positive and negative duties associated with it because it requires some minimal criteria. An urgent threat to a human right may only demand negative duties because the urgency is only felt when the value in question is denied.

This dichotomy of terms remains loyal to current human rights practice and our intuitions about how human rights work (Note 31). There are only 30 articles in the UN Declaration of Human Rights, the most widely accepted list of human rights. The rights listed are all basic rights that are arguably instrumentally necessary for membership in a political community. On the other hand, there are plenty of things that we are tempted to claim as human rights, such as Internet access, that are not human rights in themselves. However, the urgency of these things at a human rights level can be felt, and their denial is arguably an urgent threat to the more basic list of human rights.

There is not a human right to the Internet, but it would seem that the denial of Internet access is an urgent threat to the human right to assemble, so the Internet demands negative duties not to be denied. This paper has presented five arguments that claim there is a human right to the Internet, and it has shown that they all fail. Besides offering clarification to discourse regarding a human right to the Internet, this paper has discussed human rights qualification and how to classify things that are not human rights but urgent nonetheless.

Acknowledgements

Thank you to everyone who helped bring this work to light during its completion as the final work of my MA at UCL. In particular, my supervisor Andrew Walton, and professors Richard Bellamy and Albert Weale for their critical comments in the beginning of the research, and to Benjamin Worthy for his guidance in my research of ICTs. To all my colleagues in the MA program, but in particular Polly Mitchell, whose critical eye kept my arguments within the Earth's atmosphere. Post UCL, a very special thank you to Vint Cerf for all his critical comments on the nature of the Internet.

Of course, an eternal thank you to David Bowie, the greatest homo superior of our times.

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Notes

Note 1. There is a large body of literature on the digital divide, which describes the economic, social and political effects of not having access to modern ICTs and access to the Internet. Major works include Norris (2001) and Warschauer (2003).

Note 2. Tim Berners-Lee made this comparison at an MIT symposium event entitled “Computation and the Transformation of Practically Everything” on April 12, 2011.

Note 3. This terminology borrowed from Tasioulas (2009), but scholars have used different terms to describe each school of thought. For example, Raz (2007) and Cohen (2008) refer to the orthodox approach as the traditional approach, and Beitz (2009) calls the political approach the practical approach.

Note 4. For more on the use of truth-based reasoning in human rights qualification see Tasioulas (2009). Not every human rights theory uses truth-based moral reasoning. For example, Rawls (2001) rejects it as unnecessary due to the very nature of human rights as tools of state bodies. For Rawls, only the most basic list of human rights could possibly apply between tolerant societies. Any further discussion into a larger list would be dependent on power relations and particular cases on the international stage.

Note 5. Rights that are intrinsically valuable are often referred to as “fundamental” or “absolute” rights.

Note 6. There is also James Nickel’s (1987) theory of human rights as guarantors of “a minimally good life”. I do not believe that difference between Nickel and the other theories mentioned here are significant for the discussion at hand. For a comparison of Griffin and Nickel see Buchanan (2010).

Note 7. For more on the fidelity and non-parochial conditions see Tasioulas (2009: 230). For more on the general failures of the orthodox approach see Raz (2007: 2) and Beitz (2009: 65).

Note 8. Just because a list might be “too large” does not mean that a list of human rights needs to be small. The list of human rights must have reasonable expectations to be enforced by the international community, with the capacity and justification to do so.

Note 9. In the political approach the primary unit of responsibility is the state (Beitz 2009: 122). Raz (2007) has speculated that this could be extended to multinational corporations and NGOs, but for the time being, the discussion here will refer to the state as being the primary institution vulnerable to human rights standards.

Note 10. For reference, Beitz (2009: 106) refers to the political approach as a two level model of human rights that places the domestic and the international realms on each respective level.

Note 11. Political approach theorists do not reject the idea that natural rights exist, they only see them as a type of subjective judgment about the nature of human existence. The place of natural rights in a contemporary, liberal society of states might conflict with the idea of toleration because natural rights inherently set a dogmatic standard of what needs to be protected without properly considering any conflicting viewpoints from non-liberal political societies. Therefore, if human rights are going to be useful and tolerant to varying human viewpoints about the nature of humanity, it must detach itself from a concept of natural rights.

Note 12. One conception not mention here is the minimalist approach to human rights based on a grounding of toleration as espoused by Michael Ignatieff (2001). Due to weaknesses in Ignatieff’s minimalism argument (Cohen 2004) this approach will be avoided in this paper’s arguments.

Note 13. Beitz (2009: 137) and Raz (2007) also add two other criteria for the qualification of a human right: (1) It would be advantageous to protect this right through laws and policies of state bodies because there are a range of circumstances where this right could come under threat, and (2) in the case that a state was to fail to protect this right, its failure would command international concern and potential intervention by the global society of states. However, it would seem that both of these conditions are simply sub-criteria of the urgency by a standard of global public reason. Pointing out these two extra points might give more weight to a claim to a human right, but without the urgency by a standard of global public reason it is not clear why we should consider a particular norm important enough to be considered a human right in the first place. Because the purpose of human rights is not clearly defined, any human right claims based on only the second and third criteria would be especially susceptible to status quo objections because power relations in international relations could define the purpose of human rights for individual state interests. Nevertheless, these are probably best served through empirical observations and reasoned judgments about the international community. Of course, making a definitive judgment about what the international community might do in any particular case is impossible, so it may be best to rely on historical cases regarding the right in question.

Note 14. In part, Beitz (2009: 138) rejects this approach and thinks we should work empirically in that we try to find any norms that are particularly important, then we proceed with our analysis from there. He argues that organizing our aim of human rights under some “master value” (such as personhood, basic capabilities, membership, etc.) will not fully solve the abstract question of the purpose of human rights and it may even limit the scope of human rights. This said, working empirically is not much more helpful because it lacks a concept of

human rights purpose because we would be left with unlimited possibilities of norms that could qualify as serving important human values.

Note 15. For a more in-depth discussion of the special justice-raising relationship between an individual and his governing institution see Rawls (1999), Blake (2001) and Nagel (2005).

Note 16. There are, of course, problems with Cohen's membership grounding of a political approach. However, I do not believe they urgently pertain to the question at hand. For criticism of Cohen's membership concept from a political approach perspective see Jean Cohen (2008).

Note 17. For more a more general discussion on space and ICTs see Castells (2000: 409).

Note 18. An objector may note that sharing the same spatial-temporal location is not both necessary and sufficient for connection. This is probably true. An individual needs the capacity to deliberately communicate with someone before they have the possibility to communicate. However, I do not wish to elaborate on this point because it would deviate too far from what specifically the Internet does. The Internet unifies its users spatial-temporal zones.

Note 19. Television and radio broadcasting allows messages to be delivered to millions of people simultaneously, but this is only one-way communication usually originating from a company or organization that has the vast resources and permissions required to broadcast these messages. The Internet allows messages to be sent and received by individuals to large numbers of people.

Note 20. This is only referring to the state, but it is reasonable to think that the right to the Internet could come under threat from other actors such as large companies or NGOs.

Note 21. For more discussion on rights and duties see Raz (1986: 183) and Lippke (1995). Dividing human rights into positive and negative rights might also be seen as dividing them into "normative" and "aspirational" categories. For a criticism on this point see O'Neill (2005).

Note 22. Perhaps the most widely accepted definition of a human right to the Internet and the duties associated with it can be deduced from the values expressed in the UN special report (UN Human Rights Council 2011) on the place of the Internet in human rights.

Note 23. The right to expression is probably the most commonly used right that forms the basis of discussion for a human right to the Internet. The UN (2011) recently published a special report linking the Internet to a right to free expression, and the UN Declaration of Human Rights article 19 cites the use of any "media" to be used for expression. The report states that the denial of Internet access is a violation of the right to free opinion and expression.

Note 24. This might also be considered the right of association, but I do not think the difference matters for the purpose of this paper. The right of assembly can be used interchangeably with the right of association.

Note 25. Griffin (2008) places autonomy under the most fundamental intrinsic good, "personhood". Although Griffin defines autonomy differently as the capacity to make rational choices about one's life, Griffin's entire personhood account might be said to incorporate Raz's autonomy definition because Griffin also puts special weight on liberty as a feature of personhood, which can be interpreted by Raz's autonomy definition. For Sen, autonomy as options is a close parallel to having freedom of effective choice.

Note 26. The value of autonomy is often raised in literature on the digital divide (Servon 2002: xvii).

Note 27. The Equality Argument can probably be made under either the orthodox approach or the political approach with grounding in the concept of membership. While this section shows the argument from an orthodox approach, a political approach would work in a similar fashion except it would place membership as the intrinsically valuable norm and equality as instrumentally necessary for membership. Cohen (2006) offers a convincing argument that shows how equality is not instrumentally necessary for membership, so the argument by that approach would most likely fail as well.

Note 28. Buchanan (2010) primarily emphasizes the political equality embodied in human rights literature over a more general equality of options. Political equality means to have similar status when it comes to political decision-making, and equality of options, as emphasized in digital divide literature, consists of a more general level of "life" options, such as being able to apply for more jobs, make distant investments or receive higher education. Therefore, equality by Buchanan's definition might not apply in a defense of equality of options as an intrinsically valuable norm.

Note 29. At the time of writing, only about 27.3% of the human population has Internet access. According to a

BBC (2010) survey, less than 50% of those with Internet access think that they would not be able to cope without it.

Note 30. For example, US Secretary of State Hillary Clinton gave a talk at the George Washington University on February 15, 2011 noting the importance of Internet access for democratic movements in the Middle East and North Africa, and she condemned limiting Internet access by governments in general.

Note 31. This is referred to as “fidelity” earlier in the paper.