

# **Human Right and Internet Access**

**A philosophical investigation**

**Dissertation**

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# Human Rights and Internet Access

A philosophical investigation

## Mensenrechten en de toegang tot internet

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(met een samenvatting in het Nederlands)

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## Contents

<b>Introduction.....</b>	<b>1</b>
I Background.....	1
II The thesis outlined .....	4
<b>Chapter I Internet and Democracy—A General Review. 14</b>	
I Introduction .....	14
II Defining Internet and democracy.....	14
(i) What is the Internet? .....	14
(ii) What is democracy .....	19
III Internet Use and the practice of democracy.....	21
(i) Facilitating voting by providing information access.....	21
(ii) Facilitating voting by facilitating information processing.....	24
(iii) Simplifying politics.....	27
(iv) Mobilizing people to vote .....	30
(v) Facilitating contestation .....	31
(vi) Growing the civil society .....	34
(vii) Building transparent and responsive government .....	37
IV Brief conclusion.....	40
<b>Chapter II Internet and Chinese Public Sphere..... 43</b>	
<b>I Introduction .....</b>	<b>43</b>
II Methodological reflection .....	44
(i) Chinese scholars .....	44
(ii) Jürgen Habermas.....	45
III Public sphere in China .....	49
(i) Economic reform.....	50
(ii) The chinese public sphere .....	53
IV Guo Meimei and China’s public sphere .....	62
(i) The storyline .....	62
(ii) Internet and flow of information.....	63

(iii) Inclusion and critical interaction.....	66
(iv) Political impact .....	70
V Challenges.....	72
(i) Digital divide.....	73
(ii) Censorship.....	74
(iii) Risk of privatization.....	76
VI Conclusion .....	77
<b>Chapter III A Human Right to Internet Access (A Moral Approach) .....</b>	<b>79</b>
I Introduction .....	79
II What are human rights? .....	79
(i) Step one: the conceptual analysis of human rights .....	80
(ii) Conceptualizing human rights .....	84
III The human right to democratic governance .....	95
(i) Griffin’s attempt.....	95
(ii) Gewirth’s attempt.....	97
IV A Human right to Internet access .....	105
(i) A derived right .....	107
(ii) The nature of the human right to Internet access .....	109
V Conclusion .....	118
<b>Chapter IV A Human Right to Internet Access (A Practical Approach) .....</b>	<b>120</b>
I Introduction .....	120
II The background.....	121
III Beitz’s approach to human rights .....	124
(i) Rawls’ conceptualization of human rights.....	125
(ii) The fresh start.....	127
IV Beitz on human rights criteria .....	129

V A Human right to internet access .....	132
(i) Are very urgent interests at stake? .....	133
(ii) Threats by the government.....	136
(iii) Possible means of regulation .....	138
V Criticism.....	140
(i) Problems of a statist conceptualization of human rights.....	140
(ii) Human rights inflation .....	142
VI Conclusion .....	143
<b>Chapter V Internet and Confucian Ethics .....</b>	<b>145</b>
I Introduction .....	145
II Bockover and Wong: confucianism VS Internet use .....	147
(i) Mary Bockover.....	148
(ii) Pak-hang Wong.....	150
III The concept of ‘ <i>tian xia</i> ’ and confucianism .....	151
(i) The geographical and cosmological concept of ‘ <i>tian xia</i> ’ .....	151
(ii) Moral and epistemological interpretation of <i>tian xia</i> .....	153
(iii) Concept of ‘ <i>tian xia</i> ’ and principle of ‘ <i>he er bu tong</i> ’ (harmonious differentiation) .....	155
IV Bockover and Wong revisited .....	158
(i) Confucianism and the right to individual freedom .....	158
(ii) Confucianism, anonymity, and collapsed contexts.....	160
(iii) Problem of the blurring of public and private spheres.....	163
V The Internet and the concept of ‘ <i>tian xia</i> ’ .....	166
VI Conclusion .....	168
<b>Chapter VI Internet and Confucian Society .....</b>	<b>170</b>
I Introduction .....	170
II Is there a concept of ‘right’ in confucianism?.....	170
III Can confucianism embraces human rights concept? .....	173
IV Confucianism and the human right to basic goods.....	176

V The Concept of <i>min xin</i> as an aggregation of individual rights .....	178
VI <i>min xin</i> and the human right to Internet access .....	185
VII Conclusion.....	190
<b>Conclusion .....</b>	<b>192</b>
<b>Bibliography .....</b>	<b>200</b>

## **Introduction**

### **I Background**

Despite numerous controversies, it is commonly acknowledged that the idea of human rights, both as a political-legal tool and a moral concept, plays a significant role in global normative discussions. One of the trends in international human rights practice is the incorporation of a greater number of interests into the list of acknowledged human rights, which aims to better protect them or assist in their actualization. The Universal Declaration of Human Rights (UHDR), the renowned post-World War II document that is widely accepted as a landmark political and moral achievement, encompasses a wide range of human interests, including the right to a fair trial, the right to food, and, most controversially, the right to a paid vacation for workers.<sup>1</sup> The international discussion suggests that human rights practice requires careful, progressive, and continuous philosophical study to grasp and to justify, if possible, its evolution.

As of December 2014, there are three billion Internet users worldwide, of which 649 million are Chinese. This number will grow in the years to come. This technology, of course, possesses immense significance in our everyday life. What is currently new in international human rights practice is the trend of discussing Internet access as a potential human right. A BBC poll showed that of twenty-seven thousand interviewees worldwide, almost 80% believed that Internet access should be regarded as a fundamental right.<sup>2</sup>

In the political arena, several nations, among them Finland and Estonia, have made Internet access a legal civil right, requiring that their governments distribute

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<sup>1</sup> “The Universal Declaration of Human Rights.” Last accessed Jan 6, 2013, <http://www.un.org/en/documents/udhr/>.

<sup>2</sup> “Internet access is a “fundamental right””. Last accessed July 6, 2014, <http://news.bbc.co.uk/2/hi/technology/8548190.stm>.

affordable access to all.<sup>3</sup> However, the move to make Internet access a *human right* is a bold and recent effort, initiated by a specific legal decision: namely, the judgment by the highest court in France in a case involving the illegal downloading of pirated music, which claimed that the government was not authorized to cut off Internet service in order to prohibit illegal downloading, on the grounds that Internet access is a human right.<sup>4</sup>

The UN has been putting much effort into the spreading of telecom infrastructure. It also recently issued a report suggesting that Internet access should be regarded as a human right, which might entail intervention against a government that had arbitrarily cut off the Internet access of its citizens.<sup>5</sup> Those proposals demonstrate the importance of the current social context, within which any proposal of Internet access as a fundamental human right has to be evaluated. However, despite the vigorous discussions in the legal-political arena, philosophical studies on the subject are still quite sporadic and preliminary.

Vinton Cerf (2012), one of the founders of the Internet, argued that Internet access is not a human right: the Internet is just another tool, which can be used for both good and bad purposes. For him, a human right involves something essential for the achievement of a meaningful life—for example, the right, to freedom from torture. In contrast, Internet access is better regarded as an enabler of rights than a right in itself.

Cerf correctly identifies Internet access as an enabler, and yet the question remains why such an enabler should not be considered to be a right in the light of actual

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<sup>3</sup> Don Reisinger, 'Finland makes 1Mb broadband access a legal right', last accessed July 2014, <http://www.cnet.com/news/finland-makes-1mb-broadband-access-a-legal-right/>; Colin Woodard, 'Estonia, where being wired is a human right.' Last accessed June 15, 2014, <http://www.csmonitor.com/2003/0701/p07s01-woeu.html>.

<sup>4</sup> 'Top French court declares Internet access "basic human right."' Last accessed July 7, 2014, <http://www.foxnews.com/story/2009/06/12/top-french-court-declares-Internet-access-basic-human-right/>.

<sup>5</sup> Frank La Rue, 'Special rapporteur on the promotion and protection of the right to freedom of opinion and expression', [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

practice. The American Bill of Rights embraces freedom of the press as a human right, while the UHDR enshrines rights to education, to work, to equal voting franchise extended to all adults, and to periodic paid holidays for workers, and none of these rights would have made much sense thousands of years ago. Human rights lists include not only very basic rights, but also some derived rights which help to articulate conditions in which basic rights could be properly protected.

Best (2004) might have been the first writer to engage in a serious philosophical discussion on the possible human right to Internet access. He argued, in his interpretation of the UHDR, that there should be an appropriate relationship between the rights to freedom of expression and speech and to the freedom of information available through reading, meaning that people should always be able to freely access information so that they can authentically express themselves freely. A brainwashed person might express his wishes, but this is not free expression in the strict sense, and certainly would not represent well-informed judgments. Article 19 of the UHDR states that everyone has the right to ‘hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’. Best argued that the Internet is crucial for acquiring information in today’s world. But his argument for the human right to Internet access was still very preliminary, as he simply presented his approach without careful and systematic discussion of the issues it entailed.

Brian Skepys (2012), currently a Google employee, has recent furthered the discussion on the human right to Internet access. Roughly put, his approach is to investigate the validity of a human right to Internet access by considering its relation to important, already established human rights. He discussed how the Internet, as a specific instrument, could contribute to the fulfilment of the rights to communication, assembly, information equality, autonomy, and membership. He contested both the validity of these rights and, more particularly, the instrumental value of the Internet for fulfilling them. His idea, in a nutshell, is that Internet use is not indispensable for achieving these goods, and therefore it should not be seen as a human right.

Skepys' argument is flawed for two reasons: first, his view on the indispensability of the Internet is essentially an empirical argument, and is thus open for further contestation. Kay Mathiesen (2012), for instance, took the opposite position and argued that the use of the Internet is indeed indispensable for fully achieving our right to communication, which is the prerequisite for the achievement of any other rights. To call a tool "indispensable" does not imply, in a strict sense, that it must be the only available means to reach the goal in question; rather, it might just be the most promising technology, and one that dramatically outperforms others. In addition, a very important enabler of other rights, despite not being indispensable, can still be seen as a human right for certain reasons: take the human right to education or paid vacation, for instance. As such, the unrevealed presuppositions and the rationale behind the human rights list need to be articulated more explicitly.

Strangely enough, beyond these few discussions, there has been almost no explicit work on the subject. Clearly, philosophical studies have fallen way behind the development of human rights practice, and my goal in this thesis is to fill this gap, at least to a certain extent. My attempt here will be to investigate the plausibility of a justification for a human right to Internet access. I will do this in the form of a philosophical investigation that also aims to be empirically well informed.

## **II The thesis outlined**

Simply put, I will attempt to justify a human right to Internet access by referring to its instrumental value in promoting and protecting democracy. Therefore, I will discuss not only the normative idea of democracy, but also how Internet use might contribute to its protection and promotion.

The thesis consists of six chapters, dealing with several questions. First, I will investigate the empirical evidence relating to Internet access and the protection and promotion of democracy (chapters I and II). Making the assumption that democracy is one of the important human rights, and considering the instrumental value of Internet

access for democracy, I will try to defend the thesis that Internet access should be seen as a derived human right (chapters III and IV). Since I am particularly interested in the role of Internet access in China, I will study the extent to which Confucianism might play a role in justifying or rejecting a human right to Internet access (chapters V and VI).

The chapters are organized as follows:

- I Internet Use and Its Potential Impact on Democracy: A Review of the Literature
- II Internet Use and Its Impact on Democratization in China: Thinking Through the Guo Meimei Case
- III A Human Right to Internet Access: A Moral Justification
- IV A Human Right to Internet Access: A Political Justification
- V Is Internet Use Compatible with Confucian Ethics?
- VI A Confucian Human Right to Internet Access

Because the main goal of this thesis is to investigate whether we have good reasons to justify a human right to Internet access, I need first to consider broadly how Internet use is relevant for my further discussion. To achieve this, in *Chapter II* will review the existing literature, so as to evaluate empirical studies concerning the possible interplay between Internet use and the practice of democracy.

The function of this chapter with regard to the thesis as a whole is twofold: *first*, it helps to broadly clarify the interplay between Internet use and the practice of democracy in the world, along with its perspectives and methodologies; second, and relatedly, it helps me to be methodologically more attentive concerning the investigation of the interplay between Internet use and China's democratization. As the general discussion in this chapter will be complemented with a full-fledged case study on China in the next, this work will provide solid empirical grounds for normative argumentation.

As such, the chapters are structured as follows: I will present, in sequence, some

general arguments on how Internet use might impact politics with respect to the practice of democracy. *First*, I will discuss the interplay between information intake and political participation; *second*, I will discuss how Internet use might mobilize people to vote, or discouraging them from doing so. However, these studies seem not to be immediately relevant for Chinese case, as China does not have authentic voting institutions. To address China's case, other perspectives, such as those focused on online protest and the growth of civil society, might be more informative; thus I will more specifically discuss literature concerning online protest and the Internet-facilitated growth of civil society. *Last but not at least*, since various states, particularly China, have been carrying out the e-government project for decades, which helps many local government establish their websites. I will also investigate how this practice might affect democratic changes.

After reviewing generally how Internet use might interact with possible democratic changes, I will be able to be more methodologically attentive in my investigation of the Chinese case. Drawing from this review of the literature, I come to the conclusion that the idea of civil society and the public sphere is relevant for the study of China's democratization. In *chapter II*, the goal is to ask how Internet use can facilitate the formulation of the online public sphere, which has been a crucial precondition for the development of democracy in China. Together with the general review made in chapter I, chapter II, as a full-fledged case study, serves as the empirical grounds on which I can construct my normative argument. My attempt in this thesis is to provide a preliminary rather than a conclusive justification of the human right to Internet access. Whether Internet use is indispensable or significant for the public sphere in all states is an empirical question that requires progressive study. Until such work is completed, no conclusive justification can be made.

Systematically, then, I will introduce Habermas' (1991) theory of the bourgeois public sphere. Then I will discuss whether China has also been experiencing the transformation of the public sphere in the way outlined in this influential theory. Specifically, I will study whether China has also been experiencing the separation of

state and society, noted by Habermas as a crucial precondition for the formation of the public sphere, that is characterized by the growth of civil society and the reduction of government power and influence in the economy. If this is the case, then we should ask: What are the similarities and differences between the bourgeois Western and Chinese models?

To be specific, what is crucial is detailed study, not only addressing whether the separation of state and society occur, but also delving into *how* it occurs—namely, what is the dynamic governing the changes taking place? What agents are involved, and how are they engaged? The differentiation of state and society in Habermas' case is firmly supported by a strong social class (the bourgeoisie), while in China this might not be the case. In addition, since the CCP (Chinese Communist Party) is so dominant, official channels for political participation simply do not function as expected in China. Therefore, in comparison with the bourgeois public sphere, we can propose an outline of what might be lacking for the formulation of Chinese public sphere: *first*, a space in which diverse agents could manage critical debates; *second*, a social class that could continuously defend its interests before the state government. It is in this context that Internet use becomes crucial.

Along these lines, I will further study, through my case study of a hotly debated online incident in China, how the Internet might help provide a space (if it can in fact do so) in which critical debates might be made based on the joint efforts of various agents, and how these debates might be backed up by a social class that could strongly support the discussion and transform the discussions into concrete political demands. After discussing empirical evidence in chapters I and II, namely how Internet use affects democratic changes in reality, I then move to my normative argument: that is, a response to the question, If the Internet can in fact bring us democracy, does this suggest we have a human right to Internet access?

In *chapter III*, my goal will be to justify a human right, as a moral concept, to Internet access. To achieve this, I will take the following steps: *first*, as a foothold, I need to

find a generally accepted conceptualization of rights in general, so as to further articulate what human rights really are. After addressing this issue, I then proceed to elaborate theories of human rights, specifically with respect to the normative structure of such a concept. After reviewing some general human rights theories, I turn to the particular human rights theory that I believe has the most merit, and argue how such a theory helps justify a human right to Internet access.

For the first step, I will refer to Hohfeld's (1913) widely accepted analysis of rights. He systematically discussed what it means when we use the term *right*. Specifically, he clarified rights as those of power, claim, immunity, and privilege, which provided a good framework in which the nature of human rights could be aptly considered.

In this context, I will argue in the thesis that human rights are claim rights, which are always correlated with certain duties. In so doing, I will move to articulate the normative structure of the human rights concept. Here, I will study the recent, widely celebrated work on human rights done by James Griffin (2009), which is regarded by Beitz (2011) as the paradigmatic example of the naturalistic theory. The core concept of Griffin's human rights theory is the idea of 'normative personhood'—that is, the unique nature exclusively possessed by human beings, namely the capacity to plan one's life and carry out such plans. He regards three basic characteristics—autonomy (the capacity to plan one's life freely), minimum provision, and liberty—as the preconditions for the carrying out of any plans. Human rights are tools that ring these basic goods. I will evaluate the consistency and soundness of his thesis, and will propose that his theory, relying merely on intuition for its justification, fails to explain why normative personhood is radically important for us.

This dissatisfaction with Griffin's work leads me to Alan Gewirth's (1980) theory of human rights. Gewirth argued that rights are necessary claims that we must make if we are to act at all. As an acting being, no one would be able to deny rational action, as denying in itself is a specific action. If we act, we need to logically acknowledge that basic freedom and well-being are preconditions for any sort of action. As such,

we necessarily claim rights to these goods, for they are derived from our agency as a result of deliberation from the first-person point of view. Gewirth's theory is thus more complete than Griffin's, as he grounded human rights not on an unjustified conception of human nature, but on the necessary conditions for our agency.

I will discuss systematically how Gewirth formulated his theory, and then move to justify the normative value of democracy by referring to that theory. In so doing, I am able to combine Chapter II with this discussion and further argue that, due to its instrumental value, the Internet can be seen as a derived human right that derives its normativity from the human right to democracy. I then will try to articulate the nature of such a right, and identify its correlated duties and possible bearers of such duties. Introducing another view on human rights, *Chapter IV* aims to investigate whether it is possible to justify a human right to Internet access as a political instrument rather than a moral concept. It is quite important to notice the radical differences between these two schools of thinking, because they might generate very different interpretations of rights and, relatedly, different justifications for the human right to Internet access. To avoid succumbing to bias towards one or the other, I need to investigate both schools of thought.

Several philosophers, most prominently John Rawls (2001), Joshua Cohen (2004), and Charles Beitz (2011), have proposed human rights to be a political concept rather than a moral imperative. I will make no attempt to settle the debates concerning the distinction between moral and political conceptualization of human rights. Rather, I will investigate whether it is possible to justify a human right to Internet access within this political framework, focusing particularly on the work of Charles Beitz, as he has made the most recent attempt to formulate a political conceptualization of human rights.

Inspired by the work on human rights in Rawls' books *The Law of Peoples* and *Political Liberalism*, Beitz held that human rights should be conceptualized not from any one particular philosophical or cultural tradition, but from the careful

investigation of and reflection on its specific role-related functions performed in international human rights practice. Based on this understanding, he argued that a human rights concern must first address the most urgent interest; second, the interest to be protected by such a right should be very vulnerable to governmental action; and, lastly, its violation should be able to trigger international action. In line with this argument, I will investigate whether the right to Internet access could fairly meet these criteria.

*Chapters V and VI* are focused on the cultural dimension of the topic, aiming at dispelling worries about cultural imperialism by carefully discussing the compatibility of Internet use and Confucian ethics.

Despite many controversies with regard to human rights, it is generally agreed that the concept of human rights ought to be, or is at least expected to be, universally applied. However, bearing in mind that the UDHR, for instance, was mainly a political outcome produced mostly in the wake of World War II, the concept is deliberately left open to accommodate different cultural interpretation(s) that are congenial to these rights. Moreover, to apply a human rights directive globally in our diverse world might run the risk of imperialism, if the status of particular cultures is not seriously considered. Especially when it comes to the UHDR's quite expanded human rights list, a handful of rights are derived rights that are seemingly not so fundamental.

Taking these concerns seriously, I will review the arguments made by Bockover (2003) and Wong (2012a), who claim that Internet use is not compatible with Confucian ethics. Bockover holds that the Internet embeds within it the specific liberal value of freedom that is alien to and in conflict with Confucian ethics, which focuses on the duty of obedience. Wong argues that online anonymity and de-contextualized communication are very destructive of a Confucian orientation towards life, as Confucian ethics is characterized by role-based and context-sensitive communication.

I will discuss the soundness and consistency of these arguments, and then put forth the notion that Confucian ethics might not be as incompatible with Internet use as has been argued: how, then, has China become so efficiently wired and connected to the Internet, considering the continuing strong presence there of Confucian culture (Bell 2010, Yu and Lu 2000)? As opposed to Bockover and Wong, I will propose a more systematic reconstruction of Confucianism, in which I will explain how the concept of *tianxia* (under the heavens) is related to the concept of *ren* (humanity) as the condition for differentiated harmony. I will argue that Confucian idea of *tianxia* and the idea of harmonious differentiation could be employed to accommodate the use of the Internet. Thus, I conclude that the ‘Internet imperialism’ argument is altogether misguided.

Having put forth this argument, I will then discuss in *chapter VI* the possibility of justifying a Confucian human right to Internet access, which is to say that a Confucian society would not only *tolerate* Internet use but even *demand* it. As we know, the Chinese government has been justifying its Internet policy, which sometimes involves heavy censorship and manipulation, by referring to the Internet as a form of American cultural imperialism (Youzhi 2010, Dahong 2011). Against this background, if my argument in this chapter is sound, the idea that Internet access can be cut off for the sake of protecting Confucian cultural integrity will not stand.

Here I will first argue that Confucian ethics can accommodate the idea of human rights, as this idea, first and foremost, affirms the legitimate desires of people and the correlated duties of rulers to protect and facilitate the fulfilment of these desires. Therefore, human rights objectives could certainly be amply protected in a Confucian society. More importantly, I will argue, in line with Zhang Qianfan’s (2000) argument, that people’s legitimate desires are protected not out of concern for fulfilling one’s social roles (to be a good ruler or husband, for instance) but because of the consideration of an individual’s human dignity. As such, I am able to show that Confucianism, through a proper reconstruction of its core tenets, could be used to accommodate the idea of human rights.

I will further argue that, as a political arrangement, the Confucian idea of *min xin*, the will of the people, as the aggregation of individual legitimate desires is, in theory, supposed to help legitimate the governance of the king; second, it helps to restrain the king's actions; third, it helps the king in decision-making.

However, I will show, through a historical study, that because the information channels of Confucian society are very limited and are largely constructed by the powerful, *mi xin* is never expressed fairly through these channels. The politicians are forced to take information not only from official channels, namely from the government and court reports, but also from folk songs and the discussions of intellectuals. This phenomenon clearly shows that Confucian society demands a better flow of information.

Against this background, I will argue, along the lines of the discussion on the public sphere made in chapter II, that cyberspace could have worked both as an information channel and a public sphere crucial for the protection and fulfilment of people's legitimate desires, had Confucian society had Internet technology. As such, I conclude that even a Confucian China will not necessarily reject the Internet; it may in fact demand it as a human right, considering its instrumental value for protecting and fulfilling the legitimate desires of all. As such, referring to Confucian ethics, as the Chinese government does, is simply not a convincing justification for its censoring of the Internet.

To reiterate, the goal of this thesis is to investigate the philosophical possibility of arguing for a human right to Internet access. My strategy here is to explore how Internet use might contribute to democratic changes: if democracy is a human right, and Internet use is indispensable for the achievement of democracy, then we might have good reason to accept Internet access as a human right. If my arguments in this thesis stand, I may be able to provide a systematic philosophical framework in which the human right to Internet access could be further addressed. And not only for China: similar work could be carried out for nations around the world. Moreover, I have

discussed the issue of technology's acceptability in a cultural context; doing so helps us to have a broader understanding of technology and its interaction with other crucial values. I would note here that my approach is inherently interdisciplinary, combining both philosophical and sociological methods. As such, this exploration is not merely conceptual and thus beyond concrete socio-political contexts; rather, both the justification and the articulation of the human right to Internet access need to be progressively revisited alongside considerations about the development of human history. However, there is nothing especially strange about this: derived human rights, in contrast to the most fundamental rights, do change—sometimes necessarily so—because they are preconditions for the fulfilment of basic human rights within changing historical contexts.

## **Chapter I Internet and Democracy—A General Review**

### **I Introduction**

My intention in this thesis is to develop a justification for a human right to Internet access by investigating the impact of Internet access on democracy, with a particular focus on the Chinese case. To study this question properly, I need to review government documents as well as literature from social and political scientists concerning the impact of Internet use on democratic practices. This chapter's goal is to come to a comprehensive understanding of the significant literature on this topic in order to approach the impact of Internet use on democratic change in China with sufficient methodological awareness and sophistication. I seek here to grasp more clearly the relevant perspectives for investigating the Internet's impact on democracy. Certainly the political situation in China is different from that of countries which were the focus of these studies; thus, it makes sense to reflect on these studies and develop my own perspective about the salient differences in the Chinese case. In this chapter, I will first propose a working definition of the Internet and an understanding of democracy as necessary tools for studying how this technology exerts its impact on the practice of democracy. Afterwards, I will discuss the relevant literature that investigates the interplay between politics and Internet use with respect to democracy as it is actually practiced.

### **II Defining Internet and democracy**

#### **(i) What is the Internet?**

Understanding the Internet, and particularly its political dimension, first requires a short history of its development. In the early 1960s, several countries initiated national projects to build packet-switching networks.<sup>6</sup> In response to the risk of

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<sup>6</sup> Packet-switching is a form of network communication in which all data was packed in a series of blocks that could be received and reassembled in the end computer.

nuclear war, the government of the United States launched a project for the development of military communications technology, which sought to develop technology for the circulation of information and communication among other nodes when a particular information node was destroyed. ARPANET (Advanced Research Projects Agency Network) was developed and connected to institutes at several universities. Later on, organizations such as the National Science Foundation in the United States established their own networks. Different networks around the world in this burgeoning decentralized system would then request access to one another, and in response to this need a specific protocol, namely the TCP/IP protocol, was introduced and standardized so as to enable networks to connect with one another.

The term ‘Internet’ was coined by Vinton Cerf in 1974 as an abbreviation for Interconnected Networks. However, it should be noted that as a concept the Internet was then quite different than what we understand it to be today. The Internet was first constructed through the retrieval of information by several computers from one central supercomputer. End users were connected via the medium of a single supercomputer, a process markedly different from later peer-to-peer connections in the Internet that has come to be ubiquitous in our everyday lives. Moreover, Internet resources, mainly its infrastructure, its IP and DNS resources, were tightly regulated by the US government. When the Internet was later commercialized, private ICPs (Internet Content Providers) eventually could provide content for individual users. This change helped decentralize the information retrieval process, as users were no longer limited to getting information from supercomputers subject to government control. Yet, even then, the Internet did not quite have the meaning that it has today. Not until the introduction of so-called web 2.0 technology did the term ‘Internet’ take on the meaning that it now possesses. In addition, the regulative organs of Internet resources, mainly IP and DNS resources, have become part of a non-governmental

organization with members from all over the world.<sup>7</sup>

After this short history, we must now establish a working definition of the Internet. If we start with the sort of popular explanation provided in many introductory books about the Internet and the World Wide Web, then the definition might focus on Internet infrastructure, emphasizing the means by which computers are connected. For instance, Ostrowick (2009, 1), in his book *How The Web Works* (5th edition), defined the Internet as ‘a world-wide network of connected computers, linked by various means, such as cables, radio signals (“wifi” or satellite, and so on)’. Or it could focus on aspects involving information transmission: James (2010, 2) writes that ‘the Internet is a worldwide, publicly accessible interconnected computer network that transmits data based on the standard protocols.’ In books that mainly investigate the social impact of the Internet, the definition might focus on other qualities.

Chadwick (2006, 8) for instance, after comparing the Internet to traditional media, defines the Internet as the ‘net of the nets’ (the ultimate network that connects a plethora of small independent networks) that allows one-to-one, one-to-many, many-to-many, and many-to-one communication, based on a specific group of protocols. Recent definitions of the Internet differ slightly according to the different purposes they serve for their authors and readerships. Ostrowick and James have written popular guidebooks for readers interested in building websites. However, James’ book covers more subjects, such as Internet security, e-commerce, etc. Chadwick, focusing exclusively on Internet politics, is concerned mainly with the media effects of the Internet. If we move beyond those books whose emphases in defining the Internet are determined by their authors’ practical purposes, the easy way

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<sup>7</sup> In plain language, the IP address helps identify each computer. Analogous to a person having a name (though without the duplication that occurs when different people have the same name), each computer is assigned its own distinct IP address when connected to the Internet. DNS is the service that interprets the domain name in relation to its IP address. For instance, when you type or click on a link for [www.youtube.com](http://www.youtube.com) (the domain name for YouTube), the DNS server helps find the specific IP address attached to this domain name; your request will be directed to that IP, resulting in a connection. For amore detailed discussion on the history of the development of the Internet, see Chadwick (2008, 38–64).

to find a context-neutral definition is to refer to an authoritative dictionary. The English-language American Heritage Science Dictionary, which specializes in providing the most accessible definitions of scientific and technological terminologies for the public, states:

Internet is a system connecting computers around the world using TCP/IP, which stands for the Transmission Control Protocol/Internet Protocol, a set of standards for transmitting and receiving digital data. The Internet consists primarily of the collection of billions of interconnected webpages that are transferred using HTTP (Hypertext Transfer Protocol), and are collectively known as the World Wide Web. (The American Heritage Science Dictionary 2005, 328)

This definition has certain merits. It explains TCP/IP in a bit more detail, and, in specifying one of the most important applications of the Internet used in everyday life, offers a more accessible definition of the Internet. But ultimately this definition is too narrow. It might create the illusion that the Internet is equal to the World Wide Web. Although this may be the Internet's most important feature at the moment, it is far more than merely a set of interconnected websites. Because of its diverse applications, for instance its FTP (File Transfer Protocols) and e-mail uses, it is certainly mistaken to regard the Internet as just a conglomeration of globally interconnected websites. Especially in the age of Web 2.0, in which social-networking apps such as Twitter, Weibo, etc., have spread rampantly and are increasingly crucial in our daily lives, the percentage of time spent viewing webpages may well decrease significantly as a share of broader Internet usage.<sup>8</sup>

On October 24, 1995, the American FNC (Federal Networking Council) came to a definition of the Internet through a vote among its members. This was one of the earliest definitions made by democratic vote rather than being simply prescribed by

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<sup>8</sup> Simply put, in the pre-Web 2.0 age, the website mainly allowed its employees to generate content for the reader. Web 2.0 technology allows its users to generate and exchange content and thus make their own contributions to the content of websites.

technocrats, and as such it represented more or less a consensus among earlier scholars, users, and technicians in understanding this specific technology.

Resolution: The Federal Networking Council (FNC) agrees that the following language reflects our definition of the term ‘Internet’.

‘Internet’ refers to the global information system that—

- (a) is logically linked together by a globally unique address space based on the Internet Protocol (IP) or its subsequent extensions/follow-ons;
- (b) is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions/follow-ons, and/or other IP-compatible protocols; and
- (c) provides, uses or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described herein.

For the technical parts concerning the engineering structure of Internet technology, there are few disagreements on this. Besides covering some of the crucial technical features of this new technology, this definition pinpoints one of the Internet’s fundamental features—its facilitation of communication—while at the same time it mentions that it enables many services focused on communication. The enabling of communication through the use of the Internet could be seen as a meta-feature, for it makes other services possible online.

Yet despite the continuity of the Internet’s technical features, its specific functions might, and do, change over time. When the FNC’s definition was given, the Internet was still a cutting-edge technology used only by elites, and therefore what it was expected to deliver was limited to high-level services. This is certainly not the case today. Nowadays, as an everyday tool, it has been used in various ways that go far beyond the imagination of its inventors and early adopters. Nevertheless, the FNC definition stands, as it covers the feature that links the Internet of twenty years ago

with that of today: namely, the electronic communication enabled by specific technology that helps ‘digitalize’ our world by making various services possible online. It would be hard to make this definition any more specific, as it would be impossible to identify all the services that the ever-evolving Internet could possibly deliver.

Integrating the FNC definition’s points, my definition of the Internet can be briefly formulated as follows:

The Internet is the technology that allows computers to run peer-to-peer connections via TCP/IP protocols, and by doing so enables communication and numerous possible services layered upon such communication.

Definitions of the Internet overlap with its technical description, because, to put it simply, it is nothing more than a technology that allows computers to connect with one another through TCP/IP protocols recognized by all engaged computers, without which they would not be able to communicate. The differences among definitions, as I mentioned, mainly concern the specific features that are hand-picked according to context. I have chosen, among its many features, a meta-feature, namely communication, that makes possible other diverse functions. I expect that my definition will be precise and inclusive enough to work with.

The definition I am presenting here is purely descriptive, as it mainly covers what the Internet is at the present moment, including how it is regulated. Moreover, since I am focusing on politics in this thesis, I mainly discuss how Internet use would affect political participation—in particular democratic political participation.

## **(ii) What is democracy**

Since my intention in this chapter is to review the impact of Internet use on the practice of democracy by a study of the relevant literature, I will also briefly discuss how democracy is understood. The question ‘What is democracy?’ could mean

various things. It could mean (a) What is the nature of democracy? which is an ontological question; (b) What are main features of democracy? which is an inquiry into its institutional characteristics; (c) What are effects of democracy? which concerns the sociology of democracy; or even (d) What are the possible justifications of democracy? which is a normative question. I will discuss the latter questions in much detail in chapter IV. Here I would like to start with a standard definition of our contemporary, mainly constitutional, form of democracy which focuses on its general institutional characteristics, as the empirical literature I will discuss here mainly investigates the interaction between Internet usage and some of its institutional features, such as election and political participation.

Even concerning the institutional features of democracy, there is no consensus. Different models of democracy demand different institutional characters. The ancient Platonic model casts direct voting for free, male citizens, but only for them, as the crucial feature of democracy, while in Mill's model, representative government is essential (Urbinati 2002). David Held (2006 282), in his book *The Models of Democracy*, systematically discussed various models of democracy in history. According to Held, contemporary democracies are characterized by:

- (a) The principle of autonomy enshrined in a constitution and bill of rights;
- (b) A parliamentary or congressional structure in which representatives could effectively represent voters, an independent judicial system that is responsible for interpreting its citizens' rights, and a competitive party system;
- (c) A strong civil society that includes diverse organizations, such as clubs of people with shared interests, enterprises, consumer groups, etc.;
- (d) Media and channels that allow the free flow of information.<sup>9</sup>

My ambition is not to develop my own distinct concept of democracy and its various

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<sup>9</sup> In his inclusive book, Held discussed a list of models of democracy, including Athenian, republican, liberal, elitist, deliberative, and cosmopolitan models. He identifies the core values of democracy, its institutional features, and the environment in which these features could be secured. In so doing, he makes a very structured, systematic attempt to understand what democracy is and what it should be like in our contemporary world.

models; I will, rather, work with the understanding of democracy that is presupposed in the literature on the subject. The literature I discuss in this context does not explicitly provide a conceptual explanation of the nature of democracy, as I mainly investigate empirical studies made by political scientists. Instead, those studies discuss the impact of the Internet on democracy in democratic nations, mostly North American and Western European countries, and therefore they presuppose either simply an understanding of how democracy functions in these countries or a rough, commonsensical understanding of its contemporary features. Held's clarification of democracy is sufficiently general but is nonetheless informative in the sense of covering the contemporary features of democracy. Thus, it would suffice to keep Held's standard clarification of these features in mind while reviewing these studies in the literature. In what follows, I will discuss these studies and evaluate whether their findings are valid.

### **III Internet use and the practice of democracy**

There is a massive literature addressing the interplay between Internet use and the practice of democracy. For the sake of clarification, these studies could be roughly sorted into three categories: they focus on how Internet use contributes to the *pre-voting*, *voting*, and *post-voting* procedures of democracy. *Pre-voting procedures* refer to the activities of information collection and deliberation among citizens; *voting procedures* refer to the voting process as such; and *post-voting procedures* refers to contestation, protest, and the supervision of governmental actions. Modern democracy can be reasonably practiced only if all three procedures work well. I will now turn to a thoroughly detailed investigation of the literature.

#### **(i) Facilitating voting by providing information access**

The work of Alexander van Deusen and Willem Peterson (2006), who have compiled statistics for several other countries, shows that in Switzerland, Canada, and the Netherlands, the gathering of information accounts for 66%, 87%, and 42% of these

nations' Internet use, respectively. As for China, the CNNIC (China Internet Network Information Center) issued a report about the development of the Internet there that showed the results of a large-scale sociological study. From October 1 to December 31, 2012, the CNNIC placed a questionnaire on numerous websites, including its own, other governmental websites, and influential Chinese portal websites. From the 157,172 valid questionnaires collected, the report revealed that in 2012, 80% of 0.45 billion Chinese Internet users made use of search engines to collect information.<sup>10</sup> These studies suggest that the influence of traditional media is on the wane and might even be dying. No matter how futuristic it might sound, the *New York Times*, for instance, conceded that one day, it will eventually shut down its print edition.<sup>11</sup>

For citizens to be informed, information access is crucial, and a well-informed citizenry is vital for the practice of democracy. Especially for people who live in non-democratic countries where information is tightly controlled, cyberspace is often the place where they have a chance to obtain access to dissenting ideas. However, being well informed is not simply equal to having more information. The notion of a well-informed citizenry presupposes not only information consumption, but also internal deliberation through which information can be processed properly. Too much information can sometimes cause severe problems by overburdening citizens, who may become confused by the contradictory news given by various sources and then be compelled to spend a considerable amount of time processing it (Taylor et al. 1999). Such information overload might also distract people from caring about politics. The relation between information consumption and political participation may not be positively linear.

For instance, Putnam (2001) published a sociological study on recent social capital

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<sup>10</sup> "The Statistic Report of the Development of the Internet in China." Last accessed July 12, 2013, <http://www.cnnic.cn/hlwfzyj/hlwxyzbg/hlwtjbg/201301/P020130122600399530412.pdf>

<sup>11</sup> "New York Times Will End Print Edition (Eventually), Publisher Says." Last accessed December 1, 2012, <http://www.theatlantic.com/entertainment/archive/2010/09/new-york-times-will-end-print-edition-eventually-publisher-says/62731/>.

trends in the United States. His cited statistics revealed a decrease between 1980 and 1990 in social clubs and voluntary associations in America, and his quantitative research investigated the correlation between television viewing and civic engagement. This research led him to conclude that in the United States television viewing decreases civic engagement, since people spend too much of their time watching TV rather than attending public meetings, taking part in committees of local organizations, volunteering, writing to their representatives in Congress, etc., activities that he assumes to be essential for bringing people together (Putnam 2000, 222–246).

Such activities, Putnam argues, are important in establishing and maintaining connections among people and thus produce a significant amount of social capital that is vital for political participation, as they make it easier for people to pursue their interests in a united and well-organized fashion.<sup>12</sup> Putnam even attributes 35% of the decline in voting rates to the apathy of so-called TV generation by arguing that watching television not only takes away spare time that might otherwise be devoted to civil engagement, but even creates an illusionary feeling of being already engaged through the mere watching of television programs. This problem might also apply to Internet use as well, given its potential for addiction (Young 1998, Ng and Wiemer-Hastings 2005, Kandell 1998).

Putnam's findings can be contested, as one might reasonably argue that he neglected to account for significant changes in the very nature of politics and historical context. The correlation between television watching and political participation may, in fact, be quite complex. It is too rough a treatment to simply regard television watching as a single factor without carefully analyzing the distribution of time spent when people watch TV. Putnam's highly touted study might be overrated, as watching the news might well have a very different effect on political participation than watching soap operas (Norris 1996).

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<sup>12</sup> The term 'social capital' refers to the connection among individuals and social networks and the norms of reciprocity and trustworthiness that arise from them (Putnam 2001, 19).

A study conducted by political scientists Peer and Malthouse (2003) shows a more complicated relation between media use and political participation. This study was based on a data set of thirty-seven thousand randomly selected respondents, drawn from various representative samples of media markets in the United States. Instead of studying the relationship between media use and political participation across the United States, the aim of this study was to explore whether there are differences in the relationship between media use and political participation in various American media markets. After making a regressive analysis, the study shows that overall, despite some exceptions, watching news is positively correlated with voting, while consuming entertainment information on both television and in newspapers has the opposite result.

However, this effect varies quite substantially among markets. In some markets, the positive correlation between news intake, TV watching, and voting is quite obvious, while in others this effect is small, even close to zero. What is interesting is that in some markets, the consumption of televised entertainment might even have a slightly supportive impact on voting, while in others it is rather damaging to people's propensity to vote. As such, the correlation between information intake and political participation is complicated. Depending on the information one takes, the degree of correlation can vary dramatically. The situation may be even more complicated when it comes to Internet use. Since the Internet can be creatively used in various ways, it helps generate many sorts of information that may affect political participation very differently.

#### **(ii) Facilitating voting by facilitating information processing**

After obtaining access to pertinent information, citizens must undergo a time-consuming process in order to achieve a substantive understanding of politics. This may make them well informed about potential and actual costs and gains, and such awareness could lead them to cast a meaningful vote when they go to the polls.

In addition to the Internet's facilitation of information intake, some authors have argued that people are more likely to be open in cyberspace, as they are more likely to be confronted with different forms of information and to engage with the same public topics: ultimately, these forms of engagement foster critical thinking in cyberspace. For instance, Hilmar Westholm (2002), basing his findings on the study done in Bremen about the future development of the core district under the EU-supported project EDEN (Electronic Democracy European Network), argues that participants may have more time to collect information and to think reflectively during online conversations than they would have in face-to-face conversations, as the asynchronous character of online communication offers the benefit of emancipating people from certain limitations of time and space. Face-to-face communication often requires interlocutors who share the same time and space to immediately respond to each other. This is not required by online communication: one could send an e-mail to someone and expect a reply days later.

The Internet, besides giving people more time to think before responding in a given conversation or debate, allows people to raise questions and to offer their reactions at a time of their choosing, and this encourages them to deliberate with one another.<sup>13</sup> In addition, Guo Binyang (2003) suggests that Internet use might tie people closer to one another, and this arguably will help individuals process information, as they will be able to discuss questions with others. In his study, he shows, based on statistics, that Chinese Internet users frequently used BBS (Bulletin Board System) to discuss various kinds of questions, including political topics. In particular, he did a discourse study on the Chinese website [www.huaxiazhiqing.net](http://www.huaxiazhiqing.net), which was initiated by a group of educated young people. Guo follows the activities in the BBS attached to this

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<sup>13</sup> In the study, about 6100 visits were counted. Sixty-seven registered users and around 25-50 unknown users participated; there were 224 postings. This procedure generated a huge amount of material, which daunted decision-makers and administrative experts because it is so time-consuming to read all of it. However, the results show that two-thirds of the contributions appear to be constructive and expressive though not necessarily persuasive. Since this online discussion involved diverse agents, including experts and the head of the district administration, its quality was acceptable.

website and shows that such a forum works as a place to communicate, discuss, find mutual help, and organize people to perform specific socially oriented works.

Indeed, people can use the Internet to maintain lines of communication and to organize large-scale collaborations; and it also provides a platform for the prompting of ideas. Such online engagement helps average citizens to process information they have been exposed to and therefore facilitates their deliberation with one another. Nevertheless, it is still not clear whether people from different cultural backgrounds will use the Internet to increase mutual understanding. Discussions in cyberspace do not always generate agreement or even civil conversation; they also generate conflicts, because people can find the different values and opinions expressed there to be offensive.<sup>14</sup>

Many studies have shown that online communities can be very segmented, as are communities in the real world (Jaeger 2005, Westholm 2002, Katz 1996). The anthropological assumption of amplification theorists, which holds that individuals are willing to communicate broadly with others in cyberspace, might be wrong. Individuals may in fact be more willing to communicate with like-minded people. When individuals are exposed to others in cyberspace, they will inevitably try to contact people worldwide who support and look favorably on their ideas and who share their experiences (Putnam 2009, 101–102).

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<sup>14</sup> I would like to mention one widely discussed case to illustrate the risks of using the Internet. On September 30, 2005, the Danish newspaper *Jyllands-Posten* published a series of cartoons about the prophet Muhammad (whose depiction is forbidden under Islamic law). The publication of the illustrations on the website of the Norwegian newspaper *Dagbladet* triggered disastrous consequences around the world. Ten Arab ambassadors asked Danish Prime Minister Anders Rasmussen to intervene, and eventually the government of Saudi Arabia recalled its ambassador from Copenhagen. Danish products were boycotted in the Middle East; the UN office in the Gaza Strip was robbed and vandalized; and Danish people were warned to leave countries where they might be subjected to violence. In this case, the Internet was the means that allowed the cartoons to be viewed all over the world. The Internet enabled Muslims to mobilize and made possible their worldwide protest against the cartoons. It is hard to imagine such a conflict being possible without the Internet. “Jyllands-Posten Muhammad cartoons controversy.” Last accessed September 23, 2012, [http://en.wikipedia.org/wiki/Jyllands-Posten\\_Muhammad\\_cartoons\\_controversy](http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy)

Even worse, some online services—for instance, the Google search engine—are designed to reinforce such habits. Google search results, of course, reflect preferences embedded in the user’s search terms; and people often search for something in a way that confirms their judgments. If one’s search terms are ethically contested, for example, Google may not be able to provide this information in its results. Google’s search engine also displays location bias: US-based websites are preferred over those from other countries, such as China or Singapore. It has been shown that this is the result of the advantages accumulated by American sites on the web. As American websites have had an earlier start and tend to link to each other more often than foreign websites do, Google might be more likely to index these websites (Vaughan and Thelwall 2004). No matter how unintended this result may be, it can strengthen people’s preferences rather than provide them with alternatives.

To sum up, using the Internet might help people to process the information they have been exposed to by facilitating the sort of online deliberation and communication that provides them with opinions from diverse perspectives. However, Internet use might also strengthen one’s biases and prejudices, as the online community is very segmented and search-engine results might be skewed towards reinforcing an existing worldview.

### **(iii) Simplifying politics**

Besides facilitating the processing of information, the Internet is used to simplify politics as well. We need to acknowledge that many citizens are not precisely aware of the specific standpoints and policies of their country’s political parties, because there are simply too many of them, and politics has become extremely professionalized in modern societies. Against this background, ‘Voting Advice Applications’ have been developed. Citizens can log onto a website, where they are then asked to answer a series of questions related to particular political positions or claims. After giving your responses, parties/ individual candidates) matching your stated political preferences will be listed. For instance, you could choose among anti-

or pro- gay marriage and abortion positions, etc., and then the parties/individuals holding the same or similar political opinion as you do will be suggested. This kind of online service helps simplify complicated political issues and makes citizens more aware of what policies and parties they are voting for.

The Dutch website [www.stemwijzer.nl](http://www.stemwijzer.nl) is the paradigmatic example of a 'VAA'. This website is designed to make politics easier to grasp through its survey of statements, all of which require an 'agree', 'disagree', or 'have no idea' response. After making selections, the website is programmed to generate a result about how many points of agreement you have with the various competing parties. One is supposed to vote for the party with which one shares the most views.

There are many such websites worldwide (in Austria: [www.wahlkabine.at](http://www.wahlkabine.at); Germany: [www.wahlomat.de](http://www.wahlomat.de); USA: [www.vote-smart.org](http://www.vote-smart.org), to name a few). The use of VAAs (voting advice applications) can affect people's voting in various ways. For instance, an empirical study on the 'Smart Vote' application in Switzerland has shown that on the politician side, the VAA using rate among the elected MPs in the Swiss parliament rises from 69.5% to 93.5%. It is argued that the popularity of the *smartvote* application has caused candidates who do not participate in it to lose media coverage and, ultimately, votes. In addition, of the 1,700 survey respondents (around 95% of candidates) who participated in *smartvote*, 23.7% of party candidates believed that the application is definitely advantageous, with 45.8% believing it to be somewhat advantageous and only 1.4% thinking it somewhat damaging.

For potential voters, 66.5% of 16,385 interviewees answered that *smartvote* has an influence on which parties they vote for. In particular, 66.6% of 10,559 interviewees confirmed that, based on the advice given by *smartvote*, they voted for parties and candidates they would otherwise not have voted for (Ladner, Felder, and Fivaz 2010). In addition, various studies show that people influenced by VAAs will be more inclined to vote, and the use of VAAs makes swing-voting significantly more probable, particularly among young people. In addition, people who are surprised by

the application's suggestions are more likely to change their voting preferences (Ladner and Pianzola 2010, Ladner, Fivaz, and Pianzola 2012).

Yet 'Voting Advice Technology' is far from perfect. It might only remind citizens of their preferred political positions without introducing the element of deliberation that is a precondition for democracy. In this case, political participation might mean merely that people just care about what they want in an immediate, unreflective sense, rather than reflecting on their desires and making justifications for those desires. Therefore, use of this technology possesses the potential risk of breeding populism (Ramonaitė 2010). Moreover, the technology presents potential security problems, as online services gather much information that might easily be exposed. Also, by formulating the questions and choices in specific ways, the will of voters might be manipulated (Prosser et al. 2004, Wagner and Ruusuvirta 2011, Van Praag 2007).

Last but not least, the validity of using VAAs implicitly depends on the presupposition of citizenship and democracy. Different expectations regarding citizen competence and models of democracy would require different uses of VAAs. For instance, in a deliberative model of democracy, the mere relating of one's political preferences to a particular party's claims would seem insufficient, for this model places much emphasis on getting people to deliberate about their choices. However, one of the problems caused by the widespread use of VAAs is that these presuppositions are not yet well reflected, and may be in tension with the design and intended use of VAAs (Fossen and Anderson 2014).

In particular, the practice of the Stemwijzer website has attracted much controversy. First, regarding its technical aspects, Stemwijzer uses a specific kind of algorithm to calculate the degree of match between the user's selected beliefs and the policy orientations of particular parties. It has been suggested that this model could be contested, and therefore Stemwijzer might be able to generate different voting suggestions for users (Louwerse and Rosema 2011). In addition, Stemwijzer may more readily suggest that users vote for extreme right- or left-wing parties, as these

parties have clear-cut positions that make for obvious matches, unlike the more nuanced policy stances of more mainstream parties. Parties also could tailor their language so as to maximize being chosen by Stemwijzer. Therefore, as we can see, it is possible that Stemwijzer can be used in a manipulative way (Van Praag 2007, Arendsen 2003).

#### **(iv) Mobilizing people to vote**

When it comes to actually voting, the Internet is viewed as being helpful as well. After World War II, there was a severe decline in voter turnout in the United States as well as other nations around the world (Burnham 1984, Lijphart 1997). Against this background of decline and voter apathy, encouraging people to vote is important for maintaining vigorous democracies.

There have been studies examining e-voting practices in various nations. For instance, in Estonia, a study about a nationwide e-voting project showed that this specific technology will not mobilize people to vote who are not interested in politics at all, though it makes people who occasionally vote more likely to do so (Madise and Martens 2006). In the Netherlands, e-voting was abandoned since many people and concerned NGOs did not trust the e-voting system that had been put in place, and the Dutch government failed to supervise the use of e-voting machines and simply left their management to private companies (Loeber and Council 2008).

In the US state of Arizona, whose politics are largely controlled by the Republican Party, Internet voting was initiated in 2000 for the Democrats' primary election. Solop (2001), noting that turnouts in Arizona Democratic presidential primary elections have historically been small, points out that in the 2000 primary, turnout was 579% larger than in the state's Democratic Party primary election in 1996, the previous presidential election year. He then places the turnout increase in a broad context, arguing that among thirty states holding Democratic primary elections in 2000, half experienced increased turnout, while the other half experienced lower

turnout. The mean difference, not including Arizona, in turnout for that year's Democratic primary election was a 40.65% increase. Arizona had the highest increase in turnout. The research shows that e-voting indeed dramatically contributes to increased turnout.

However, e-voting also confronts us with certain challenges. First, there are security concerns: someone's computer might be hacked, important information not meant to be made public could be revealed, votes could be manipulated (Lauer 2004, Bannet et al. 2004, Maaten 2004). Moreover, compared to traditional, paper-based voting, e-voting makes it very difficult for voters to check whether their vote has been correctly recorded and presents problems in validating the vote totals when necessary (Bishop and Wagner 2007).

And, in line with Putnam's (2000) previously discussed study, one could reasonably put forth the criticism that while e-voting might increase voter turnout, it could decrease the frequency of interaction among citizens, for they may think that voting is just their own business. More importantly, it is still too early to affirm that e-voting will increase voter turnout over the long term; and over the short term the introduction of e-voting might even deepen the voting gap among groups of voters, as elderly people, for example, might find e-voting to be a very alien and confusing process if e-voting system is exclusively deployed. In the long run, turnout might still fall once people started taking e-voting for granted (as they become accustomed for voting to be conducted this way, just as they got used to more traditional forms of voting such as paper ballots, voting by mail, etc.), since their underlying attitudes and perceptions of politics may not have fundamentally changed. Therefore, the great increase in voter turnout through e-voting when compared to traditional voter turnout may be noticeable only in its initial, transformative stages (Norris 2002).

#### **(v) Facilitating contestation**

Besides the pre-voting phase of information acquisition and the act of voting itself,

the post-voting process is also very important. In reality, one might find it hard to draw a firm line between information collection and post-voting supervision of elected officials, for in most circumstances these areas overlap. Citizens usually make their voting decisions based on considerations relating to their prior voting habits. Therefore, an authentic vote necessarily embraces that history. Democratic countries in general legitimize the protest of citizens, although different models of democracy might rationalize the role of protest in different ways. For instance, Van den Hoven (Hoven 2005) has thoroughly discussed a specific model of democracy in the Information Age, namely ‘Contestatory Democracy’.

Unlike other models of democracy, which focus on how people vote, the contestatory model emphasizes how political decisions can be contested by the mass of citizens. Van den Hoven argues that it is unrealistic for everyone to deliberate about politics all the time, as this requires a certain level of cognitive capacity and exacts material costs. Following politics and deliberating complex political issues has gradually become demanding in modern states, as parties proliferate and politics becomes professionalized. However, the flourishing of contestatory democracy enables people to assert their dissent. In this particular model, popular sovereignty is represented by the people’s authority to contest specific policies. Citizens, although they do not directly make political decisions, are entitled to contest the actions of decision-makers whenever they disagree with those decisions. In this model, the right to protest and freedom of speech become crucial.

Protest on a national level resulting in political change without violence is rare. A study conducted by Han (2002) shows how Internet use helped mobilize young people who had not been interested in politics and transformed them into a major political factor in the 2002 South Korean presidential election. When an armored American army vehicle killed two Korean schoolgirls and two US soldiers charged in the case were acquitted of negligent homicide by a US military tribunal, the political passions of the young were ignited. The decision of the military court intensified an already prevalent anti-Americanism. Ninety percent of South Korean MSN

Messenger users posted a mourning badge on their homepage. The incident was heavily politicized in later political debates, which consequently mobilized many previously apolitical young people. By adopting a specific campaign strategy targeting young people, President Roh Moo-hyun ultimately defeated his opponent by winning most of the votes from the so-called 2030 generation (people in their 20s and 30s).

In this case, an innovative way of protesting was introduced. When a mass of South Korean citizens changed their status on MSN, a trend in public opinion became visible, and this contributed to social mobilization. Online protest also makes it easier for governments to grasp social reality, because the Internet makes the nature of public attitudes directly visible (whereas a traditional public poll, for instance, would require a more time-consuming process). What is striking is the way that Internet use enables the rapid circulation of information and efficient communication. In a very short period, the news became public, and it was extremely easy for citizens to talk about it in an online chatroom or BBS (Bulletin Board System is a forum system that provide users a locale in cyberspace for discussion and communication). This protest paradigmatically illustrates how innovative the Internet can be used with respect to starting a protest, and how efficient it is for facilitating offline protest. The South Korean case is not unique. The Internet's capacity to facilitate protest has been revealed often, both on a national and an international level (Blood 2001, Grossman 2009, Yang and Calhoun 2008).

However, online protest can be chaotic. Because there can be anonymous participants, there is a risk that some online comments will be violent and irresponsible. The problem of hate speech and the possible damage inflicted by rumor are never trivial concerns (Stern and Committee 1999, Cheung 2009). More interestingly, Wellman (2001) argues that online protest might sometimes substitute for offline protest, and could dissolve a possible real protest into little more than chitchat. Theoretically speaking this is possible, as online protest might generate a placebo effect by giving people the illusion that they have already protested. However, designing an empirical

quantitative study to evaluate this possible effect would be very difficult, because one wouldn't be able to be sure whether a real protest would occur in the presence (or absence) of the accompanying online protest. In addition, it is still not clear if exclusively online protest would exert the same effects as real-life protest. If so, maybe one could argue that this would make it less important to talk about the substitution of online for offline protest. In some cases, online protest might even result in a political change for the better. The efficacy of both real-world and online protest needs to be better addressed.

To conclude, I have shown that Internet use might facilitate protest by making information circulate more efficiently and providing people with a novel means of protest. However, online protest might be filled with rumor and hate speech that are destructive to the practice of democracy; even worse, online protest might even substitute for forms of offline protest that might otherwise help to make concrete political changes. The correlation between Internet use and political contestation is rather complicated and demands careful investigation.

#### **(vi) Growing the civil Society**

The practice of democracy relies very much on the growth of civil society. Various NGOs in civil society help to survey public opinion and attempt to give people a voice for their views. These organizations also help people deliberate about their demands and policies by facilitating meetings and debates. Moreover, by forming organizations, individuals gain more power to support or contest policies, and in so doing they become familiar with politics and are more likely to become mature citizens (Putnam, Leonardi, and Nanetti 1994, Bermeo and Nord 2000, O'Connell and Gardner 1999).

Castells (1996), for instance, famously provides a systematic argument on the power-shaping effect of the Internet on our society. He argues that in our information society, the power of nodes prevails. Nodes are the connecting points of information

nets. If A passes information to C through B, then B is, by definition, a node. The power of nodes depends on how much information they can provide, as well as how fast and how authentically they can do so. To be specific, if among nodes A to Z, node N circulates information in the least time and with the fewest mistakes, it obtains more power, as deliverers of information will tend to pass the information to it instead of choosing other nodes. As we know, traditionally power is affiliated with violence, knowledge, or wealth, yet in the information society, the switching power becomes significant, and this development might help reshape the traditional power landscape. Along these lines, individuals and NGOs capable of collecting, transporting, and switching information would acquire great power, and this would help restructure traditional power relations, and empower average citizens.

Bimber (1998), on the micro level, argues that the use of the Internet could facilitate the growth of NGOs and empower individuals, making them ever more active and visible. To be precise, without the Internet, people sharing the same ideas would have more difficulty finding one another, and individuals may not be able to discover an analogously apt channel to address the public and would therefore stay inactive. With the Internet, different interest groups can attract a larger audience and receive the sort of attention that would make them popular in society. In this way, Bimber argues that Internet use accelerates the growth of pluralism through the flourishing of online communities. However, the way this accelerated pluralism affects the practice of democracy is not obvious. What *is* evident is that accelerated pluralism, indeed, helps involve more and more agents in the public sphere, and thus helps construct a more open space where diverse opinions can be expressed. Potentially, a more democratic conversational discourse may follow.

From an empirical perspective, based on an intensive study of four popular Chinese-language news-media and politics bulletin boards, Yang Guobin (2003) argues that there is a high degree of engagement with public issues among China's Internet users. It is shown in the survey that 35% percent of people who do not use the Internet rely in general on three dominant forms of conventional media (television,

newspapers, magazines) for exchanging ideas, while 73.4% of Internet users choose the Internet as a medium for exchanging their views. Social organizations use the Internet for publicity, recruitment, fund-raising, and public education. There is stable growth among NGOs and most of them maintain active websites.

More importantly, with the ever-quicken pace of online communication, virtual communities have emerged. One active virtual community called “Forum of Chinese Educated Youth” attracted a daily average of 700 hits per day by May 2000. In July 2000, through online discussions, core members of the forum established a China Educated Youth Internet Studio, a collective management entity, to plan, develop, and fund the operations of its BBS (Bulletin Board System) forum and associated websites. As Yang rightly pointed out: “In the middle of these online discussions, a new type of political action, critical public debate, entered contemporary Chinese life.” The positive correlation between the use of the Internet and the practice of NGOs can certainly be observed elsewhere as well; various cases around the world support this correlation (Rutherford 2000, Sullivan and Xie 2009, Huysman and Wulf 2004).

However, the positive impact of the wide use of the Internet on the growth of civil society may not be universal. The “fortification” theorists, for instance, argue that traditionally powerful agents are more likely to use the Internet to maintain and strengthen their power, as the traditional resources they possess can be used to trade for power in the Information Age. Therefore, the problem of the digital divide is always lurking as a danger to our democracy (Kraemer and King 1986, Schumpeter 2013, Noam 2005).<sup>15</sup> Along these lines, one could argue that accelerated pluralism might only be a temporary trend; it might not persist over the long run, as powerful agents will again come to be dominant.

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<sup>15</sup> The ‘digital divide’ refers to the phenomenon of unequal distribution of Internet access between poor and rich, well-educated and poorly educated. The problem of the digital divide is both a local and global problem. For a systematic discussion of the digital divide and political participation, see the book *The Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (Norris 2001).

In particular, a study made by Jensen (2003) investigating the practice of the Danish governmental website Nordpol.dk, which is specifically designed to prompt democratic dialogue, shows that on its forum politicians made 300 postings, compared with 150 for non-politicians. On average, politicians made 6.5 postings each versus 2 for individual citizens. This phenomenon is echoed by research conducted by the DEMOS (Delphi Mediation Online System) project in the city of Hamburg, Germany. It shows that the ten most active users wrote 34.9% of contributions on the forum. Twenty percent of active users wrote more than three-quarters of the contributions, and the single most active user had a share of 4.3% (Albrecht 2003). More interestingly, this study shows that online representation for each political party in the debate matches quite closely with their representation in parliament. As such, it seems that Internet use might simply help duplicate the power landscape of the ‘real world’ rather than reshape it.

Besides these doubts, one could imagine that specific groups of people, for instance the Amish in the United States, might be indifferent about the new possibilities that emerge as the Internet evolves; their values may well be in tension with the very idea of Internet use. Moreover, it is argued that criminals might make use of the Internet to organize crime on an unprecedented scale that would severely damage our society (Robinson 2000, Richard 1999). In addition, as Putnam (2000, 175-180) rightly observes, compared to face-to-face communication, online communication is less able to involve the non-verbal information, such as gestures, eye contact, etc., that is essential for building a trustworthy relationship. All these problems might cause severe damage to civil society or hinder it from developing as it should. In short, the studies do not suggest a conclusive answer for the correlation between Internet use and the development of civil society with respect to the increase of the total number of users and the Internet’s organizational efficiency. From a long-term perspective, there are still many possibilities and uncertainties.

**(vii) Building transparent and responsive Government**

Besides the discussion of the Internet's impact on voting and on civil society, there have been many efforts to explore how Internet use might help create more transparent and responsible governments, something that is vital to the practice of democracy. A democratic government ought to be transparent and should be expected to be responsive to the concerns of its citizens. Citizens in democratic societies demand transparency as a means of supervising politicians; they also expect the government to be responsive to their needs, as people living in democracies are more likely to interact with government. An e-government project is believed to be an efficient tool for prompting transparency and efficiency with regard to state bureaucracy (Al-Hakim 2007, Abramson and Morin 2003), both of which are crucial for the practice of democracy. Here I shall briefly discuss the project.

In simple though not oversimplified terms, governmental projects involving the Internet in general consist of two parts: (i) horizontal Internet connection among many governmental bureaus on the same level; (ii) vertical connection among the different ranks of bureaus and citizens. Horizontal connection via the Internet is supposed to increase bureaucratic efficiency, which helps to build a more responsive government. Vertically, well-wired bureaus may be more likely to communicate and circulate information that could minimize the risk of neglecting citizens' voices. In addition, average citizens might find it easier to communicate with local bureaus via electronic means. They can just log on to the official website to get necessary information; if confused, they can e-mail the officials asking for help; if annoyed, they can submit a complaint via e-mail or on the digital wall of the governmental agency's Facebook page. Internet use, in this sense, makes the daily interactions between citizens and governments unprecedentedly easier and faster, and governments can be expected to be more likely to hear citizens' voices and to be more aware of the public impact of their policies (Reddick 2010, Böhlen 2005).

Without a doubt, e-government is practiced today not only in developed but also developing countries. And a country like China has devoted considerable efforts to

develop its e-government project.<sup>16</sup> However, it is hard to measure whether e-government initiatives indeed exert a positive impact on the practice of democracy, as good governance does not necessarily mean good democracy. In an authoritarian state such as Singapore, for example, the Internet has been widely adopted to promote government transparency and accountability but it is still very unclear how this will work for democracy. In fact, Singapore's government has adopted a sophisticated censorship system that can filter information regarded unfavorably by the government (Skoric, Ying, and Ng 2009, Prashad 2007). Therefore, whether e-governance prompts democracy still largely depends on the political context in which the project is carried out.

Besides these conceptual problems, there are many practical issues as well. E-government projects are not always convenient, and sometimes they bring about conflicts and problems. Research done by Phil Noble (2001) shows that in the process of practicing e-governance, information that has traditionally not been defined as private can still raise privacy concerns once it is published online. When the City of Virginia Beach in the United States posted online the names of the owners of each property in the city, this caused a bit of backlash. Citizens might not be comfortable with this information being posted online, even though it is supposed to be public. It seems that Internet use starts to challenge people's traditional views on privacy: it makes people rethink what they believe should and should not be regarded as private. In addition, after online profiles of politicians were established, a growing number of citizens in the United States became increasingly frustrated by what they perceived to be a lack of responsiveness to e-mail by their representatives in Congress.<sup>17</sup>

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<sup>16</sup> The Chinese government initiated its own online project in 1999. By 2005, 96% of all ministry bureaus and 81.3% of local governments had established their own websites. 90.3% of the provincial governments and 94.9% of the municipal governments have portal websites. These websites mostly provide three general kinds of services: information publishing; policy consulting; and government supervision and reports of corruption. 'The Progressive Achievement of E-government Project', [http://www.gov.cn/ztl/yzn/content\\_480139.htm](http://www.gov.cn/ztl/yzn/content_480139.htm)

<sup>17</sup> Phil Noble & Associates, "E-Democracy Around the World." Last accessed October 2,

At the same time, members of Congress have been frustrated by what they perceive as a lack of understanding on the part of citizens about how Congress works and their poor grasp of the constraints under which it must operate. It seems that the habits fostered by using the Internet are not fully compatible with the way we now conduct politics offline. This phenomenon is echoed by the aforementioned research conducted by Hilmar Wesholm (2002). He noticed that some politicians expressed doubts about participating in a political debate via the Internet and preferred to use the phone when discussing issues with citizens, since they found that the requirement of a written answer forces them to commit themselves more strongly than they would like on particular issues, and this makes them more cautious. Also, there are some questions that cannot be answered publicly due to regulations, but average citizens expect them to disclose such information.

So far, the practices of e-government have not yet matured, as much of its potential has not yet been achieved. In some states, investment in e-government projects has cost a great deal more in public funds than what the government could save if it didn't pursue such initiatives (Longford 2000). However, its great potential makes it worthwhile to carry on. In delivering certain services, it is supposed to save lots of money and make governance much more transparent and responsive. In addition, although it might be the case that democratic states are more likely to adopt e-governance, it is not clear whether e-governance will directly bring us democracy.

#### **IV Brief conclusion**

Thus far, I have presented some general arguments about how Internet use might have an impact on politics with respect to the practice of democracy. I have shown first that more and more people are using the Internet to obtain information, which is crucial for people to stay informed. However, the correlation between information intake and political participation is rather complicated. Too much information might distract

people from meaningful political participation, and it might even complicate their sense of politics and thus drive them away.

Second, some cases showed that the use of the Internet might help to motivate people to participate in politics, as it could be used to lower the cost of participation by providing people with easy access to voting. The practice of e-voting projects I mentioned above proves that Internet use can dramatically increase voter turnout. Yet the practice of e-voting has also attracted considerable controversy. People's voting information might be leaked or hacked, or their perceptions about politics might be radically changed so that they consider politics simply to be a tool that fulfills whatever desire they choose to embrace.

Third, Internet use might help facilitate the growth of civil society, which is often seen as the cornerstone of democracy, by reducing the cost of communication and by breaking geographical limits for organizations. However, studies have shown that online communities are also very segmented, and more conflicts might be generated through Internet use because the Internet might expose people to offensive (to them) or intrusive values. Fourth, some studies suggest that Internet use helps people protest by facilitating the rapid circulation of information and enabling large-scale cooperation—and, more importantly, it has introduced many new ways of protest. For instance, the mass changing of one's MSN status could enable a protest which would have been unimaginable before the advent of the Internet. Nevertheless, online protest may also be filled with violent language, threats, and hate speech, which is enabled by anonymous online communication. In addition, the interplay between online and offline protest is not yet clear: it is possible that online protest might substitute (poorly) for the sort of offline protest which can generate concrete political changes.

Last but not least, some studies have shown that e-government projects could help spur bureaucratic efficiency and make governments more responsive and transparent, and this is believed to be important for the practice of democracy. However, other studies have shown that e-government projects have not yet achieved their potential,

as they cost more than what they gain. In addition, the practice of e-government might be in tension with or even thwart the development of democracy. Some governments, Singapore for instance, have adopted a very complicated e-government program that allows for an increase in bureaucratic efficiency accompanied by tight control on politics through the use of a sophisticated e-supervision system (Ang and Nadarajan 1995).

To sum up, due to the rapid development of Internet technology and its versatility of use, literature on this topic is still not adequate and is sometimes very controversial. Considering this, drawing any decisive conclusions would be too hasty when attempting to understand all the theoretical and sociological possibilities of this technology. Constant effort needs to be made to adequately catch the dynamics of the interaction between the Internet and politics. Nevertheless, the literature review that I have just presented helps provide a comprehensive perspective for my consideration of the question of how Internet use affects the practice of democracy. Having this perspective in mind, I could then investigate in particular how the Internet affects China's politics and its process of democratic change. However, China is a unique case, as it is neither a democratic society like the United States, nor a totalitarian state like North Korea. Therefore, a discussion of literature here would only provide me with methodological suggestions rather than a solution. In the next chapter, I will construct my own methodology to study how Internet use impacts China's democracy based on the reflections made in this chapter.

## Chapter II Internet and Chinese Public Sphere

### I Introduction

In 1987, the first e-mail from China was sent out to the world, bridging Beijing Computer's applied technology institute and the University of Karlsruhe through the first Chinese Internet backbone, the Chinese Academic Network (CAET). The e-mail stated inspirationally: 'Across the Great Wall we can reach every corner in the world'. Internet access has, since then, been progressively distributed all across China. In January 2012, the number of Chinese Internet users reached 513 million, with an Internet penetration rate of 38.3%. Moreover, from 2007 to 2010, the number of Internet users in all age ranges has been continuously growing. The number of mobile-phone Internet users increased from 117 million in 2008 to 355 million in 2011.<sup>18</sup> It is estimated that Internet-related business and commerce made up 5.5% of total Chinese GDP in 2010.<sup>19</sup> China has now become the nation with the largest Internet population in the world.

In the previous chapter, I presented a review of the literature on the interplay between Internet use and democratic political practices. Building upon this foundation, I will investigate in this chapter through a case study how Internet use is affecting the development of democracy in China. This chapter's goal is to develop a narrative that clearly presents the interplay between Internet use and the democratic changes taking place in the realm of Chinese politics. As such, the function of this chapter in the thesis as a whole is to provide empirical evidence, on which I can further develop my normative argument.

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<sup>18</sup> "The Statistical Report of the Internet's Development in China." Last accessed July 3, 2015: <http://www.cnnic.net.cn/hlwfzyj/hlwxyzbg/201201/P020120709345264469680.pdf>.

<sup>19</sup> David Dean, Sebastian DiGrande, Dominic Field. 2013. "The Internet Economy in the G-20,." Last accessed June 3, 2014: [https://www.bcgperspectives.com/content/articles/media\\_entertainment\\_strategic\\_planning\\_4\\_2\\_trillion\\_opportunity\\_Internet\\_economy\\_g20/](https://www.bcgperspectives.com/content/articles/media_entertainment_strategic_planning_4_2_trillion_opportunity_Internet_economy_g20/)

To achieve this aim, I will first make a methodological reflection, investigating whether the studies discussed in chapter I are appropriate for studying China's case: I will argue here that the concept of public sphere as it has been developed and used by Jürgen Habermas, with a slight revision, is useful in studying how Internet use could impact China's democratization. Then I will outline Habermas' book on the transformation of public sphere so as to present his argument systemically. Lastly, I will, making reference to Habermas' work, introduce the formation of the Chinese public sphere that is crucial for democratic change, and consider how Internet use affects this process by presenting a specific case study about a hotly debated online incident.

## **II Methodological reflection**

In this part, I will first revisit the literature discussed in chapter I and argue that the idea of the public sphere is a better tool than the ideas of e-voting, e-protest, etc., for assessing China's democratic changes. I will then discuss intensively Habermas' formulation of the public sphere and offer a brief explanation of why I think his idea is congenial for studying China's case.

### **(i) Chinese scholars**

In chapter I I discussed some of the most notable empirical studies about Internet use and its impact on democracy. Yet it is difficult to directly apply their perspectives to China, as China has a different political system than the nations where most of the studies have been done. For instance, since there has yet been no authentic voting in China due to the dominance of the CCP (Chinese Communist Party) (Shi 1997), it would make no sense to study how Internet use affects voting in China. Studies on the development of civil society and transparent governance are much more relevant. As mentioned in Chapter I, the work of Bimber (1998) and Castells (1996) shows that the Internet helps pluralize power agents and can therefore reshape the power distribution of a society by facilitating the development of civil society.

Several important studies made by Chinese scholars echo these findings. In particular, Guo Binyang (2009) and Tai Zhixue (2013) systematically studied how Internet use empowers common citizens by giving them access to more information, enabling political discussion, and facilitating the growth of civil society by providing a space where various sensitive issues can be discussed. These studies focused almost exclusively on how Internet use can empower average citizens.

The political scientist Zhen Yongnian (2008) is more reflective with respect to the understanding of the changing relationship between the Chinese government and the society it presides over. In his interpretation, the Internet could both spur the development of civil society and increase transparency and efficiency in the nation's bureaucratic system. Zhen's key point was to see how the Internet provided a place that enables interaction between government and society, which contributes to the establishment of a recursive relationship that would help reshape both state and society. Drawing on Zhen's reflections, I consider Habermas' idea of public sphere in this light, as it includes the three important dimensions mentioned above: (i) collective action by average citizens with respect to the development of civil society; (ii) the interplay between state and society with respect to their separation; (iii) the establishment and sustaining of a place where communication occurs with respect to critical discussion. I will elaborate these points in detail below by discussing Habermas' book on the transformation of the public sphere.

## **(ii) Jürgen Habermas**

Habermas (1991) has made the major contribution to the study of the public sphere. In his classic work *The Structural Transformation of Public Sphere: An Inquiry into a Category of Bourgeois Society* he made a systematic attempt to characterize the evolution of the public sphere in Western Europe (focusing largely on France, Germany, and Great Britain) by providing a historical and narrative interpretation of the concept of publicness and by analyzing its preconditions. The basic idea of his work is that the very existence of a bourgeois public sphere depended on, and was

predetermined by, the specific socioeconomic conditions upon which a differentiation of state and society was gradually achieved. I will present his theorization of the public sphere by discussing several of his key points in sequence: (a) the development of a capitalist economy and the formation of a bourgeois class; (b) the growth of civil society; (c) the rise of the press and a space for critical communication; and (d) the decline of the public sphere in contemporary society.

### **(a) The capitalist economy and the bourgeoisie**

Habermas argued that in the Europe of the Middle Ages, the King, members of the nobility, and clerics, as qualified representatives, had a different political status than ordinary people. For this particular way of representation, a kind of publicity, Habermas coins the term *representative publicity/publicness*. Representative publicity excludes people who fall outside the circles of kingship, nobility, and religious authority, as only certain attributes (holiness, etc.), of these people are publicizable. An average individual might be hardworking or have other notable features, but did not possess a distinct personality that was suitable for being represented in public (Habermas 1991, 5-14).

Habermas further argued that there occurred a transformation in the economy that resulted in a specific group of average people, namely the bourgeoisie, to acquire attributes that were seen as worthy of being publically represented (Habermas 1991, 14-27): with the development of capitalist economy, capitalists began to achieve some measure of status and power. Under feudalism, characterized as it was by an agricultural economy, farmers and craftsmen generally served themselves without being much involved in public activities. Therefore, no civil society was formed among them so as to prompt the economic benefit of a certain class, as would happen later with the bourgeoisie; the fields and other workplaces of the people were attached to particular locations, and were relatively self-contained.

However, as time passed, a new form of economy emerged that featured

long-distance trade. Traditional farmers and craftsmen were marginalized and a new bourgeois class came onto the stage. The bourgeois radically differed from these traditional groups in several aspects. First, the capitalists were less constrained by the established institutions of feudal society (Habermas 1991, 23) Second, the new bourgeoisie was a class of people who demanded information. As long-distance trade was very sensitive to sociopolitical changes, capitalists needed a flow of relatively current news; developments in printing allowed them to fulfill their demand for information (Habermas 1991, 16). Lastly, the bourgeoisie was relatively well educated, and in particular possessed up-to-date knowledge that allowed them to participate in and manage critical debates (Habermas 1991, 37).

### **(b) Civil society**

Habermas argued that the capitalist economy demands a strong element of autonomy, thus resulting in the privatization of the economy. The leading of one's economic life became a private issue (Habermas 1991, 30). He noted how a civil society began developing along with the transformation from an agricultural to a capitalist economy, featuring mass production, the division of labor, and long-distance trade involving resource exploration and extraction (Habermas 1991, 19-20).

At first, civil society was cultivated mainly to protect and to spur commercial activities. As it progressively developed, the bourgeoisie managed to successfully lobby state governments to legislate their demands by granting them, the property owners, basic rights to, for instance, freedom of speech (Habermas 1991, 83). With a strong civil society and the accumulation of a good deal of wealth, a relatively secularized life came into being. Against this background there gradually developed a public sphere.

### **(c) The Coffee Houses, the Press, and the Public Sphere**

In its beginning, the public sphere took form as a literary public realm where salons

and coffee houses were the scene of critical debates about literatures and the other arts. Later, the topics of the discussion were expanded to include political and economic issues. Habermas refers to this new sphere as the political public sphere (Habermas, 1991, 43-51).

To be brief, the capitalist public sphere possesses the following features: *first*, in contrast to representative publicity, capitalist publicity is conceived as inclusive, meaning that all property owners could represent themselves equally in critical debates.<sup>20</sup> *Second*, the discussions in the public sphere, whether in coffee houses or on the pages of newspapers, are critical in the sense they refer to reason, instead of authority or holiness or mere emotion, to justify their positions and contest others; *third*, the critical debates in cafés and especially in the newspapers are deliberately made to address the mass: they aim to inform the public, introducing the topics of public concern and encouraging people to join crucial debates.

#### **(d) The decline of the public sphere**

After fully explaining the idea of public sphere as it took shape during the Enlightenment in Western Europe, Habermas noted further that modern advertising strategies destroy genuine critical debates in the public sphere. Previously, debates in newspapers were critical and reflective enough to address issues of public concern. However, by the middle of the twentieth century (when Habermas was writing), newspaper had evolved to care primarily about their readership numbers (and advertising revenue), and therefore they became manipulative organs tailored merely to attract public attention. This phenomenon is vividly demonstrated by the presentation of the news in the form of the *news story* (Habermas, 1991, 181-196).

Something similar holds for politics. As Habermas notes, by the mid-twentieth century politicians' appeals to the public had become simply a means to propagandize their ideas, and their cultivation of personality cults ultimately serve nothing more

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<sup>20</sup> However, the bourgeois public sphere in its beginnings excluded the proletariat.

than their party's interests (Habermas, 1991, 196-211). Habermas calls this phenomenon 'refeudalization' in a sense that it takes a form similar to that of representative publicity (Habermas, 1991, 231). All in all, Habermas completed his analysis of the transformation of the public sphere by pointing out that the very development of bourgeois consciousness and its related economic arrangements help create a political public sphere, which, as it develops, is also encroached upon.

The idea of the public sphere is relevant for the study of China's democratic changes for the following reasons: *first*, as I have already argued, China is not yet a fully democratic state with well-established democratic institutions, so therefore the studies which focus on the interplay between Internet use and voting or other institutional features of democracy cannot be directly applied. Instead, the idea of the public sphere is more proper to the study of the transformation of societies in which democratic changes might occur, as it delivers insights into understanding the formation of the preconditions of democracy.

*Second*, China, over the past decades, has been experiencing the differentiation of state and society, during a time when the growth of civil society has accompanied economic reforms which are often referred to as semi-capitalistic. China's recent progress bears some similarities, albeit with great differences, to the early development of European bourgeois society. *Last but not least*, the media, mainly the newspapers in Habermas' case, play a crucial role in forming the political public sphere, which in any contemporary case relates directly to the Internet, the technology that is widely accepted as being the most attractive and competitive form of media that has been reshaping politics. To proceed, I will now apply the theory of the public sphere to contemporary China, elaborating how the Chinese public sphere has been formed (if, indeed, there is one).

### **III Public sphere in China**

In this section, I will present how the Chinese public sphere has developed. I will first

introduce China's market-based program of economic reform, and explain what it has changed and the political mentality behind such changes. Then, by referring to the theory of the public sphere, I will explore how this new economy and the accompanying political evolution have helped to gradually differentiate state and society and to develop a civil society. Then I will discuss what is still missing in China for the formulation of a mature public sphere in which critical debates take place. Lastly, I will explore how Internet use could facilitate the formation of a mature public sphere, and what this means with respect to China's democratic changes.

**(i) Economic reform**

In Mao's era, Chinese politics were based on ideology. From 1957 to 1978, the Communist Party focused exclusively on the class struggle. When Deng Xiaoping took over the Party's leadership, China started to shift its focus to economic development (Esphere 2012, 374). Deng distinguished between ownership within the economy and the form of governmental economic regulation, arguing that efficiency should be the only criterion for regulating the economy. In his words, the socialist economy could embrace market mechanisms for economic development, and the capitalist economy could also to some extent be planned. Later, at the 14<sup>th</sup> CPC National Congress in 1992, the Party publically adopted a policy that the publically owned economy should be the mainstay of the Chinese economy, while recognizing other types of ownership, including private, collective and foreign-owned forms (Zhongfu 2005, 105-107).

Against this background, the CCP adopted a series of bureaucratic reforms aimed at unleashing economic potential. At first these reforms were directed towards reducing the number of State Council departments and promoting bureaucratic efficiency. Later the central government, which used to be seen as the main agent for stimulating and planning the economy, was redefined as its macroeconomic regulator; eventually it was mainly viewed as a service provider responsible for making laws and polices for

securing a relatively free market (Zhongfu 2005, 26-41).

To be specific, China has been engaged in heavily reforming its state-owned companies. Those companies, whose government-appointed heads did what they were told, often made no profit, and gradually became a burden for the central government. One study showed that for all industrial enterprises, from the town level upwards, the loss rate grew from 7.62% in 1986 to 51.85% in 1997, a year in which the total loss rate was 108.8 billion *yuan* (Haihang 1998, 27). The reform in enterprise first separated ownership from operation, and in doing so, was a further step in enabling the private sector to manage operations. Later the government also enacted a group of laws and policies that allow the bankruptcy of state-run companies, as well as merger-and-acquisition activities. As a result, many state-run companies went bankrupt and were acquired by private parties (Tianyong 2004, 217-234).

Besides the reform of state-run companies, there was in 1982 the official recognition, via the Constitution's 11th amendment, of the legal status of private, collective, and foreign-owned companies. However, these enterprises were still seen merely as complementing the state-owned economy in the sense that they were tolerated and promoted as long as they did not dominate the national economy (Changling 2007).

As the reforms have increased, the central government has been making efforts to reduce the official administrative layers, aiming to progressively reduce the five administrative layers (central, provincial, municipal, county, and town administration) to three. The institution of town government is expected to be downgraded to a local agency of the county government, and the provincial government will directly regulate the municipal and county government. The reform of these bureaucratic layers is expected to reduce the burden of taxes and fees burden endured by Chinese citizens; more significantly, it might help free society from the oppression of bureaucracy (StateOffice 2004).

As the economy developed, people demanded that the central government give them

ever more economic freedom. They asked for a lower cost for market access and for a freer market that would allow private parties to run certain businesses in industries previously dominated by state-run companies, for instance the telecommunications business (Liyong and Guoyong 2003, Lei 2007). On the other hand, as the disparity between rich and poor sharply deepened during the reforms, the demand for a just market system became urgent. When this demand was finally reflected in national politics, the idea of social justice was emphasized.<sup>21</sup>

Current Prime Minister Li Keqiang affirmed strongly in his first government report that the government sought to deliver justice so that everyone could share the fruits of the reforms. He also continues to move forward the nation's economic reforms, proposing that the Chinese government cede power to a market economy so that it would be the primary force in determining how resources should be allocated. One of the results of these moves was that the government canceled 632 restrictions related to commercial activity, which roughly accounts for one-third of the total number.<sup>22</sup> Also, it opened a first group of eighty previously state-dominated industries to private investment.<sup>23</sup>

To draw a short conclusion here, we could see the logic underlying the Chinese political-economic reforms as follows: First, the demand for better economic performance required a severe change in the bureaucracy. When this demand entered the arena of national politics, a political reform took place which resulted in concrete bureaucratic changes. Second, the economy grew during the period when these

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<sup>21</sup> Maria Bondes (2013) made a keywords analysis based on Chinese government reports from 2001 to 2011, covering the governments of Jiang Zeming and Hu Jintao. The study shows that on the one hand the communist government adopts an official stance of continuity to justify its governance. Economic growth, for a while, was regarded as a means for justifying its governance. Yet the idea of 'social justice' gradually gained in significance from Jiang's to Hu's government, even becoming the core concept in the latter.

<sup>22</sup> For the precise items that have been canceled or devolved to the local governments, check the official website of the Statistic and Reform office of State Council:  
<http://spgk.scopsr.gov.cn/bmspx/qxxfList>

<sup>23</sup> The document can be accessed through the State Council Website:  
[http://www.gov.cn/guowuyuan/2014-04/23/content\\_2665259.htm](http://www.gov.cn/guowuyuan/2014-04/23/content_2665259.htm).

changes were being implemented, and once they were in place, the government was pressured to make further reforms in the bureaucracy and its national policies. President Xi Jinping even publicly acknowledged that Chinese political reform is generally spurred on by the need to solve practical problems rather than beginning with a top-level design.<sup>24</sup> Against this background, I will now be able to discuss the development of the public sphere in China.

## **(ii) The Chinese public sphere**

### **(a) The radical differences from Habermas' public sphere**

As mentioned, the goal of Chinese reform is to develop the Chinese economy by redefining the function of the state, devolving its power, and making the economy more private through the adoption of a market system. As a result, the Chinese economy has been growing at a fast pace for the last thirty years, with the private economy steadily increasing: it took up 47% of the national economy in 2005, and if one counts private capital invested in state holding enterprises, the percentage reaches 61% (Chengrui 2006). The fast-growing economy means that education is now more affordable. From 1964 to 2000, the illiteracy rate dropped from 52.4% to 9.1%. (Stateoffice 2001, 93). The number of people who received high school or higher education showed an eight-fold increase (Stateoffice 2001, 35). With so many educated citizens, the number of Chinese NGOs has been growing rapidly. During the Cultural Revolution, there were hardly any NGOs; however, at the end of 2013, there were 511300 NGOs registered in China.<sup>25</sup> More importantly, the autonomy of NGOs has also been growing over time (Guosheng 2005).

As such, one could argue that the differentiation between state and society is occurring via the liberalization of the economy and the development of a civil society

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<sup>24</sup> People's Daily. 2013. President Xi Made an Important Talk for the Non-Party Members, accessed Oct 6, 2014: <http://cpc.people.com.cn/n/2013/1114/c64094-23534196.html>

<sup>25</sup> Report on Social Management, Ministry of Civil Affairs, accessed Nov 12, 2014: <http://mzzt.mca.gov.cn/article/qgmzgzspby/gzbg/201312/20131200568958.shtml>.

(Shiqi 1996, Jianxing and Yu 2003). However, this differentiation largely differs from what Habermas noted in his historical example, although in the origins of both cases it is to a large extent pushed by new economic developments. The radical difference is that the differentiation in China is carried out solely by the central government and largely led by the Communist Party all the way down, whereas the bourgeois-capitalist differentiation, at a very early stage, was largely spurred by the capitalist class who were motivated to grow the capitalist economy.

Therefore, the state-society differentiation in China lacks the support of a bourgeois consciousness and a related social and historical discourse that would be characterized by power struggle, critical communication, the representation and contestation of political demands, etc. The reforms are simply implemented paternalistically if not arbitrarily by the Party. In the reform process average people are not able to really express themselves as citizens through critical debates.

As such—turning back to the role of the public sphere—one could argue that even though there is a separation between state and society, the public sphere is not fully developed in China, as there is not a group of people, such as the capitalist class in the work of Habermas, who engage in critical debates with one another on national politics, and then inform and address the mass afterwards. Since the economy is fully planned by the state, everyone is, in the strict sense, a proletarian who is fully dependent on the government and is therefore prohibited from initiating or taking part in critical debates.

Note here that I am not putting forth the argument that one needs a specific sort of economy to have a public sphere. Rather, what I am offering here is the view that to have a public sphere, there must be a group of people, a social class, that could conduct, manage, and sustain critical debates. For Habermas, it is the capitalist class who did so during a time of momentous economic change in Europe. However, in China, since the free-market and bureaucratic economic reforms are dominated by the government, we do not see find a particular social class leading an ongoing critical

discussion. The economy, as a private rather than a public matter, is radically important for the embrace of the idea of the public sphere, for if people do not have property rights, they are very likely to depend on the state and consequently fail to launch a critical debate directed toward the government and its policies.

Moreover, there is no space—cafés or coffee houses, salons or something similar—that could function as a place where ongoing and vigorous political debate could take place. The teahouse, the Chinese version of the café, used to be a place where urban residents could discuss politics, but since 1950, due to the influence of the Party, the teahouses have generally died out (Lichao 2005, Xiaonan 2004, Yuezhi 1998, Zhuohong 2003). As such, everyone is simply supposed to be a socialist worker who is fully attached to the *danwei* (their working place, organized by the CCP). Most of the *danwei* are very self-sufficient in the way that they might have their own school, canteen, and even a hospital. The *danwei* monopolizes most aspects of one's life, and in so doing, it becomes an extremely powerful locale for the teaching of the Party's ideology (Lulu 2002, Wei and Hanlin 2004).

To conclude, there is in general neither a class of people nor an *unofficial* space available that have made a critical debate possible in China. The question, then, is whether official channels can provide a space for critical political debates to flourish. I will now briefly discuss this issue.

### **(b) Political discussion via official channels**

To be brief, four ways of political participation are officially recognized (Yongwen 2009, 168-209): *first*, people could ask representatives to make political demands; *second*, people could participate in politics by appealing to the media for public discussion; *third*, people could contest government decisions by appealing to the courts; *fourth*, people could protest against the government both individually or as a member of a social group. I will discuss these options each in its turn.

(1) The representatives:

*First*, according to China's constitution, Chinese citizens above the age of 18, excepting severe criminals, are qualified voters. Yet the Chinese voting system has long been criticized, chiefly for four sorts of reasons (Ye 1998). *First*, it is argued that representatives are not elected by the people but are appointed explicitly or implicitly by the powerful, and therefore they simply do not represent the people and their interests. As Zhang (2007) succinctly put it, representatives are not motivated by concern for the public interest; rather, they vote to prove their loyalty to the Party. Candidates are not allowed to voice their plans, and occasionally they can even get elected without attending the representative conference (Shaobo 2001).

*Second*, the distribution of the number of representatives is arguably unfair, as farmers are underrepresented. Chinese law affirms that the number of villagers who could possibly be represented may be four times more than that of city residents (Zuoguo 2007). This system becomes particularly unjust when there is rapid urbanization and land appropriation. Farmers usually bear the greatest cost in the process (Tiezhong 2007, Weidong and Liming 2004).

*Third*, the bureaucratic arrangements of the People's Congress, which according to the constitution is China's ultimate authority and legislative organ, are highly inefficient for enabling critical communication. For instance, the People's Congress holds a conference every four years with around 3000 representatives who are not mainly professional politicians but workers of every sort (Zhe 2004, 249-264).<sup>26</sup> It is very difficult to conduct a meaningful discussion with so many people; what's more, the conference is held only once every four years and lasts just fifteen days (Pingxue 2005, 13). Even more problematically, the People's Congress relies heavily on the Communist Party: all heads of standing committees must be Party members, and for the past two decades, three-quarters of the representatives at the Congress have been

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<sup>26</sup> The number of representatives grew from 1226 in 1954 to 2979 in 2003.

Party members.<sup>27</sup> Therefore, it is hard to be critical towards the CCP at the conference.

Above, I have shown how representatives function in China's political system. I will now turn to my point (ii), discussing political participation via the media in China.

(2) Media participation:

In general, political participation through the media occurs in a problematic way, because media such as television and newspapers, though not the Internet at the moment, are to some extent attached to governmental organs. Previously, average citizens were informed about politics mostly from traditional media sources; however, studies show that they gradually lost their trust in the traditional media, as these were manipulated by the CCP (Lingge and Fenglan 2007, Weibu 2002).

In general, there have been three ways to regulate traditional media: *first*, China has passed a group of sophisticated laws that are used to control the media. These laws appear to concern only management functions, but, as He (2008, 23) argued, when they are used in combination with the estimable power of Party propaganda departments, they make the media little more than a propaganda machine.

For instance, according to the law, all media outlets need to be supervised by governmental departments. Failure to conform to the rules could result in the suspension of their licenses (He 2008, 24-27).<sup>28</sup> CCTV (China Central Television), for example, is managed by the State Administration of Radio, Film and Television (SARFT). '*nanfang zhoumou*' (Southern Weekend), one of the most famous Chinese newspapers, known for its liberal views on politics, is supervised by the propaganda department of Guang Zhou City. Moreover, the chief editors of important media organizations are often placed there by the Party's authorities: for instance, the head

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<sup>27</sup> For a detailed discussion on the relationship between the CCP and People's Congress, see the book *A Study of the National People's Congress of China* (Zhe 2004, 34-72).

<sup>28</sup> *Ibid*, pp. 24-27.

of the “*Beijing Daily*” newspaper used to serve in the propaganda department of the Beijing government. In addition, if deemed urgent enough, the central propaganda department can issue specific regulations for addressing specific cases (He 2008, 27-31).<sup>29</sup> I will now turn to shortly discuss whether the court system functions as a place where people can discuss political, usually justice-oriented issues.

### (3) The courts

Strictly speaking, the courts are usually not the place for political discussion. However, the protection and promotion of justice—the duty of the courts—is inherently a political matter. People engaged in lawsuits participate in politics in the sense of exercising their rights that are enshrined in the constitution, giving expression to their struggles, etc.

In China, the court system also faces great challenges to its juridical independence. In China the court system has three levels: local (county), intermediate (municipality), and supreme court (provincial). By design, the court system is supposed to be independently organized and removed from the influence of the government, and yet in fact its financing largely relies on governments, both central and local. Therefore, the courts find it difficult to make independent judgments, especially when it comes to cases in which government organs are sued (Wusheng and Zeyong 2000, 33-37, Peidong 2000, Changling 2007). This financial arrangement fosters a culture of clientelism between the government and the courts. In addition, the Party established a particular bureau, the Politics and Law Committee, which has branches in the court, procuratorate, and police systems, so as to supervise and coordinate their work (Jinyan 2014). This bureau, a Party organ, has long been criticized for directly intervening in court affairs (Li 2010, Tao 2012).

Given some of the failures I have outlined above, naturally there have been protests. I will now proceed to discussing whether protests in China work well to initiate critical

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<sup>29</sup> Ibid, pp. 27-31.

communication among diverse political agents.

#### (4) Protests

One study has shown that the number of protests, referred to as ‘Mass Turbulence’ in Chinese, has been rapidly growing: from 60,000 cases in 2003 to around 360,000 in 2011 (Jianrong 2006, 40-42). Although approved protests are legal under the Chinese constitution, political reality in China has meant that there have been few street protests officially approved and regulated within the current legal framework (Tong and Lei 2013, 184-185).

Yu Jianrong (2009) famously concluded that protests in China share some important characteristics: *first*, they are either individual eruptions or small-scale protests initiated by a group of people who suffer the same problem, for instance retired soldiers protesting for their pension; *second*, large-scale protests are mainly either carried out by young workers in the same factory, particularly in those of high-tech industries such as vehicles or computers, or have been spontaneously triggered by street confrontations, for instance between street vendors and city managers. Therefore, Chinese protests are very issue-oriented: people simply ask that their economic demands be justly met. Beyond this, rarely do they have concrete political demands. Most importantly, these protests still presuppose that governors should be the main and even the only justified agent to protect the interests of protestors (Guangxian 2011, Luyan 2014).

In short, protests in China are neither organized by a party or party-like organization, nor are they backed by a strong social class. As such, protesters directly rely on the government to find and offer solutions without referring to their own political participation, because they feel extremely vulnerable as individuals. To put forth a political demand, such as the demand for freedom of speech and political participation, a protest needs to be relatively well organized and mounted on a large scale, and perhaps be headed by elites who know how to translate personal economic demands

into more universal political demands, and who have the ambition to participate in political decision-making as well as the capacity to do so. What the street protests offer is focused more on direct confrontation than critical communication.

All told, official channels in China have simply failed to work as means by which people could discuss politics critically and eventually affect national politics. However, it would be mistaken to conclude that there is not even a thread of critical debate in China. Critical discussion used to take place on Chinese campuses in the 1980s, as I will argue.

### **(c) Scholars and informal political discussion**

It should be noted that the Confucian tradition despises businessmen and highly praises scholars (Yingshi 2004, 119-120). As such, it is not the businessman but the scholars who are deemed to be qualified to discuss politics in China, although in most cases they are also tightly controlled (Buke 1996). Given this cultural context, universities become the semi-official place for political discussion to take place.

Such discussion on campus reached its peak in late 1980s with the liberalization of the political regime and its accompanying economic growth, culminating with the 1989 protest that ended so abruptly. This protest, organized solely by university students and supported by scholars, had one crucial feature: it did not make concrete and feasible demands for bureaucratic changes, particularly concerning economic matters, but directly attacked the legitimacy of the CCP's governance. The protestors' demands were: (i) to accelerate the political reform in the spirit of measures favored by Hu Yaobang, the political figure publically denounced by Deng; (ii) to establish anti-corruption measures; (iii) to prompt greater efficiency on the part of the bureaucracy and build a responsive government; (iv) to give people the freedoms of speech, press, and publication (Oksenberg, Sullivan, and Lambert 1990, 25). Since the protest was led by scholars and young students rather than entrepreneurs, it struck directly at the leadership of the Party and demanded institutional change. As was soon

revealed to the world, it ended in a bloody suppression.

Apart from the activities on campus, there were other developments. As the state and society began somewhat to diverge, state media control loosened to some extent, and publications flourished. From 1976 to 1997, the numbers of publications skyrocketed from 6,967 to 120,106, and members of the press increased from 97 in 1957 to 565 in 1997 (Junhao and Yongping 2001). In addition, people were gradually able to make a living outside the institution of the *danwei* (Chengrui 2006). A large literate class of readers and a growing self-sufficiency among elites resulted in the formation of a specific group of people who could directly discuss national politics in front of the masses: namely, public intellectuals. In the 1980s, public intellectuals flourished, participating in debates about various issues concerning the public interest (Youyu 2004). However, the government adopted a carrot-and-stick strategy and successfully managed to arrest some of these intellectuals, and integrated most of the rest into the official system (Jilin 2003a).

To recast the discussion here, we can characterize the differentiation between state and society in China by noting the following features. *First*, the differentiation was not driven in its early stage by the bourgeois class but was led directly by the Party. It started with political reform rather than legislation or policy changes on the micro level. *Second*, the power of the government was limited regarding its direct influence on the economy; much of the economic work was left to the market, while at the same time the government was also empowered as the agent for making changes. *Third*, the official channels for political participation failed to facilitate critical communication, and there were no unofficial channels such as cafés that could work as a space to foster critical political debates in a potential public sphere.

As such, I can safely conclude that there has been no full-fledged public sphere to accompany the differentiation of state and society in China. Even so, the preconditions of a public sphere have been partly fulfilled there. First, along with the differentiation between state and society, a civil society has been progressively

growing. A specific social class, comprising entrepreneurs, blue- and white-collar workers, freelance workers, etc., are now regarded as being ‘out of the official system’, and thus they are capable of criticizing politics. Yet there still needs to be a *space* where public debates can take place. In this context, so will I argue, the Internet becomes crucial, as it provides a space where people can identify themselves as being members of a grassroots movement and can discuss politics critically.

#### **IV Guo Meimei and China’s public sphere**

Above I have addressed the preconditions of the public sphere. I have argued that to foster the development of a public sphere, Chinese society lacks two crucial elements: *first*, a specific group of people, having independent economic status, who would be able to conduct critical political debates in public; *second*, a specific space where critical communication could take place. I will argue below through my case study that the Internet can help fill this lack. I will argue that the growth of online communities facilitates a sense of new belonging which would help in the formation of a new grassroots social movement or class; in addition, cyberspace can be a place where various agents can engage in critical dialogue with one another.

##### **(i) The storyline**

Among many hotly debated online incidents, one episode involving the anti-corruption movement against the RCSC (Red Cross Society of China) is, as I see it, very informative regarding the formation of the public sphere. In contrast to the street protests mentioned above, which are full of direct confrontations but carry limited potential for genuinely critical debates, this online incident was particularly interesting because diverse agents were engaged in cyberspace, and their discussions went back and forth among one another, creating a critical communicative dynamic which ended up achieving concrete political reforms.

On June 20, 2011, a young woman named Guo Meimei, who claimed (falsely) to be

the chief business manager of the Commercial Association of the RCSC (Red Cross Society of China), posted a series of photographs showing off luxury goods on the Chinese social-media website Weibo. She showed a villa, a Lamborghini, a Maserati, a Mini-Cooper, numerous Hermès bags, etc. Having only just turned twenty, she would have been regarded as a very successful young woman indeed, assuming that she owned those goods. However, the story turned out to be quite dramatic. Most of the luxury goods shown in the pictures did not actually belong to her, but to her older, wealthy boyfriend. She later confessed on a television show that she posted the pictures only to show off. This, in itself, does not make for a big or noteworthy story. However, the incident was taken unexpectedly seriously by Internet users. Gradually the focus of the issue shifted and gave rise to protest against the corruption of the RCSC. In the end, the central government was pressured to redefine its relationship with NGOs, who were ultimately granted greater freedom as a result.

Having briefly presented the basic storyline, I will now make a detailed investigation of how this case helps us understand the interplay between Internet use and the formation of the public sphere. To return to Habermas' theory, a public sphere has four basic features: (i) necessary information should be disseminated and acquired so that people can stay informed; (ii) the public sphere should be sufficiently inclusive; (iii) communication and interaction in it must be critical rather than merely emotional; (iv) discussions in the public sphere can be transformed into public opinions that eventually influence politics. I will discuss each of these features in turn.

## **(ii) Internet and flow of information**

Here I will discuss two crucial features of online information flow: *first*, as mentioned in the literature review, the amount of online information can be huge, and it can circulate with lightning speed; *second*, online information can be generated and accumulated by average users, as they are not just passive receivers. As we know, access to information is crucial for keeping people informed so that they can engage in critical discussion.

In the Guo case, the first repost about Guo Meimei was reposted 279 times and received 88 comments, not so many that it would be widely known at first. But then the story went viral. In total, from midnight on June 20, 2011, to 23:00 on June 21, 6,924 tweets were posted related to Guo Meimei.<sup>30</sup> The story had already become popular enough to be noticed by more people. By 23:00 on June 22, the total amount reached 45,006. Rui Chenggang, a famous Chinese journalist, published a relevant post on June 24, which was then reposted 3,960 times, with 1,247 comments.<sup>31</sup>

Only ten days after Guo posted the pictures with her luxury goods, the total number of tweets hit more than one million. The growth in the number of tweets was dramatic; only in rare cases had the traditional media been able to achieve comparable exposure. The total number of Weibo tweets related to Guo Meimei has already surpassed thirteen million. Such a heap of information generated online helps to inform people. It can hardly be ignored.

Second, this information represents not just one piece of news that has been repeatedly posted; rather, the first tweet by Guo initiated more discussion, contestation, investigation, and so on, and this dynamic helped generate a lot more involvement. What is worth noting is that this process of producing information has certain epistemic features: *first*, in giving rise to a hot topic, responsible agents will be pressed to address public concerns about it; *second*, as there is a massive number of Internet users, these users could pool different opinions together in the service of more informed and critical discussions; *lastly*, since online information is archived,

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<sup>30</sup> All the precise numbers of the reposted tweets and comments are collected from the retrieval function of Weibo. Weibo allows one to check the frequency of keywords generated by all tweets in a selected period of time. Moreover, it allows one to check keywords in the total tweets of specific users. It should be noticed that the number might be subject to change, as in the meantime, tweets might be reposted and receive more comments. For details, see the link for the retrieval function:

[http://s.Weibo.com/wb/%E9%2583%25AD%25E7%25BE%258E%25E7%25BE%258E&xsort=time&Refer=Weibo\\_wb](http://s.Weibo.com/wb/%E9%2583%25AD%25E7%25BE%258E%25E7%25BE%258E&xsort=time&Refer=Weibo_wb)

<sup>31</sup> The link for the tweet:

[http://Weibo.com/p/1035051255849511/Weibo?profile\\_ftype=1&key\\_word=%E9%83%AD%E7%BE%8E%E7%BE%8E&is\\_search=1#\\_0](http://Weibo.com/p/1035051255849511/Weibo?profile_ftype=1&key_word=%E9%83%AD%E7%BE%8E%E7%BE%8E&is_search=1#_0)

events described online and discussions about them are open for further contestation.

In the Guo case, more than one million tweets were generated by Internet users. Once this topic stirred the public, the responsible agents moved to act. The RCSC later claimed no connection with Guo.<sup>32</sup> Sina portal, the managing company for Weibo, acknowledged that they made a mistake in identifying Guo Meimei.<sup>33</sup>

However, Internet users adopted different perspectives, and thus enabled the focus of the public toward the incident to shift towards the ‘commercial branch of RCSC’. RCSC argued that this is not the same company that Guo Meimei had referred to. However, the explanation did not convince the Internet users. The incident triggered a burst of long-lasting distrust towards the management of the RCSC, whose charity contributions had been used secretly and had not been reported to the public.

The Internet not only helps pool perspectives from its users, but it also helps spread reports made by traditional media, and in so doing, online information becomes more pluralistic and informative. In this process, a kind of interactive mechanism unfolds. Online debates attract public concern, then public concern attracts the interest of traditional media, and lastly traditional media coverage is brought into cyberspace and spurs another round of discussion.

Yu Guoming, a professor at the Institute of Public Opinion at Renmin University, showed that once a tweet on Weibo was reposted more than ten thousand times or received more than three thousand comments, traditional media will step in to cover what is being posted about and will thereby make it even more publicly noticed.<sup>34</sup> Traditional media in China moved relatively slowly but then tried to catch up in the

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<sup>32</sup> RCSC. 2011. “RCSC Claims No Connection with Guo Meimei” Last accessed Feb 15, 2013: <http://www.dfdaily.com/html/33/2011/6/22/620989.shtml>.

<sup>33</sup> On Weibo, one can verify his/her own real identity by providing a certificate. After getting verified, Weibo users can use more features of Weibo. Sina. “How to Get Weibo Verification.” Last accessed Feb 15, 2013: <http://help.Weibo.com/newtopic/verified/list/1634/1635>

<sup>34</sup> Yu Guoming. 2012. “Interaction Between Internet and Traditional Media.” Last accessed Nov 6, 2014: <http://weibo.com/u/2863146752>

Guo case. Xinhua Net (the website of state-owned Xinhua News Agency) reported first that there was no such department called the ‘Red Cross Business Association’.

Later, pressured by online discussion, the CCTV news channel made a three-minute television report on the controversy, suggesting that the RCSC should not only focus on dispelling rumors but should provide evidence to prove its innocence as well.<sup>35</sup> CCTV even broadcast a twenty-minute report, in which many important people involved in the case were interviewed. During a face-to-face interview, the president of ‘*tianlue* Company’ clarified several important questions raised by Internet users. These reports caused there to be more furious online debates after they were uploaded into cyberspace. The mutually interactive process between traditional media and online communication helps not only to prolong public attention about particular incidents but also deepens the understanding of such cases, as traditional media is more professional in its reporting than online commentary.

Above I have presented how online information flow bears important epistemic features that make online discussion become more informed and critical. To reiterate: for Habermas, a public sphere requires not only that there be sufficient information to keep people informed, but it also has to be inclusive in the way that people are not excluded due to their social status. I will now discuss whether in the Guo case, the online discussion was inclusive enough to engage diverse agents. If so, how did these diverse agents interact?

### **(iii) Inclusion and critical interaction**

In the Guo case, diverse agents participated in the online interaction. Average citizens, opinion leaders, representatives of the RCSC and Weibo, officials from local and central governments, traditional media: all were involved in the process. Online space is simply open towards all users, regardless of their background. What should be determined is how different agents critically interact with one another, rather than

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<sup>35</sup> The Video Link: <http://tv.cntv.cn/video/C11356/7d028c382bdf4796bad7b07605bd3651>

simply being drowned in the emotions of their conflicts.

In addition to serving as an information channel, cyberspace provides the foremost space in China for the exchange of views, comments, and thoughts. Guo Meimei's tweet was first reposted by her friends and was soon circulated by others. After the public became aware of Guo, average users started to use Weibo to express their anger and sarcasm towards the corruption of the RCSC. There were soon rumors that Guo was the daughter of the chairman of the RCSC, Guo Changjiang, as they share the same family name.

However, as discussed in my literature review, the Internet gives great freedom to its users, transforming them from passive news consumers to active investigators, and in so doing, they become far more critical. In my case, some users, driven by those rumors, began to publish online about Guo's background. They discovered that she used to live with her mother, a divorced woman, in Shenzhen city for quite some time while she worked as a unknown actress; moreover, she was found to have a sugar daddy who gave her a Maserati as a birthday gift. Online resources even allowed users to verify her educational background and her connection with the '*Zhonghongboai*' company. Weibo's rumor-dispelling function has been widely observed by many, and this helps secure well-founded discussions that are crucial for critical debates (Shini 2011, Hangyu 2012).

To take our discussion one step further, once online research provides more structured information, it often attracts much more attention, triggering another level of critical interaction, namely interaction led and reformulated by opinion leaders. Zhang Zhian (2012) made a study of the characteristics of opinion leaders on Weibo. By compiling statistics about the one hundred most influential opinion leaders online, he shows that media workers, writers, scholars, and entrepreneurs are the main opinion leaders, and in general they possess strong educational backgrounds and, most importantly, many have international experience that allows them to compare China to other nations. When a tweet is picked up by opinion leaders, they often verify the authenticity of it

and then reframe it in purposeful ways—including, most importantly, making concrete demands out of it. In this way, the attention of individual users might be prolonged and their emotional concerns could be transformed into a form of critical political deliberation.<sup>36</sup>

Many studies have shown that online opinions leaders are crucial to online debates and protests, as they help set the agenda for political discussion (Li et al. 2014, Ruisheng 2013, Kavanaugh et al. 2006, Lagerkvist 2005). For China in particular, it was shown that half of the viral online incidents involve devoted engagement from opinion leaders. More surprisingly, based on the statistics about thirty high-profile incidents in 2011-2012, only 7,584 tweets were reposted 500 times, and these were produced from only 2,158 account (Xie 2013). This phenomenon shows how opinion leaders can attract and shape the sort of public attention that is crucial in setting the agenda for political participation.

In the Chinese situation, we can regard the Internet's opinion leaders, in contrast to the representatives of Congress who are not authentically chosen by the people, as being directly voted for by Internet users, as people freely follow the leaders they like. Some opinion leaders have millions of fans. With Weibo, for the very first time, the Chinese people got a taste of being authentically represented by someone, at least in a relative sense. They could keep track of their representatives, as Weibo would automatically push notifications about him; they could show support by commenting on tweets, and even lobby others by retweeting or direct-messaging people whom they would like to address. If they disagreed with online leaders, they could also argue with or send mail to them, demanding explanations. Most importantly, it makes no sense for one to be committed to just one opinion leader. Opinion leaders are abundant online, as potentially everyone is allowed to address the public.

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<sup>36</sup> The study shows that in China, hot online incidents usually capture people's attention for around two weeks. For most, interest will die out after this amount of time (Xie 2013, 22).

Yet this should not suggest that people are strictly represented by such opinion leaders. Weibo representation, still very nascent and thus immature, faces numerous practical challenges, for instance problems concerning the qualifications of representatives, how people are represented, etc. Yet Weibo representatives are quite significant when viewed in the light of the failure of traditional representatives.

In the Guo case, *zuo ye ben*, being here the most prominent grassroots opinion leader, posted a merely sarcastic comment about Guo Meimei in the beginning, and this tweet was then reposted 2,059 times and garnered 1,230 comments. His later tweets changed focus completely, as he went on to suggest that the RCSC should make its income and expenses transparent to every citizen by offering them a chance to check financial contributions and track where they are used. Eventually, he proposed a boycott of the RCSC, asking people to stop donating until the RCSC took responsible action. The tweet was reposted thousands of times, and soon went viral and was widely shared by many other opinion leaders.<sup>37</sup> In the end, average users not only gave their support for the protest tweets made by opinion leaders by posting harsh comments on the RCSC's Weibo account; they also stopped donating money to the organization, causing a great drop in contributions.<sup>38</sup>

The public focus changed in line with the efforts of opinion leaders, shifting from first chastising Guo Meimei, then to condemning the corruption of the RCSC, then to studying the actual problems of the RCSC, and finally debating about reforms to the RCSC and discussing possible protests against the organization. Those leaders, thanks to their professional backgrounds, are more likely to think and write in issue-specific terms and to be politically aware. They are not satisfied with just denouncing a superficial young woman, or merely expressing their anger towards the RCSC; rather, they are more interested in revealing the truth and asking for concrete changes. Along these lines, they often have a strong tendency to involve other professionals, e.g.,

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<sup>37</sup> The tweets can be tracked on his Weibo account: <http://weibo.com/314117444>

<sup>38</sup> 'The Great Loss of Donation', accessed on July 3 2014: <http://roll.sohu.com/20110812/n316144084.shtml>.

lawyers and scholars, expecting them to give additional support.

It's hard to believe, due to the physical constraints involved, that a street protest could inform and mobilize so many people in such a short period of time. The Internet helps achieve a new form of protest, namely a mass protest that can accommodate a huge amount of people—there were one million comments over ten days in the Guo case—and allow them to express themselves and mount a protest in a way that makes so-called public opinion immediately visible. This constellation of public opinion slightly differs from what Habermas has described in the sense that it is not merely formed from a group of well-educated capitalists whose arguments and concerns are presented in newspaper articles; rather, it is formed of people possessing proper educations, namely Internet users, and shaped by elite professionals and online grassroots representatives through tweets, in the form of short but provocative comments.

As such, the Guo case shows that online interaction can achieve the status of critical discussion, debate, and commentary. In the first place, online interaction by itself has certain epistemic features which transform passive information consumers into active investigators and help provide diverse perspectives. On the other hand, through the efforts of opinion leaders, online interaction could be oriented and refined to achieve particular goals. I will now turn to discuss whether online interaction can actually produce any political changes.

#### **(iv) Political impact**

As noted above, political changes often come along as a response to great pressure from society. I will first discuss how relevant non-governmental agents responded to this particular controversy, and then explain how central government acted against this background.

As shown, the public, under the direction of opinion leaders, made concrete demands concerning the reform of the RCSC. And not only this: some opinion leaders started

to do charity work on Weibo and this eventually pushed Weibo to initiate an online charity system. Through 2015, ‘Wei Gongyi’ (Weibo Charity) has initiated 15,704 charitable activities, collecting around 240 million *yuan*.<sup>39</sup>

Under pressure, the RCSC has made progressive changes to respond to the crisis. RCSC first invited a State Council auditing bureau to investigate its financial condition.<sup>40</sup> Various agencies—the Ministry of Supervision, the Institute of Sociological Study in China’s Academy of Social Science, Beijing’s ‘Liu Anyuan’ law office, and the China Commercial Association—came together to pursue a joint investigation into the RCSC’s branch in the society of commercial organizations. Several days later, the RCSC opened its own Weibo account for publishing news and answering questions. Soon afterwards, the RCSC established a website which provided interactive functions, allowing people to trace the use of charity money.<sup>41</sup> And soon after this, the RCSC claimed to abandon its commercial branch office, as it might be implicated in corrupt activities. A year later, the newly appointed head of the RCSC, Zhao Baige, declared that RCSC will reform itself according to western experience, making explicit the effort to redefine the relationship between the government and the RCSC and aiming at making the organization fully independent.

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The reform of the RCSC was carried out under the directives of the central government. On July 11, 2012, the State Council issued a paper entitled ‘Suggestions on Further Development of RCSC’.<sup>43</sup> In this paper, the government stressed the

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<sup>39</sup> “The Development of Weigongyi.” Last accessed Sept 2014, <http://gongyi.sina.com.cn/gyzx/2015-01-14/115951212.html>

<sup>40</sup> Xinhua News Agency, 2013, “RCSC Invites State Audit Bureau to Investigate Its Branch in Commercial Association.” Last accessed Feb 20, 2014, [http://www.gov.cn/jrzq/2011-07/07/content\\_1901018.htm](http://www.gov.cn/jrzq/2011-07/07/content_1901018.htm).

<sup>41</sup> The link of the official website of the online supervision system: <http://fabu.redcross.org.cn>.

<sup>42</sup> For the full interview, see the link: [http://v.youku.com/v\\_show/id\\_XMzg4NDc5MjUy.html](http://v.youku.com/v_show/id_XMzg4NDc5MjUy.html).

<sup>43</sup> State Council, 2013, “ Suggestions on Further Development of RCSC.” Last accessed May

importance of institutional innovations, and attempted to pressure RCSC to build a more transparent organization. Most importantly, it is written clearly in the document that there must be a redefinition of the relationship between government and the RCSC. This reform program is expected to serve as a model that will give more freedom to NGOs in the future. If this does indeed happen, it might mean that Chinese society will gain more power to be autonomous in the face of the government. Clearly, this is a move toward liberalization if not democratization.

To conclude, I have presented above the case that online interactions can be both inclusive and critical in the sense of conducting meaningful debates and stimulating collective action such as protest. In addition, online interaction will eventually affect national policies, in this case the relationship between the government and NGOs. More importantly, online interaction is firmly supported by a group of Chinese people who are labeled loosely as ‘netizens’ and who consider themselves to be a new grassroots class (Zhao and Rosson 2009, Marmura 2008, Hara and Estrada 2005, Jinlin 2011, Xianghui 2007, Ye 2009). Because of these developments, online interaction can continuously flourish without being simply dismissed by the government. However, the online public sphere is not uncontainable at the moment, and it is far from perfect. I now turn to discuss some of its most serious challenges.

## **V Challenges**

As I have said, the online public sphere can still be contained. I will note three of the most serious challenges that might cause the online public sphere to fail: first and foremost, the problem of the digital divide; second, the problem of censorship; lastly, the crisis of the dominance of the logic of the capital, as Habermas noted. It is quite clear that if only a few people—with others either excluded or oriented exclusively towards their financial interests—engage in critical discussion in a version of cyberspace where information is heavily censored, there will be no genuine public

sphere . I will now move to discuss these challenges.

**(i) Digital divide**

The many case studies mentioned in Chapter I suggest that the digital divide is a serious problem. The distribution of Internet access usually correlates with education and wealth; people without such access are likely to be poorer and not as highly educated (Kraemer and King 1986, Schumpeter 2013, Noam 2005). Two separate questions need to be addressed: *first*, whether the problem of the digital divide also applies to China; second, even it does, considering the specific political context, whether Internet use helps engage more people in political discussion than had been the case in the past. For the first question, the answer is both yes and no. CNNIC's report shows that China now has the largest population of Internet users on earth. Its formidable total of Internet users—618 million—indicates that 45.8% of the Chinese population has been connected to the Internet.<sup>44</sup> This means a lot for political inclusion.

Yet, despite the rapid development of Internet use, there is a disparity between city and village. Recording online access through December 2013, the report shows that an Internet penetration rate of 72.4% of city dwellers, but only 28.6% of villagers. There is obviously a huge gap between city and village. However, bearing in mind that 28.6% represents 177 million people, it makes sense to celebrate this achievement. More importantly, if we take a careful look at growth in Internet use, we see that the growth in village users is now much faster than among urban residents. In 2013, the growth rate in the village was 13.5%, in contrast to 8% in the city.

The report notes the gender distribution among netizens: 55.8% male vs. 44.2% (Female), which is not a huge gap. When it comes to age, people between the ages of 20 and 49 make up 68.1% of the Internet population, and they are more likely to

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<sup>44</sup> CNNIC. 2013. The 33rd Annual Report of the Development of Chinese Internet, accessed July 2, 2015:  
<http://www.cnnic.net.cn/gywm/xwzx/rdxw/rdxx/201302/W020130115444339760410.pdf>.

participate in politics. People older than 50 who find it difficult to use the computer, however, have found it easier to use new gadgets, such as iPads and other tablets. The problem of the digital divide does apply here to some extent. However, it is also quite clear that the Internet is the only instrument that can potentially engage most of the Chinese people in politics.

Lastly, the report further shows that people who have middle school, high school and professional educations (56.85% of China's population) make up 67.9% of all Internet users, while the users with a college or university education (9.6% of the population) make up 21.1% of the total Chinese Internet population. Those who have only primary school or are illiterate make up only 10.9%, whereas its proportion in the population at large is around 28.8%. Clearly, highly educated people are overrepresented and those who have not been well educated are not sufficiently represented. However, what is clear is that most of the Chinese population is able to access the Internet, as people with at least a middle school education are clearly the majority. This carries significant implications for political participation, for they simply are not authentically represented in the traditional political structure.

## **(ii) Censorship**

There is no reason to believe that the CCP will give up its control over the Internet's information flow. In fact, the government has adopted three levels of regulation. To be brief: *first*, the CCP enacted a group of laws and rules so as to regulate the content providers and the behaviors of average users. From September 2000 onwards, the Chinese government enacted a license regulation for ICPs (Internet Content Providers), requiring that all ICPs obtain a license in order to run their businesses. Getting the license requires compliance with a group of specific censorship rules. Foreign ICPs need to cooperate with a selected Chinese partner in order to obtain a license (Sha and Yu 2008). *Second*, a pseudo-governmental organization, the Internet

Society of China, has been established as a NGO to supervise all ICPs.<sup>45</sup> *Lastly*, the government also encourages every individual to report websites if they find any information there that might offend the Party (Jinsong 2013, Guiru 2006, Liquan 2007).

However, this does not mean that the government controls the Internet absolutely. White (1986) rightly pointed out the communist legitimacy is based on its performance in spurring the national economy. Bearing this in mind, I would argue it is very risky, actually it is too risky to ever be considered as an option barring emergency conditions, to cut off Internet access for all Chinese netizens, for this would exact great damage on economic growth. It might be even too risky to cut off Internet access in a single province. Attractive business profits and a large online population help reduce the arbitrariness of governmental action. As a result, the government has adopted censorship as its primary strategy to control information flow (Hachigian 2001).

To be brief, censorship can be conducted in at least three ways: *first*, by completely deleting information considered to be harmful or threatening; *second*, by partially deleting a particular piece of information; *third*, by putting particular websites on a blacklist, so that the potential visitors would no longer be able to access it. All three methods have been used in China for some time (Leberknight et al. 2012).

However, due to the rapid circulation of information in cyberspace, it is impossible to delete all purportedly harmful information in time to limit its effect, for, as shown in the case study above, one news item could be reposted thousands of times in a split-second. Setting sensitive words for automatic filtering may be a way to solve this problem, but people could use homophones to get around this measure (Xiao (2011)). When people use instant messages or e-mail which is encrypted, it becomes much

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<sup>45</sup> ISC (Internet Society of China). "Public Pledge on Self-Discipline for the Chinese Internet Industry." Last accessed Oct 10, 2014, <http://www.isc.org.cn/hyzt/hyzt/listinfo-15599.html>.

more difficult to censor them.<sup>46</sup> Another point is that discussions directly targeting sensitive political issues aren't so numerous. One could expose corruption among government officials or organizations such as the RCSC without being censored, for fighting corruption is also a stated policy goal of the Communist Party. However, these discussions can lead to criticisms being leveled towards the CCP. There are no fixed criteria for editors to make a proper judgment in these cases.

To conclude, even though the central government has deployed sophisticated instruments to censor online information, due to some unique features of Internet communication, it would be difficult, practically, to easily control information flow, and because of this, the online realm has become the space where people can potentially conduct critical debates.

### **(iii) The Risk of Privatization**

To repeat what was said above, Habermas was genuinely worried about the future of the public sphere. He argued that when the mass media is dominated by the logic of capital, namely to maximize monetary profit, the public sphere withers, because genuine critical debate is precluded. There is no reason to hold that the Chinese online public sphere will be immune to this problem: it has been shown that people could buy his/her Weibo fans from dealers (Li 2014). In light of this, it is contested whether some opinion leaders really represent so many people. More problematically, if one would like to pay more, the fans they bought, which are referred to as zombie fans, can even automatically 'like' and repost the tweet that V users like to prompt (Fangxing 2011). As such, some V users could pretend to represent the will of the people so as to achieve his/her own purposes. Even worse, one report (Yiqi et al. 2012) shows that some companies manage to run several V accounts at the same time and

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<sup>46</sup> Surely the government has the capacity to hack into anyone's computer if it wanted to; however, this costs quite a lot. The Chinese government had proposed installing 'Green Dam' software, purportedly for blocking pornography, on every new computer. However, this project never succeeded due to public discontent towards its implementation (Wolchok, Yao, and Halderman 2009, Murray 2010).

let them comment and repost each others' tweets, so as to create an illusion of public attention that could attract more people. Numerous fans allow these accounts to simply make money by reposting advertisements.

In addition, since fans are so important, some users sometimes even deliberately spread rumors online to attract attention. Clearly, these sorts of acts will be very destructive to the public sphere. They are also strictly forbidden by Sina Weibo. Selling zombie fans is blatantly against the rules of the company, since it would very soon make people lose interest in Weibo. At the moment, there are several means of regulation that are commonly used. *First*, Sina initiates a V account specifically for dispelling the rumor. As Sina has a huge database which allows it to supervise all the hot tweets, it is quite capable of identifying a suspected tweet and inspecting it with caution. Also, there are many self-organized accounts which dedicate themselves to dispelling rumors (Jiaqin 2012). Several studies suggest that Weibo is capable of clearing rumors thanks to its specific features: online information is open for everyone and therefore is subjected to carefully examination by people who use various information resources. Given enough time, if the database is big enough, rumors might be identified. Moreover, considering the difference between the distributive pattern of rumors and true information online, several programs have already been developed to detect rumors online automatically (Sun et al. 2013, Yang et al. 2012, Yue, Jianjin, and Fangfang 2014).

## **VI Conclusion**

In this chapter, I tried to present how the Internet is used to cultivate an online public sphere that works as a most important precondition for the development of democracy in China. First, I provided a methodological reflection based on the literature review done in chapter I. In doing so, I proposed to study China's democratization by investigating the transformation of the public sphere in contemporary China. I then introduced the work of Habermas on the public sphere, arguing further that China has also been experiencing the differentiation between state and society that Habermas

identifies as a crucial precondition for the development of a public sphere.

Yet I further showed that in comparison with the bourgeois public sphere, what is lacking for the formation of a Chinese public sphere is a space where diverse agents can have critical debates, and a group of people who can continuously defend its interests before the state government. Based on this, I argued that the Internet can help provide such a space and cultivate grassroots groups who are educated Internet users. As such, the online public sphere might finally be able to perform its political function, which is so crucial for China's democratic evolution.

## Chapter III A Human Right to Internet Access

### A Moral Approach

#### I Introduction

In the previous chapter, I showed how Internet use has influenced the culture of deliberation in China. It is quite likely that this influence will lead ultimately to the development of more democratic structures. As mentioned in the introduction, this dissertation aims to justify the position that Internet access should be accepted as a human right by referring to its instrumental value for democracy. Therefore, in this chapter, I will ask whether we can justify a human right to Internet access, and will offer an answer to this question. To determine whether a human right to Internet access can in fact be justified, I will discuss three subsidiary questions: *first*, in part II, I will analyze the concept of ‘human rights’ by discussing its structure and its justification; I will – *second* – investigate whether we can justify a human right to democratic governance in part III; *third*, if we can indeed justify a human right to democracy, we can then pose as a follow-up question whether there can be a human right to Internet access, particularly when we focus on its significance for facilitating democracy in countries such as China. Lastly, it is important to examine what the status of such a right to Internet access might be, and whether it is possible to determine the corresponding duty bearers entailed by this right; I will deal with these two questions in part IV.

#### II What are human rights?

An inquiry into the nature of rights leads to two distinct but interwoven questions. *First*, we need to investigate the concept of ‘rights’ in general and the concept of ‘human rights’ in particular, and here we have to ask what makes human rights different from other normative concepts, such as duties. *Second*, we need to study *how human rights can be justified*. The latter question will help grasp why human

rights are important and on what basis we have these rights. To determine whether there are human rights to democracy and Internet access, we first have to discuss these two questions.

**(i) Step one: the conceptual analysis of human rights**

**(a) What is a right?**

Before I investigate the concept of a human right, I will first discuss the concept of a right as such. Different scholars possess different understandings of rights. Some investigate the concept of a right in relation to other normative concepts.

For instance, Nozick and Dworkin both approach the question of what rights are in the context of theories of justice. For Dworkin (1984, 153-168), rights are ‘trumps’ that outweigh, in average circumstances, the utilitarian calculation of utility. Nozick (1974, 29), adopting a libertarian approach towards justice, saw rights to be side constraints on the pursuit of goods. However, neither of these understandings of rights tells us what a right *is*: they merely situate the role of rights with regard to other relevant primary normative considerations. A conceptual analysis of rights, in contrast, directly addresses the question of what it means to say that someone has a right. This question, to be more precise, can be phrased as follows: What specific features makes rights different from other normative concepts (such as, for instance, duties)? I will now investigate the general structure of rights.

Jural Opposites	rights / no-rights	privilege / duty	power / disability	immunity / liability
Jural Correlatives	right / duty	privilege / no-rights	power / liability	immunity / disability

Wesley Hohfeld proposed a widely accepted conceptual analysis for the concept of a ‘right’, which aimed to systematize the diverse uses of the term ‘rights’. Hohfeld (1913, 16-59) generally understood ‘rights’ to be ‘subjective rights’, which would

entail the following general structure: 'A has a right to P'. This structure can, according to Hohfeld, have four kinds of meanings.<sup>47</sup>

*First*, saying someone has a right to P might mean that he has a 'privilege' to P (Hohfeld 1913: 26), which means that A can do whatever he wants within the realm of this privilege, as he has no duty to refrain from doing it, and others do not have a right to prohibit him from doing it. For instance, a right to surf is a privilege, as you do not have an obligation to do it and others have no right to demand that you surf. Thus, the opposite of A having the privilege to P is A having a duty to P. A correlative principle is that others have a right to hold A obligated to P.

*Second*, 'A has a right to P' is used to express the idea that A has a 'power' over P (Hohfeld 1913: 44): this means that A is capable of constructing a relationship in which someone can be obliged to do something A wants. For instance, a policeman might fine someone for speeding. In this case, the power of the police allows him to oblige the driver to pay the fine. The correlative here to power is the liability of his addressee, who is vulnerable because he cannot change the relationship controlled by the more powerful agent, meaning in the case of speeding that the driver is not entitled to reject paying the fine.

*Third*, the term 'right' can be used for what Hohfeld calls 'immunity' (Hohfeld 1913: 55), which means that one has the power to reject the obligation someone else puts on him. For instance, in the ancient Chinese tradition of conscription, if one of the two sons in a family has already joined the army, the second son could decide freely whether or not to become a soldier. In this case, the younger son would have an immunity right to not join the army even if he is requested to do so. The jural correlative of this immunity right is disability, meaning that if someone is not capable of waiving the obligation that has been placed on him, he does not have a right understood as immunity.

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<sup>47</sup> Compared to the subjective use of a right, an objective right is often expressed in the way that it is right for A to do X.

*Last but not least*, the right could be used to say that A has a ‘claim’ to P (Hohfeld 1913, 32): this means that such a claim would allow A to oblige someone to do or not do something in order to fulfill A’s right. For instance, one could claim a right not to be kidnapped. In this case, his claim obliges others not to kidnap him. Thus, a claim right is conceptually related to the concept of the duty of someone else. The opposite of one’s having a claim right is simply not having a claim right.

Having now addressed what rights are, I can turn to the question of what *human* rights are. Hohfeld’s conceptualization of rights provides me with a tool to investigate the structure of human rights. The question is: Are human rights powers, claim rights, or another type of rights?

### **(b) What are human rights?**

Human rights are commonly understood to be rights inherent in the sheer fact of one’s being a human being (Sepúlveda and Gudmundsdóttir 2004, 6). This means, first, that human rights are rights. They are not duties or obligations. Second, these rights are granted to everyone equally, simply because all individuals are human beings. When talking about ‘human rights’ in what follows I will presuppose this understanding. I will discuss why the human rights concept should be understood in this way in the section about the conceptualization of human rights.

If we start from this assumption, we can wonder what kind of a right a human right actually is. It is certainly difficult to regard a human right as a right in the sense of a power, since there would not be duties required from others correlated to such a power.

The same hold for immunities. The crucial point of an immunity right is that it does not necessarily generate correlative duties. Someone has an immunity right if others cannot construct a relationship that obligates him to do something. A master might have an immunity right to use his slaves if no one can prevent him from doing so, and yet there no correlative duty is generated for the slaves to obey their master. However,

human rights are usually understood to be conceptually correlated to duties.

Are human rights simply privileges? According to Hohfeld's conceptualization, if a human right to freedom of speech is merely a privilege, this means that one does not have a duty to recognize and perform it, and others do not have a right to force him to do so. Yet, human rights are often understood to be rights that cannot be waived, which means that human rights, as the grounds of a specific normative relationship, have to be recognized. For instance, one simply cannot rationally choose to be disrespected, which means one is obligated to maintain the right to be respected. That does not mean, however, that one has to make use of the object of the right. If we assume that each human being has a right to freedom of speech, I can decide not to make use of this right, but I will still have it. Thus, it seems that human rights cannot be categorized simply as privileges.

Human rights have to be understood as claim rights, which means that these rights are always correlated with duties. If there is a human right, someone has a duty to fulfill it. This conceptual insight does not exclude the possibility that it can be difficult in specific cases to identify the duty bearer. If there is, for example, a right to access to medical treatment, the identification of the party or parties responsibility for making this treatment available and accessible can still be a matter of debate.

If human rights are ascribed to all human beings, we can understand their universality in the way that they are claim rights that are *necessarily* claimed, implicitly or explicitly, by all, due to some features that are equally shared by all and are significant for human existence in general; relevant concepts that ground those claims are human dignity, humanity, reason, and basic human values such as life, liberty, etc. These rights are claim rights that are equally shared by all, and everyone is obliged to recognize and protect them. Therefore they are regarded as human rights.

If human rights are claim rights rather than powers or privileges, etc., and are equally shared by all, the question remains: Why do human rights have these special features?

In another words, What are the reasons we must accept in order to affirm that human rights are the specific kinds of claim rights that should be equally possessed by every individual simply because each person is a human being?

**(ii) Conceptualizing human rights**

Since different philosophical traditions have conceptualized human rights in different ways, it is necessary to distinguish the various forms the conceptualization of human rights has taken. I will use Charles Beitz's (2011) categorization of human rights merely as a starting pointing for further discussion. There are two reasons I have chosen Beitz's paradigm: *first*, Beitz has recently made a systematic attempt to discuss various schools of human rights theories as part of his effort to present his own political theory of human rights. Since his work is relatively new and is therefore distant from traditional conceptualizations of human rights, his general categorization of human rights theories can be used as a way of initiating further discussion on my part. It should be noted that I refer to his general categorization of human rights theories only as a foothold to further my investigation here, and I am not necessarily affirming his critiques of these theories.

*Second, and relatedly*, as an important new exploration, Beitz's political conceptualization of human rights helps to articulate human rights based not on traditional arguments, such as on human nature, rationality, etc., but rather on the political roles they are supposed to play in international politics. In the next chapter I will discuss the possibility of defending a human right to Internet access within such a framework, so I use his categorization here for the sake of continuity.

**(a) Beitz on the naturalistic rights tradition**

Beitz tried to conceptualize his political understanding of human rights in the context of traditional schools, particularly those that subscribed to what he identified as naturalistic theories. I will discuss his conceptualization of human rights in political

terms in the next chapter. Here, in this chapter, I will mainly evaluate the naturalistic school of human rights, taking James Griffin's work as a paradigmatic example.

Beitz sorted many human rights theories into the category of the natural rights school, and then outlined the basic characteristics of *naturalistic human rights* conceptualizations by articulating four features of the naturalistic understanding of human rights (Beitz 2011, 53-54). *First*, the force of natural rights does not necessarily depend on the moral conventions and positive laws of a particular society; *second*, natural rights must be *pre-institutional*; *third*, natural rights are trans-historical, which means that their validity is *timeless*; *fourth*, natural rights are *universal*. They are valid for all simply because each person to whom they apply is a human being, and not necessarily because a person is a citizen of a particular state or a member of some other social organization. Beitz seems aware of the risk of oversimplification, as he argues that not all naturalistic theories must share all these features (Beitz 2011, 53). Let's now take a closer look at each of these features.

The *first feature* of the natural rights tradition concerns the normative status of these rights, suggesting that natural rights normatively are prior to specific moral conventions and positive laws. Therefore, when conflicts occur, concern about rights would require a reevaluation of these moral conventions and laws, although it might not always directly be a reason for civil disobedience (Beitz 2011, 49-52).

The second *feature* of natural rights – that they must be *pre-institutional* – suggests that people have natural rights not because they are living under the aegis of political institutions, but quite the opposite: political institutions are established based on consideration for the actual protection of natural rights. Therefore, they are fundamentally different from legal rights, which are granted by specific institutions. The validity of natural rights, therefore, does not depend on the authority of any political or legal institution, although the enforcement of natural rights might demand such institutional authority (Beitz 2011, 55).

The third *feature* of natural rights – that they are *trans-historical* – means that natural rights are fundamentally a group of rights that are not contingent on any social and institutional changes that have occurred over the course of human history. These rights are supposed to be directly related to essential aspects of human nature that can never or at least not easily be subject to changes, the right to life being one of the paradigmatic examples. As to what is essential to human nature, different theories make distinct proposals (Beitz 2011, 55).

*Last but not least*, since natural rights are trans-conventional, pre-institutional, and trans-historical (and are based on the acknowledgment that a basic human nature is equally possessed by all), it naturally follows that such rights can be *universalized*. Every individual should have these rights simply because he or she is human. If there are conflicts between natural rights and specific moral conventions or rules made by institutions, positive laws, or the demands of historical change, natural rights should override these other concerns.

To be specific, Griffin (2009) has recently published the book *On Human Rights*, which systematically attempts to conceptualize human rights. His theory of human rights, referred to by Beitz (2011, 60-61) as a paradigmatic example of the naturalistic conceptualization of human rights, is therefore a proper starting point to further articulate the structure of the naturalistic approach to human rights, and the problems inherent in such an approach. I will now discuss what Griffin specifically argued in his conceptualization of human rights.

### **(b) On Griffin's naturalistic theory of human rights**

In line with the natural rights tradition, Griffin argued that human life is different from the lives led by animals, since human beings are capable of forming conceptions of themselves, their past, and their future. In addition, since humans can reflect upon and evaluate different actions, they have developed conceptions of the 'good life'. This capability, which Griffin calls 'normative agency', which is to say one's

personhood, provides a basis for a distinct human standing that requires specific protection (Griffin 2009, 45). He elaborates this argument by introducing three basic values that constitute one's normative agency.

*First*, he argues that to be a person, one must have 'autonomy': one must be able to choose one's own path through life and not be controlled by others. *Second*, given the ability to make choices about what to do, one should also have the opportunity to realize such choices. Therefore, basic education and resources should be provided. *Third*, others should be prohibited from forcibly attempting to stop someone in the pursuit of a good life. This is what Griffin calls 'liberty'. Thus, for Griffin, normative agency consists of basic autonomy, minimum provision, and liberty (Griffin, 32-44). I will now discuss each of these characteristics in turn.

To be autonomous in Griffin's sense does not require that one systematically and comprehensively reflect upon the diverse possibilities of life. Autonomy is the capacity to form a basic conception of what a good life should be, and does not necessarily involve a comprehensive understanding of life (Griffin, 2009, 151-152). As such, Griffin's theory of human rights represents a minimalist approach, as the basic values he proposes are fundamental and very carefully defined.

Griffin's idea of minimum provision requires very few resources (Griffin 2009, 182-184). It is meant not to facilitate a fully flourishing human life but rather to sustain a simple but wholly functional life, with access to at least enough basic food and shelter, for instance, to ensure survival. Lastly, his conception of liberty presupposes that one should at least have sufficient freedom to be able to envision one's plans to achieve projected goals (Griffin 2009, 192). This sense of liberty does not mean that one should be assisted in achieving whatever goals one has in mind; rather it means, first and foremost, that one should not be coerced to abandon one's goal or be thwarted with serious interference when carrying out one's plans.

It is clear that for Griffin the normativity of human rights is derived from normative

agency. Since normative agency can be articulated without referring to any specific institution or culture or to any specific human condition in a particular period of time, some basic rights, for instance the rights to basic liberty, well-being, and autonomy, are human rights.

To sum up, Griffin argued that our normative agency as human beings, which consists of autonomy, the minimal provision that can ensure one's welfare, and liberty, are fundamentally important. The concept of human rights is a tool for ring-fencing these basic values.

However, Griffin simply assumes that normative agency is important without providing a justification for this assumption. One can always ask why we should care about normative agency. It might be true that even the most basic intuition would tell us that normative agency is important, but it is never sufficient to refer to an intuition: further justification of its validity is required. Along these lines, we might ask generally why we care about human nature at all, no matter what sort of nature it might be. As such, there is always an is-ought gap present in Griffin's work and in other theories like it.

We should note that Beitz's categorization of naturalistic human rights theories is quite broad in the sense that it places all theories that base the normativity of human rights on the specific nature of human beings under the rubric of the naturalistic school. Along these lines, the work of John Locke, James Griffin, and even Kant would be regarded as naturalistic. However, this is clearly problematic. In the broadly conceived Kantian tradition we find discussions about human rights that try to not directly justify human rights on the basis of human nature. Instead, they develop a concept of human rights by justifying a supreme principle of morality that can be further specified so that it functions as a justification of human rights. The approach of Alan Gewirth may be – among other approaches – a paradigmatic example for this sort of theory. I will now discuss this particular theory, which is able to avoid the problem of the is-ought gap.

### **(c) Human rights in Gewirth's work**

Gewirth (1980) based his rights theory on an analysis of human agency from the point of view of the agents themselves, which he expresses as: 'I do X for the purpose E' (Gewirth 1980, 43). Gewirth understood this formulation to be the generic structure of agency – the structure, that is, that all forms of actions have in common, independent of whom the agent is and what goal he wants to realize. Gewirth explained the generic structure in greater detail by referring to the assumptions that are necessarily embedded in it. It is important to emphasize that he is describing the concept of an action not from an external perspective but from the internal perspective of the agent himself. His first step in this analysis would be the explanation: If an agent intentionally does X for the purpose E, he must regard E as good. It is because of this purposiveness of the action that he must, from his point of view, accept that 'E is good'. Here, the idea 'E is good' only denotes that E has certain merits that, from the subjective point of view of the agent, are valuable (Gewirth, 1980, 49-54).

Gewirth regarded his underlying methodology to explain 'dialectical necessity', understanding 'dialectical judgments' to be opposed to assertoric judgment. An assertoric judgment ascribes a specific characteristic to an object, whereas a dialectical judgment is a judgment about the agent's perspective on these objects, concerning whether someone would consider something to be good and pursuable from his standpoint (Gewirth 1980, 42-48). For example, a serial killer might regard killing to be valuable from his subjective point of view (and so make a dialectical judgment on the matter) yet, assertorically speaking, we would hesitate to say that killing is *actually* good for him.

The claim of the serial killer about the goodness of killing is, however, not a dialectically necessary claim, but only a contingent one. Dialectically necessary claims concern claims that each agent must make simply by virtue of being an agent. In order to fulfill a purposive action, Gewirth explained, one must regard voluntariness and freedom to be the necessary goods that are essential for one's action,

for without these goods, one could not achieve any goals. In addition, since any purposive action requires certain minimal abilities and conditions, basic well-being is required (Gewirth 1980, 52-62). It has to be mentioned in this context that Gewirth uses 'well-being' in a specific and technical sense. Well-being here only refers to those goods that are strictly required for the successful realization of the goal of one's action.

Gewirth then argued that as an agent, one necessarily takes care of others' basic freedom and well-being. His argument can be summarized as follows:

1. Any agent who acts must necessarily value his purposes (Gewirth 1980, 49). These purposes might not necessarily be conscious to the agent; he may implicitly strive for them. If the agent is required to reflect on his action, he would interpret his action in the form 'I do X for the purpose E'.
2. If he values his purposes, he would necessarily value basic well-being and freedom as goods, for they constitute the generic features of any successful action (Gewirth 1980, 63). Basic freedom and well-being are prerequisites for the successful pursuit of purposes. Since an agent must regard his purpose as good, thanks to the instrumental value of well-being and freedom for achieving the purpose, he would necessarily value these conditions as good, too. If he did not, he would contradict himself. For example, different agents might prefer different types of food, but all agents need to instrumentally value the sufficient nutrition that allows them to successfully pursue whatever purposes they want to strive for. If an agent denies the instrumental value of food, he would logically deny the value of whatever purposes he wants to pursue.
3. It follows from 2 that each agent must claim a right to basic well-being and freedom (Gewirth 1980, 65).

I will address step 3 in detail later on, as this is the most controversial step in Gewirth's theory.

4. If 3 is right, the agent must logically prevent others from taking these two goods (basic well-being and freedom) away if they wish to do so. If he rejects this

principle, he would accept that others could simply take away his basic well-being and freedom. Therefore he would contradict himself, as he necessarily values them as goods and makes a claim on them (Gewirth 1980, 80).

Again, here the agent does not have a moral reason to justify his demand for non-interference; rather, his demand, as a result of a logical reflection, only expresses beliefs an agent has to hold about himself, whatever purposes he wants to achieve. If an agent denies this demand, he would logically deny that he has rights to basic well-being and freedom, and he would thus deny his own agency. However, denying one's agency is, in itself, a specific action that presupposes agency. Therefore, one would be caught in a contradiction.

5. Once he notices others are also purposive agents just as he is, he must acknowledge that others should have the same rights to basic well-being and freedom as he does. He must make this acknowledgment because his rights to these goods are based not on his specific features as a particular agent but only on his agency. In this way, the basic rights to well-being and freedom have to be recognized by all agents (Gewirth 1980, 104-107). If the agent refuses to acknowledge that other agents also have rights to basic well-being and freedom just as he has, he is forced to accept, based on the generalization of logical consistency, that he himself as one of the agents would then have no such rights. As such, he cannot logically deny that every agent should have rights to basic freedom and well-being, because to do so would be contradictory.

Based on this reasoning, Gewirth concludes: 'Act in accord with the generic rights of your recipients as well as of yourself'. Gewirth calls this the Principle of Generic Consistency (PGC) (Gewirth 1980, 129-171). Therefore, the rights to well-being and freedom cannot be rationally denied; they are claim rights that are equally possessed by all. Their universality does not mean that everyone enjoys these rights or that states actually respect these rights, yet everyone must accept that they have certain rights and, accordingly, everyone has reasons to respect these rights. Moreover, these rights have correlative duties: non-interference in the exercise of these rights and the providing of help so that these rights can be realized. Therefore, the rights to basic

well-being and freedom are human rights that can be universalized for all. I will now identify key criticisms so as to further elaborate Gewirth's theory.

*First*, one could argue that even if we acknowledge that basic freedom and well-being are indispensable for all actions, it might not follow that one has a right to them. Having a right to something means that one can oblige others to protect the right or facilitate its fulfillment. Therefore, the right needs to be justified rather than simply demanded. Yet, for Gewirth, to claim a right here is only to articulate one's indispensable and undeniable needs that enable one to be an agent. To do so does not mean that someone has a legitimate claim that is morally justified; rather, it is justified only from the first-person perspective of the agent. That the PGC has a moral dimension is just due to the fact that we all have to assume that each agent has to see those claims as justified from his perspective. As basic well-being and freedom are indispensable for achieving *any* successful action, an agent necessarily claims a right to them. As such, his claim is justified (Gewirth 1980, 65). To cite Gewirth: 'since this standpoint is decisive for him as an agent, he regards as his entitlement or due whatever is required for this being an agent. Thus he holds that he is entitled to freedom and well-being because of the genuine necessity, generality and fundamental character of the justifying reasons on which his claim is based' (Gewirth 1980, 73).<sup>48</sup>

*Second*, one might say that Gewirth's theory risks deriving the moral weight of human rights from an egoistic calculation. It seems that one would care about others' well-being and freedom equally only because to not do so would logically contradict one's own interest in protecting one's rights. But this accusation is also wrong. Narrowly understood, to say one is egoistic is to say one cares about the maximization of one's interests only at the expense of others' interests, or that one cares about others' interests for the sake of the maximization of one's own interests. Being egoistic assumes in the first place that one is capable of being altruistic, which presupposes that the agent possesses a certain degree of personal freedom. Being not

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<sup>48</sup> For a more detailed defense, see (Beyleveld 1992, 91-102).

free of making any choice, one would not be called egoistic. Thus Gewirth's theory is not built on a self-interested motif in the sense that one deliberately chooses whether or not to be an agent; rather, it rests on logical presuppositions of agency from the first-person perspective. In another words, an agent simply does not have the freedom to choose whether to recognize his rights to basic well-being and freedom: he necessarily has to claim these rights. As such, a justification of these rights is based not on an egoistic motivation one freely chooses but on the dialectical necessity that everyone should be subject to.

Gewirth's approach has some distinct features that differentiate it from other theories. *First*, it grounds the normativity of human rights on dialectical necessity rather than simply on basic human interests. As such, no values are presupposed dogmatically from the beginning. In contrast, for Griffin, the value of normative personhood is simply affirmed without giving any further justification.

*Second*, I want to focus on the challenge of the dichotomy between fact and value. Considering Griffin's argument, one could always ask why we should care about normative personhood. That there are some attributes that distinguish human beings from animals does not immediately imply that we should see them as praiseworthy values – one can point out that some of the distinct features of human beings are quite dubious: e.g., only human beings organize genocides. Thus, the fact-value dichotomy remains. For Gewirth, the gap between fact and value with respect to morality is circumvented. In his justification, the logical gap between fact and value is bridged by the internal deliberation of the agent (Gewirth 1980, 57). Practical agency consists partly in valuing something as either purposes or means. By observing the fact that well-being and freedom are indispensable for achieving any purpose one values, he would necessarily grant instrumental value to them, and in so doing, the dichotomy between fact and value is resolved.

One could further ask why we care about agency at all. Freedom and well-being are valuable objectives insofar as the idea of agency is appreciated. As such, Gewirth's

theory also presupposes dogmatically that agency possesses the most basic value. The point here is that we simply cannot disavow the idea of agency, because this would require the practice of agency in the first place. As such, one's agency should necessarily be valued by all. That is to say that from the dialectical perspective, the value of agency is not dogmatically assumed but is, rather, necessarily recognized. Along these lines, the is-ought gap is also bridged.<sup>49</sup>

*Third*, the PGC as the ultimate moral principle is proved by its justification, and thus is not arbitrarily assumed. The ultimate moral principle must be singular, for we would otherwise be guided by multiple incommensurable ultimate principles which consequently lead us to unsolvable moral dilemmas (Gewirth 1980, 7-17). So the PGC cannot be justified by other moral principles, as those principles would also be in need of justification. It is the highest principle that justifies other principles. The justification of the PGC, as shown above, starts with the explanation of our own agency in term of the formulation 'One does X for the purpose of E', and then Gewirth moves to identify the prerequisites for the generic action from the first-person perspective of an agent. Therefore, the PGC is justified not by referring to other principles but by articulating the agency and its necessary prerequisites for each agent. As the focus of this thesis is on human rights rather than moral theory in general, I will stop here from further discussing Gewirth's theory.<sup>50</sup>

In line with Gewirth's theory, human rights are claim rights that we humans, as agents, necessarily claim and possess equally as individuals. If this were not the case, we would be logically caught in a contradiction. As claim rights, they generate a correlative duty for all, which means that everyone has the duty to protect these rights and facilitate their fulfillment. I will discuss the content and nature of Gewirth's conception of human rights and their correlative duties in what follows, in the part

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<sup>49</sup> To elaborate more fully is beyond the scope of this thesis. For more detailed discussions, see Beyleveld 1992, 121-126, and (Gewirth 1973).

<sup>50</sup> For a detailed discussion on the necessity and possibility of justifying supreme moral principles, see Gewirth 1980, 7-42.

that deals with the nature of a human right to Internet access.

After presenting a Gewirthian justification of human rights, I can now take a step further and argue for a human right to democratic governance. After establishing such a right, I will argue for a human right to Internet access and consider its instrumental value for democracy.

### **III The human right to democratic governance**

Surely the question whether there is a human right to democracy will be answered differently by different authors, depending on their theory of human rights and their views on democracy. As such, a comprehensive justification of a human right to democracy requires a system-wide investigation of conceptions and models of democracy – clearly a formidable job. Since I have explored the question of the nature and justification of human rights in the context of Griffin’s and Gewirth’s theories, I will limit my scope to discussing how their theories would address the human right to democracy.

#### **(i) Griffin’s attempt**

Griffin referred to one feature of democracy, namely that everyone should have an equal say and everyone’s voice should be equally considered (Griffin 2009, 245). He saw democracy as simply an institutional design for protecting human rights. The question then is whether democracy, as compared to other forms of the government, is more likely to protect human rights. He imagined a state ruled by a monarchy, in which the power of government is very tenuous in the countryside, and any attempted change in the political system would be very risky. In addition, the size of the state is comparably small, and its people regard their ruler as benevolent. He argued that if all these conditions were fulfilled, the normative personhood of individuals could be protected in this state, which is not necessarily democratic. Therefore, conceptually speaking, the protection of human rights does not require democracy.

Yet he further argued that in our modern condition, individuals' autonomy would not be well protected without the practice of democracy. *First*, since the size and the population of modern states tend to be large, people would not be able to be closely acquainted with their leader and could not expect stable governmental action or a long-term life plan. Furthermore, Griffin pointed out that the authority of governments in today's world is, compared to the past, indeed ubiquitous and impossible to resist. Even if a government is organized and run by talented elites, due to the complexity of modern political realities, human rights could also very likely be violated; in addition, Griffin argues that it is common for those in power to be conservative and conventional along with their times, and therefore they would eventually lose touch with emergent forms of politics. Also, it is simply unrealistic for us to unconditionally trust elites. All told, democracy is the system that is most likely to protect our basic human rights (Griffin 2009, 251-255). As such, the right to democracy, in his view, is not a fundamental, universal right but simply a tool of instrumental value for achieving basic human rights.

Indeed, there is a radical difference between people's human rights being violated and their rights not being respected. One's basic human rights might be kept intact simply because the central authority is not strong enough to influence one's life, or because the authority is supervised by every individual and is fundamentally justified by general consensus. In the first case, basic rights are kept intact without being protected and respected. In the latter case, human rights are respected and protected by the central government, even if those rights are not immediately fulfilled due to a scarcity of natural resources. As such, it seems that a human right can possibly be violated if it is not respected, even if the content of the right is kept intact. Without being respected, human rights can be violated at any time; their preservation is contingent on the attitude of the powerful. Second, when human rights are not respected, the normative idea that underlies the human rights concept, namely that we are moral equals and therefore should respect one another as equals, is clearly violated. For instance, in a feudal state, a king might not have necessarily forbade

people from discussing politics, yet he could have done so if he chose to, since the right to freedom of speech was simply not respected at that time.

**(ii) Gewirth's attempt**

Gewirth made a general justification of social institutions without tackling the justification of a human right to democracy in particular in his book *Reason and Morality*; however, in his later work *Community of Rights*, he discussed the desirability of both economic and political democracy (Gewirth 1996, 257-348). Here I will exclusively discuss his work on political democracy, leaving his treatment of economic democracy untouched, as the latter is far too demanding and not especially related to my discussion of political democracy. Combining his discussions from *Reason and Morality* and *Community of Rights*, I will now show how his theory helps justify a human right to democracy. I will first discuss how Gewirth justifies the desirability of social institutions in general, then move to examine how this discussion can be used to justify democracy in particular.

Gewirth tried to justify social institutions in general by making a distinction between direct and indirect applications of the PGC. The direct application of the PGC addresses the relationship between agents and recipients, while indirect application deals with social rules and institutions.

The justification of the latter consists of two steps: first, he made an argument addressing why it is necessary to have social rules, which are right and wrong ways of acting in accordance with various roles. Gewirth argued that the direct application of the PGC does not cover all aspects of human life. Daily interaction, in most situations, involves more than two agents, and consequently a complex transaction of goods. As such, there is a strong need to establish social rules to clarify and regulate these transactions (Gewirth 1980, 273-274).

Second, Gewirth argued that institutions are organizations that materialize social rules and are directly restrained by them. He made a distinction between functional and

organizational institutions. A functional institution consists of purposive standardized activity as governed by rules and requirements, while the organizational institution includes a group of persons who pursue and regulate the standardized activity and enforce the rules (Gewirth 1980, 275). For example, an auditing institution might only function for the purpose of prohibiting business fraud, and is therefore merely functional; whereas a government, as a organizational rather than a simply functional institution, must also be responsible for the pursuit and enforcement of rules for regulating standardized activities.

He then argued that some social rules enforced by institutions are required by the direct application of the PGC. In the case of the auditing department, the fraud prohibition is fully required by the direct application of the PGC, since an individual cannot rationally accept that others can lie to him about money matters. If he would accept this, he would contradict himself. However, the justifications of some other institutions – a government, court, or social organization – are more complex, as the connection between the PGC and the function and features of these institutions is not immediately obvious.

Gewirth presented four types of justification of different social rules. There are (a) optional-procedural justifications of social rules; (b) static-instrumental justifications; (c) necessary-procedural justifications; and (d) dynamic-instrumental justifications. Understanding these justifications is important for the justification of a human right to democracy. I will now discuss each in turn.

#### **(a) The optional-procedural justification of social rules**

Gewirth argued that some activities and associations are extensions of freedom. People choose to join these associations, and they can opt out of them if they want to (Gewirth 1980, 283). All activities in such associations provide an option for consensus participation. According to the PGC, one should refrain from involving persons in transactions unless they agree on them. According to this requirement,

institutions and social rules are justified only if all members involved consent to them. Take a fraternity club, for instance: this association and its related social rules are justified if all members voluntarily consent to them without being coerced, notwithstanding the fact that some of these rules might be rude and aggressive. The consequence of joining the association, in most situations if not in all, should not be considered morally necessary for the justification of social rules and associations. In this case, when a member joins a particular organization and consents to specific social rules, he agrees to bear specific duties at the same time. As such, it is justified to punish him properly if he fails to carry out these duties. If he refuses to accept the punishment, he simply contradicts himself.

Gewirth argued that under ideal conditions, the optional procedure of a justification of human rights would be sufficient. In the real world things, however, things are more complicated. According to the PGC, every rational agent should join an association in which any transaction of goods without consent should be forbidden. Yet, in reality, a powerful agent might simply reject joining any of these associations. In this case, the optional-procedure justification fails (Gewirth 1980, 291).

### **(b) Static and dynamic instrumental justifications**

Gewirth sorted goods into three categories. These are (i) basic goods (well-being and freedom) that cannot be rationally denied; (ii) non-subtractive goods, which are goods that, once taken away, severely reduce the capacity of agents to act; and (iii) additive goods, which are goods that, once possessed, enhance one's capacity to act (Gewirth 1980, 54-56). A static justification is the justification based on the assumption that everyone is equal in basic and non-subtractive goods at an original stage. What is needed is an institution to provide and enforce criminal laws, which would prevent transactions that take place without consent. What is demanded, then, is a political association, namely the minimal state.

In contrast to the static justification, the dynamic instrumental justification starts with the assumption that during the original stage, people are not equal in their possession of basic and non-subtractive goods. Therefore, there is a potential for transaction. Huge wealth and educational gaps among people certainly make poor and less educated people very vulnerable, and often introduce immoral transactions of goods. In such cases, Gewirth argued for a supportive state in which the government can take measures to lower the risk of such transactions.

### **(c) The necessary-procedural justification**

Besides offering a justification of the state's legitimacy, Gewirth argued further that one cannot simply opt out of the state's criminal law system according to one's wishes. In the fraternity case I mentioned, the legitimacy of this particular organization is built on the consensus of all its members, and the same holds for the justification of criminal law. However, the consensus in each of the two cases is radically different. Gewirth uses consensus to refer to different levels of agreement. Consensus could merely be the sorts of agreement made by people contingently, as with a reading group, in which one can opt in or out whenever one likes. Consensus at the other end of the spectrum can be understood as agreements people necessarily make. For instance, someone may agree with the Nazis' idea that Jews should be purged from their society. Nevertheless, it is dialectically necessary for him to reject this idea, given the requirements of the PGC. Clearly, there is an important difference between what one actually accepts and what one is rationally required to accept by virtue of being an agent.

Based on this distinction, Gewirth proposed a procedural justification with a sense of constitution embedded in it. He argued that the legitimacy of the constitution should not be subjected to reasonable consensus. It is a series of ideas that must be accepted by every agent thanks to their agency. This constitution, according to Gewirth, provides us with guiding principles to facilitate and regulate decision-making procedures, and thereby helps protect basic freedom equally for all. The consensual

procedure should be provided for and should operate within a mandatory constitutional structure (Gewirth, 1980, 306).

Having briefly introduced Gewirth's justification of social rules and institutions, I will now proceed to the justification of a *human right to democracy*. Gewirth did explicit work to justify a human right to political democracy by referring to the human right to equal freedom, which is justified by the application of the PGC. The rationale is clear: he argued that the PGC requires the protection of the equal freedom of all agents, meaning that every person should be allowed to engage in any action and transaction according to their free will, unless their actions will harm others. The protected actions, according to Gewirth, include speaking, publishing, and associating with others (Gewirth 1996, 314-317).

However, Gewirth mainly discussed two of the most crucial features of democracy, the ideas of freedom of speech and political participation, and said very little specifically about some other important features of contemporary democracy. David Held systematically discussed various, if not all, democratic models in his renowned book *Models of Democracy*. I conclude from Held's (2006, 56-84) discussion of the development of liberal constitutional democracy that our modern democracies possess several widely shared features: (a) the idea of a constitution which prescribes universal suffrage and equal voting for all; (b) the idea of popular sovereignty; and (c) the principle of majority rule. I will further investigate how Gewirth's theory can be used to justify these democratic features.

#### **(a) The justification of popular sovereignty**

The idea of popular sovereignty entails that the legitimacy of the state relies fundamentally on the consensus of its citizens. As discussed above, for Gewirth, the state does not have intrinsic value in itself; the necessity of having both a minimal and supportive state in which criminal law is established and enforced is justified on the basis of its instrumental value for protecting our basic freedom and well-being. The

legitimacy of its sovereignty is therefore justified by our necessary consensus about initiating and protecting three kinds of goods, rather than on political agreements that are contingent on its people's will.

### **(b) The justification of the constitution**

A constitution denotes, in practice, a specific group of legally materialized ideas that are not very sensitive to radical changes. Usually it is an expression of the fundamental nature of the government, guaranteeing the basic liberty rights of citizens and reflecting, in some cases, the spirit of its cultural tradition. Most contemporary constitutions take a liberal or quasi-liberal form, in the sense that they declare themselves to be neutral with regard to any tradition(s) within the state.

Gewirth understood the constitution as providing a necessary procedure for the justification of social rules, thereby ensuring that it secure, on the one hand, some basic rights such as the equal rights to basic well-being and freedom, and that it serve, on the other hand, as a set of guiding principles regulating voluntary discussion on various issues. A constitution demands equal respect towards all agents with regard to their moral worth and thus affirms their equal rights to basic well-being and freedom. In practice this means that some basic civil liberties ought to be distributed equally.

In short, the essence of a constitution is to solidify a framework that accounts for those basic needs of human beings that are derived from the requirements of the PGC in the form of basic rights that are equally shared by all. Therefore, a constitution is justified not by reference to political agreements but by the necessary agreements that all need to assent to. As such, the basic rights enshrined in a constitution cannot be denied, although their content might not immediately be achieved in certain instances.

### **(c) The justification of the principle of majority rule**

Before I explain the justification of the principle of majority rule, it is necessary to differentiate two interpretations of it. The first is that majority rule enables citizens to

make their voices heard and ensures that their votes influence democratic decisions. However, given population size and the complexity of voting mechanisms in contemporary nations, often one's vote may not directly influence the result of an election.

The second interpretation simply avoids this problem by shifting the focus from democratic outcomes to the pre-voting state of participants in elections. It is argued that although nobody can be sure whether his vote would determine the outcome of an election or referendum, what matters is that it is the citizens who activate the democratic process through voting (Post 2000). For both of these interpretations of majority rule, the concept of the common will takes on great significance.

When we talk about the common will, generally two interesting situations are discussed. In the first and ideal scenario, a democratic decision is approved by all within the bounds of the state's constitutional framework; in the second, the decision is supported by only a little more than half the voters. The first situation can easily be justified by the PGC, because something is freely chosen unanimously among moral equals. The latter situation poses some difficulties, as it requires some individuals to accept decisions they disagree with.

Gewirth's theory of the categorization of goods might help us resolve this thorny issue. As has been shown, basic goods, which are laid down in the guarantee of constitutional rights, are not very sensitive to majority rule. Non-subtractive goods can be overridden in circumstances where conflicts with basic goods occur. Education, for instance, seen by Gewirth as a non-subtractive good, can be overridden by the right to food during times of famine.

However, the whole decision-making process, *as a procedure*, should be made open to democratic deliberation, as political participation is a basic good. Given the fact that basic goods are ensured, many concrete questions, such as the criteria for minimal food supply and education, can be decided democratically. The distribution

of additive goods is even more open to democratic decision-making, as this mainly concerns the reallocation of material goods that are not essential for a meaningful human life but often demand many resources.

Imagine that a government is considering raising taxes on the rich: the proposal is opened up to public debate and a national vote is conducted on the matter. Taxes on the wealthy are then raised because the middle class and the poor, making up a majority, give their support to the measure. Can the policy of raising taxes on the rich be justified according to the PGC? First, since the rich also exercise their basic political rights by voting, their basic goods are protected. Then the question is about the distribution of their additive goods. It is worth noting that the resources used by the rich to enhance their additive goods could be used for achieving basic or non-subtractive goods for the poor.

If poor people suffer from the loss of basic or non-subtractive goods, considering the equal distribution of basic goods, the tax policy is justified. In reality, whether the poor's rights to basic or non-subtractive goods are seriously violated is not always very clear. Allowing them to vote might be the most efficient and direct method to hear their voices. As Sen (1999) suggests, democracy is more likely to avoid famines than other forms of political organization, because it allows a relatively free flow of information, helping to expose potential agricultural and food-supply problems before the situation becomes dire. In this light, majority rule can be justified instrumentally for helping to avoid serious violations of the rights to basic and non-subtractive goods for a state's citizens.

But consider a more complicated situation: taxes are raised in order to prompt economic growth in particular areas, and nobody's rights to basic and non-subtractive goods are violated because of the measure. According to the PGC, since every agent has the same moral worth, there is a normative necessity to equally distribute basic goods and non-subtractive goods. Nevertheless, for additive goods, an individual could strive to attain such goods by himself if there is no cooperation from others. As

such, one gains additive goods at one's discretion. However, in reality, individuals try to obtain these goods through cooperation.

Suppose there are risks and costs (though not so severe that they would endanger the existence of any basic and non-subtractive goods) that need to be distributed in a cooperative system, and agents who are cooperating to obtain additive goods acknowledge this fact. As an agent who claims that he has a right to the additive goods and seeks as well to avoid costs, he has to acknowledge that others have the same right that he has. Therefore, any agent who wants those goods must perceive himself to be a bearer of the same potential risks and costs as others bear. By following the majority decision, some agents bear greater costs for the sake of maintaining their membership in the cooperative system, and in the long run they reasonably expect compensation or benefits, which are determined by the principle of proportionality.

All in all, majority rule in democratic system is often accomplished by a sense that a state's constitution warrants it. It is as such that majority rule can be fully justified. We necessarily claim a human right to a democratic government in which our basic well-being and liberty are properly respected, and we have a greater opportunity to pursue a better life for ourselves. Note here that Gewirth's theory on goods does not immediately tell us how we should apply this theory in everyday life. Empirical knowledge is required to properly apply his theory in concrete cases. My discussion here is still, to a large extent, speculative, and so it is not sufficient to justify specific political policies without heavy empirical input from political and sociological studies. Bearing this in mind, I will now discuss whether we can justify a human right to Internet access.

#### **IV A human right to Internet access**

Having addressed the justification of democracy and the relevant principles for the application of the PGC, I will now proceed to justify a human right to Internet access.

But before specifically addressing a human right to Internet access, I would like to specify the relation between two sorts of human rights, namely basic and derived rights, as this investigation helps us understand the nature of a right to Internet access.

As I have shown, neither Griffin nor Gewirth's conceptualizations of human rights holds that human rights *must be* trans-historical and pre-institutional (only certain basic rights can be). According to Griffin, human rights are simply a tool we use to ring-fence our basic normative values. Therefore, the instrumental value of these rights may be contingent on socio-historical changes.

For Gewirth, only the PGC is a fundamental principle that all human beings can understand to be categorically binding for them. Thus there is a sense that we can call it 'trans-historical', and the rights to basic freedom and well-being would be generally valid. But Gewirth leaves room for a specification of the rights to basic freedom and well-being. He provides some general rules for the application of the PGC, but the determination of what things are important for our basic freedom and well-being, in the actual world and under concrete historical conditions, is an empirical question that cannot be addressed without our being empirically informed. Joining the church might have been significant for someone's basic freedom and well-being during the European Middle Ages; such an act, however, would have another meaning for a man living in today's Beijing.

Excepting this open-endedness, we can conclude that both theories embrace a certain kind of minimalism. For Griffin, human rights protect the most essential aspects of human nature, which means that the function of human rights is not to ensure the fulfillment of a wholly flourishing human life. As such, Griffin mainly focused on the articulation of negative rights. For Gewirth, only a few basic rights, for instance, the rights to basic well-being and freedom, are pre-institutional and trans-historical; other rights that are derived from them are sensitive to social-political factors. I will now discuss the relationship between basic and derived rights.

**(i) A derived right<sup>51</sup>**

If the right to democracy is a human right, when we consider the instrumental value of Internet access for prompting and sustaining democracy, we might then see the right to Internet access as a derived human right that derives its normativity from democracy. We understand ‘derived right’ to refer to a right that has instrumental value for the fulfilment of the primary right from which it is derived, and thereby it should have the same normative status as that primary right to the extent that it possesses this instrumental value. As such, the object of such a right depends on social, cultural, historical, and ecological circumstances.

For instance, since breathing is indispensable for human life and we have a ‘right to life’, we can see the ‘right to breathe’ as a derived right which derives its normative weight from the right to life. The right to breathe would have the same normative weight as the right to life for its indispensability, and yet it could be less important if there were many alternatives. It is also possible that there is an original right but that there are various ways of enjoying the object of this right, e.g., a right to food and various forms of consuming food: then it will follow from the original right that some of these forms have to be accessible. The same sorts of considerations apply to a human right to Internet access, as I will explain below.

But the question to be taken up now is: Can a derived right be seen as a human right? I think it reasonably can be. My argument here is twofold. *First*, a practical consideration: current human rights documents all embrace derived rights rather than just the most basic rights. The Universal Declaration of Human Rights (UDHR), for instance, states clearly that people should have rights to education, access to new technology, and even paid vacation. It is hard to see these rights as basic liberty rights in the same sense as the rights to life and bodily integrity. Some of these rights, for instance the right to a fair trial, make sense only in particular types of societies in

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<sup>51</sup> The term ‘derived right’ I am discussing here refers to Griffin’s discussion in particular. For detailed consideration, see Griffin 2009, 269.

which particular institutions have already been established. The same holds for paid vacation, which makes sense only in a society with specific structures of working and employment in place.

*Second*, a normative consideration: human rights theories generally do address the specification of basic human rights for the sake of articulation and clarification, which are crucial for human rights practice. One would not understand what basic rights to freedom and well-being are, were they not properly specified according to the social circumstances in which they are formulated. Therefore, we have a normative reason to specify basic rights in a way that allows the formulation of derived rights as specified fundamental rights suited to the concrete conditions of contemporary societies.

For the case of Internet access, this would mean the following: (i) if the use of the Internet is significant for the development of democracy, and (ii) if the right to live under a democratic government is a human right, then the human right to Internet access could be a derived right that is justified because of its instrumental value for democracy. I will now elaborate this point more clearly.

*First*, a human right to Internet access is a derived human right that derives its normative weight from the right to democracy, which is justified by both direct and indirect application of the PGC. *Second*, because it is a derived right, it is not, by itself, justified by the PGC in the same way that the rights to basic freedom and well-being are; instead, it is only one specification of the rights to basic freedom and well-being that is localized within a particular social and historical context. However, in a specific context where the Internet is indispensable technology for democratization or the sustaining of already established democracy, the normative importance of the right to Internet access is identical to the right to democracy. *Third*, as a derived right, the human right to Internet access might not be universalized in the way that the human right to life is, because different countries might not experience comparable social conditions. Such a right, for example, would not have been

meaningful in times when the Internet did not play such an important role as it does now. And of course, there may come a time when the Internet will be superseded by other technologies. But for the time being, given the crucial role it plays in contemporary life, Internet access is indispensable.

Again I want to note here that I have no intention of providing a complete justification of a human right to Internet access in this dissertation. Rather, my intention is to show that we do have serious philosophical reasons to see it as a candidate for the status of a human right. A complete justification of a human right to Internet access would rely on comprehensive sociological studies, of the sort that are done all around the world. Moreover, we might also presuppose that the duties correlated to such a right would not introduce unresolvable conflicts with other basic rights. Now I am going to take a step further and articulate what kind of human right a right to Internet access would be.

## **(ii) The nature of the human right to Internet access**

### **(a) Positive rights VS negative rights**

Gewirth (1996, 33) elaborated the distinction between positive and negative rights in his book *Community of Rights*. His point is that negative rights only forbid others' interference, meaning that no harm should be inflicted upon the individual whose basic, non-subtractive, and additive goods may be endangered; whereas positive rights require others' help: positive efforts must be made to eliminate harm or to facilitate others to achieve their purposes at a bearable cost.

Along with making this distinction, he articulated the possible relation between these two types of rights. He argued that both positive and negative rights might need positive assistance, in contrast to the idea that only positive rights require such help. For instance, a negative right to not be killed demands the effort of the police (Gewirth 1996, 34). However, he argued that distinction stands in this case, as the

ground of justification for the police's positive assistance is still aimed at preventing the potential offender from harming the innocent, and this is different from the positive assistance of the sort one exercises when one donates a story-book to a child (Gewirth 1996, 35).

However, Gewirth noted that many rights are mixed rights, meaning that they contain both negative and positive elements. For instance, the right to not be murdered is in the first place a negative right, because it simply restrains others from committing murder, but it is also a positive right in modern societies where the police's positive assistance is directly demanded (Gewirth 1996, 36).

Notwithstanding this distinction, Gewirth argued that the justifications for both these rights are made by referring to the PGC. Quite the same as the justification made for the negative rights to basic well-being and freedom mentioned above, Gewirth argued that one necessarily claims his positive rights to well-being and liberty on pain of self-contradiction, because if he does not do so, he would be rejecting help in a situation where he is not capable of achieving his well-being and freedom, conditions that are indispensable for his agency (Gewirth 1996, 39).

The question really is whether the right to Internet access is a positive or a negative right. My answer is simply that it is both. Internet access viewed as a negative right is a right that should not be arbitrarily taken away: no one should cut off someone's Internet access without providing strong moral reasons for doing so, as the Internet is *the tool* for promoting and sustaining democracy that is justified by the PGC. However, considering the cost of Internet access, some people are not capable of having such access at a bearable cost. Therefore, financial support should be given to these people. In this sense, the right to Internet access is the right that demands positive assistance from suitable agents. If the assistance is not given, people might simply lose the chance to access democracy, which is crucial for the respecting and protection of well-being and freedom.

Positive rights and negative rights are in many situations interdependent. Violation of the human right to Internet access might in many situations result in a violation of people's right to freedom with respect to democracy, and brutal violations of the right to democracy often go along with an unwillingness to adopt and ensure Internet access. Both the Iranian and Egyptian governments attempted to shut down Internet access during recent episodes of political unrest (Rhoads and Fassihi 2011, Arthur 2011).

In addition, research has shown a positive correlation between the Internet penetration rate and the degree of a country's democratization (Best and Wade 2005). In practice, the right to Internet access might be seen as a social and economic right, too, as it is very similar to the human right to education. It is resource-intensive but is indispensable for achieving other basic human goods in our modern world, particularly in countries such as China, where the Internet is the only channel for people to get any information that dissents from the official government line. In countries like these, the Internet is the indispensable technology for democratic change.

#### **(b) Duties correlated to the right to Internet access**

Having now articulated what kind of right a right to Internet access is, I will elaborate its correlative duties. As I have shown, human rights are claim rights that are logically related to duties, which oblige others to respect these rights. To identify duties correlated to human rights contributes to the further conceptualization and understanding of these rights.

Considering the inflation of human rights, O'Neill (2005), based on her interpretation of human rights documents, sorted human rights into two kinds, namely, liberty rights and rights to goods and services. The right to freedom, for instance, is of the first kind, while the right to education falls into the second category. Making this distinction, she argued further that we can know whom the liberty rights violator is without any

allocation of obligations, but we cannot know who violates the rights to goods or services without allocating obligation beforehand. In addition, she is skeptical whether we can see something as a human right if we are not able to specify the violator.

O'Neill's concern clearly hits the mark when it comes to the level of specification. The specification of basic human rights, such as freedom and well-being, requires adequate empirical knowledge. Once empirical input is required, more controversies might be generated. According to O'Neill, the benefits and costs of a candidate for a human right needs to be carefully inspected, for even if the candidate right is seen as beneficial to all, the cost of fulfilling it might be unbearable. Or, in a less extreme case, the cost demanded might conflict with certain basic human rights. For instance, one could argue for a human right to a space shuttle, and yet this argument immediately fails, as it generates an unbearable cost; less extremely, one could argue for a human right to a car, and yet this proposal fails because it is unable to identify anyone as the duty bearer.

To sum up, for O'Neill, obligations and claimable rights are simply two perspectives on a single normative pattern: without obligations, there are no rights. She argued that liberty rights immediately give rise to first-order obligations that oblige all rights holders to respect these rights. However, it is not clear whether obligations correlated to the rights to goods or services can be allocated at all. In short, O'Neill argued that if a candidate to be a human right is not correlated to an obligation, or the obligations are not allocable, such a right cannot be recognized a human right.

I have made it clear that a human right to Internet access is a derived right rather than a basic human right in the sense of demanding the realization of certain goods and services. Therefore, work needs to be done to identify duty bearers and allocate obligations. If the human right to Internet access is not correlated to any duties, or if the duty bearer cannot be identified, according to O'Neill, it cannot be considered as a human right. As such, I now refer back to Gewirth, in order to study the principle(s)

involved in identifying duty bearers and allocating duties.

Gewirth, along with his rights theory, made a distinction between negative and positive duties (Gewirth 1980, 217). By him, a negative duty is a duty correlated to a negative right. It forbids one to deliberately harm others, as any deliberate harm will trigger an unequal transaction of basic, non-subtractive goods that are justified by being equally shared by all. For instance, a murderer killing someone for money is clearly an example of this sort. Correlated to the positive right, a positive duty demands effort for help with bearable cost. Yet this cost should not trigger another, more severely unequal transaction of goods. The duty might justifiably demand that one throw a rope to a drowning child, and yet it does not immediately suggest one ought to sacrifice his own life in a rescue attempt.

Along these lines, one duty that is correlated to the human right to Internet access, as an candidate negative right, is a government's duty not to cut off people's Internet access deliberately, without providing legitimate reasons for doing so, because this move would seriously endanger people's basic goods: Internet use, as shown in chapter II, is of great significance for democracy. However, a human right to Internet access might produce more demands than this guarantee of non-interference with Internet access. As a positive right, it might generate a duty that would demand that affordable Internet access be provided for everyone.

Gewirth provided a possible justification for the positive right based on his theory relating to the potential transaction of goods. He argued that by leaving people in extreme poverty without providing help to them, we actually make the poor very subservient to the power of the rich, as they have few means to protect their basic interests if conflicts occur. Practically, there is a potential transaction, as the rich might be able to sacrifice the poor's basic goods to enhance their additive goods (Gewirth 1980, 312). In doing so, they are immoral in the sense of contradicting the requirements of the PGC. This argument is particularly valid in societies where people's well-being is tightly connected and fundamentally relies on reciprocal

collaboration. In light of the Internet's enormous effect on the development of democracy, unequal distribution of Internet access certainly exerts a great impact on people's capacity to be involved in our information age, as the space in which most of us live has been more or less digitalized. As was shown by various empirical studies presented in chapter I, non-Internet users would become less competitive compared to those who are veteran users, who are comparably well-educated and rich.

Here what is really relevant is the transaction of goods that is justified by the PGC. So construed, the obligation to help does not wholly make its justification rely on an understanding of causality. Even if one does not cause harm to others' basic goods, one would still be obliged to remove the conditions that cause this unequal distribution of basic goods at a bearable cost. If an agent is rational, he necessarily values his basic freedom and well-being; if he does so, he would necessarily demand help from others when he is not capable of realizing these goods; if he claims this, by the PGC he would be obliged to help other agents. The question concerning how much help he should offer is also partly determined by the PGC: one's help should not cause another deeply unequal transaction of basic goods. As such, one should not be obliged to save another's life at the cost of his own. However, he is fully obliged to sacrifice some of his additive goods, and sometimes even, temporarily, his non-subtractive goods for the securing of others' basic goods.

### **(c) Who are the duty bearers?**

Identifying duty bearers is often difficult, yet some criteria are at hand. In general, we can consider the following criteria: (i) Who are the perpetrators? (ii) Who are capable of making a difference? (iii) Whom would it cost less to help? (iv) Who benefits more? Surely I am not exhausting all possible criteria here, and I do not expect to be able to do so, for I believe a list should be made open through public discussion among people from different cultural backgrounds. What I intend to do here is nothing more than to propose a general outline so that we could discuss the question within proper boundaries, while still leaving the actual criteria up for debate. All the

criteria proposed above can be properly justified by Gewirth's argument on the transaction of goods, as I will attempt to show here.

*First*, according to the requirements of the PGC, one has an obligation not to infringe upon others' goods, including basic, non-subtractive, and additive goods; and, to take this line of thinking one step further, that person has the obligation to help others make the distribution of these goods not unequal, as long as the cost is bearable. These two obligations are universally binding for all. Imagining a case involving a drowning child: it is quite clear that everyone has the obligation not to deliberately kick a child into the water and let him drown. Anyone who does this for fun is sacrificing the child's basic goods to increase his trivial additive goods. It is that individual who causes great inequality among basic goods. According to the PGC, the murderer should be responsible for compensating the victim in order to restore the equality of goods.

In this case, the PGC generates the negative duty for all to respect the basic goods of the child, here particularly as his life is at stake. To respect one's right to life would require all agents to abandon any specific action that would clearly harm the child's basic good – in this case, his life itself. Therefore, 'staying put' in this case is in itself an action deliberately made by others which clearly would violate the child's right to life (Gewirth 1980, 219-220). However, it is the individual standing nearest to the child who is directly demanded to carry out the action of rescue. Only he, in that situation, can remove the danger of the child's drowning and protect the child's life, as a basic good, making a negligible sacrifice of his own additive good of sunbathing on the beach.

In addition, his additive good might be compensated by the compliments and respect he receives from others for his deeds. In comparison, if we would ask a random person in the middle of a business meeting thousands miles away to take an action, it would certainly cost him a lot to do so, and he might end up endangering his goods on basic, non-subtractive, and additive levels, for obviously he would need to pay for an

expensive plane ticket and, what's worse, there would be no way for him to arrive in time to save the child's life. All in all, it is mistaken to think that only the person standing on the beach near the imperiled child has an obligation to help: rather, everyone has an obligation to help were he to be put in that situation. Yet, due to feasibility concerns, it is only the one actually on the beach who is required to give his help.

In the same case, all other things being equal, the person for whom it costs the least to offer his help should be seen as the best candidate to actually help, as his action would result in a situation with the least inequality among goods. Others who are not as good swimmers as he is, for example, might lose their lives in a rescue attempt, and in consequence that situation would cause the great loss of the basic good of life itself.

The child in this case who is about to drown surely benefits the most if the swimmer decides to help. According to the PGC, one cannot rationally deny the child's rights to basic goods. Therefore, he has the direct obligation to protect those goods by not allowing them to be transacted or taken away. Therefore he must necessarily do everything he can to avoid the loss of his basic goods. He is expected to swim as hard and to shout as loud as he can in order to attract attention from those who can help him. He cannot simply give up making efforts, expecting help from others. In a less extreme condition where people want to benefit from an increase in their additive goods, these people are surely the first agents to make any kind of effort, as any efforts made by others would involve a unequal transaction of additive goods. Taking away one millionaire's diamond ring and giving it to another millionaire for no reason is surely a great violation of the equality of additive goods, and it might violate the basic good of freedom as well.

In the same vein, the positive duty of providing affordable Internet access, at the highest level, should be shouldered by all agents, for its normativity is derived from its instrumental value for the right to democracy as justified by the PGC. This means that everyone, morally speaking, should see himself as an agent obliged to facilitate

universal Internet access, even if he might not, in reality, possess the resources to give help. This moral obligation indicates that he should try to make a difference once he is capable of doing so.

On the practical level, the aforementioned principles could be used to distribute duties. In states where the government is powerful but the free market is still immature, the government might be the proper duty bearer to provide Internet access, considering that it is the most capable agent and shoulders the least risk in carrying out this duty. China, for instance, has developed its Internet industry in this way.

The rapid distribution of Internet access there has arguably been spurred by the joint forces of the central government and the market (Xue 2005, Foster and Goodman 2000). I made this point clearly in chapter II when I outlined the evolution of the Chinese telecommunications industry. As the spread of Internet access relies very much on massive investment in national infrastructure, such fast-paced development surely would not have happened if it were left only to the power of the nascent market in China. A strong central authority helps considerably to facilitate the development of infrastructure.

In rich, democratic nations, such as the United States and the Western European states, private industry, accompanied by the implementation of relevant policies and laws, is strong enough to provide most people with Internet access. NGOs also might play a very important role in spreading Internet access, since they might be more familiar with local situations and more likely to facilitate access to the Internet in areas that are neglected or have been deliberately skipped by companies for reasons of profit. In fact, governments, companies, and NGOs often tightly cooperate to spread Internet access around their particular nations. Once synergy is created among these three entities, a dynamic of mutual supervision and stimulation might be generated among them, which in turn, accelerates progress in spreading this technology.

Furthermore, in some situations (if, say, the central government is very hostile toward Internet use and the market is under strict control) the human right to Internet access might trigger actions by other agents worldwide on the basis of an international duty, which would mandate international aid and interference. On top of that, if civil society is too weak to organize any effective resistance, other capable countries (or transnational agencies) should be considered to be the proper agents to facilitate Internet access according to the principles aforementioned. Of course, when it comes to the question of how to interfere, many non-aggressive means can be employed. For instance, a strategy often used is the upholding of human rights compliance as a bargaining chip for economic cooperation.

I cannot identify all duty bearers in this chapter, nor is it my intention to do so. As I have said, philosophy might not be able to provide an answer to specific dilemmas, as this task should also be carried out by public discussion under the aegis of well-designed institutions. What I have argued so far is no more than a proposal for a framework of justification within which more concrete arguments can be made. Reasonable arguments and evaluations can be made based on an investigation about which agents are most the capable of providing aid or the necessary extent of intervention, and for whom it would cost the least to intervene.

## **V Conclusion**

In this chapter, my goal was to present a way of justifying a human right to Internet access. To achieve this, I took the following steps. *First*, I started by investigating what human rights are by studying the conceptual analysis of this normative concept. I argued that human rights are claim rights that human beings all possess equally. To be this specific kind of right, human rights generate duties that hold everyone in obligation to respect them.

*Second*, I proceeded to investigate the conceptualization of the concept of human rights so as to further understand its normative structure. Taking Beitz's

categorization of human rights as a starting point, I studied Griffin's work on human rights as a paradigmatic naturalistic conceptualization, and pointed out that naturalistic conceptualizations of human rights fail in the face of various criticisms. In particular, these theories cannot explain why some features of humanity are handpicked, if not cherry-picked, to be deemed important aspects of human nature, and why we should care about these features as normatively significant.

*Third*, I considered Gewirth's conceptualization of human rights and argued that his approach, which justifies human rights based on the PGC, can avoid the problems facing the naturalistic theories. Using Gewirth's theory of human rights, I moved further to justify a human right to democratic government. I argued that the PGC can be used to justify the core features of democracy, namely the guiding framework of a constitution and majority rule.

In doing so, I went on to argue, based on the work done in chapter II, that access to the Internet should be seen as a derived human right that derives its normative weight from the human right to democracy, thanks to its indispensable instrumental value for democracy. I then tried to articulate the nature of the human right to Internet access and to identify its correlative duties and possible duty bearers. The main point is the human right to Internet access is both a positive and negative right, which generates positive as well as negative duties. The duty bearers entailed by such a right can be identified on the basis of certain principles. In the next chapter, I will study whether we can justify a human right, as a political vis-à-vis moral concept, to Internet access.

## **Chapter IV A Human Right to Internet Access**

### **A Practical Approach**

#### **I Introduction**

In the previous chapter, I discussed the possibility of justifying a human right to Internet access by referring to a transcendental justification of human rights via the approach of Alan Gewirth. As I have shown, Gewirth's theory can provide an answer to some basic questions that have haunted human rights theories: his theory helps us understand the puzzling question (although it would first appear to have a commonsensical answer) of why we have to care about human rights. Since, within the framework of this approach, democracy is an important part of human rights, a human right to Internet access can be justified to the extent that it is now an important tool for prompting and facilitating the development of democracy in currently non-democratic nations, and for maintaining democracy in nations where it is more firmly established. This line of argumentation presupposes that in a basic sense we have to interpret human rights as being based on certain moral commitments human beings ought to keep.

However, besides this tradition, there is another prominent school of thinking that has received much attention in the writing about human rights in recent years. This alternative line of thought understands human rights to be a 'practical' concept and argues that the normative weight of human rights should not be based on any comprehensive moral theory. In this chapter, I will investigate Beitz's practical conceptualization of human rights – the most noteworthy manifestation of this 'practical approach' — to see whether his approach can accommodate a human right to Internet access as well. To show that both moral and practical interpretations of human rights can support a

human right to Internet access would indicate that this right would play an important role in diverse human rights approaches.

Beitz (2011) recently developed his position in an influential book entitled *The Idea of Human Rights*. The book is in important respects influenced by the later work of John Rawls. In this chapter, first I will briefly introduce the context in which we should understand a practical conceptualization of human rights. Then I will show how Beitz's political conceptualization of human rights can properly accommodate a human right to Internet access.

## **II The background**

According to Beitz, there are many ways of conceptualizing human rights, but he distinguished in particular three general approaches. The first is what is called *agreement theory* (Beitz, 2011, 74-88), the second is broadly labeled as *naturalistic theory* (Beitz 2011, 49-68) and the last his own *practical conceptualization* of human rights (Beitz 2011, 96-122).

With regard to the first category, Beitz differentiated three sorts of agreements: *political*, *static moral*, and *progressive moral*. The first type of agreement denotes the consensus made by merely political, strategic considerations, which comes close to Rawls' idea of overlapping consensus: the notion that people who are committed to different comprehensive worldviews, Confucianism and Christianity for instance, can agree on some principles of justice for merely political reasons without adopting the same conception of justice. However, Beitz argued that Rawls did not explicitly discuss the interplay between human rights and overlapping consensus. He sought to argue that the idea of overlapping consensus, through proper reconstruction, can be used to determine the content of, and give authority to, the idea of human rights (Beitz 2011, 76).

The *static moral agreement* – as Beitz understood it – holds that human rights can be agreed upon by all, as certain basic moral ideas are universally found among all culture(s) and tradition(s). The prohibition of murder and the praise of honesty, for instance, are examples. Therefore Beitz assumed that it is not unrealistic to think that the idea of human rights is a result of intercultural moral agreements (Beitz 2011, 75). He argued that such a particular understanding of human rights does not cover the proliferation of rights in the Universal Declaration of Human Rights (UHDR) and its related covenants. Current human rights documents embrace a long list of rights that simply are not agreed upon by all traditions. The insight gained from actual human rights practice is that people from diverse cultures have agreed on the necessity of embracing the idea of human rights, while it is left open to various cultural and philosophical interpretations to determine what kinds of concerns should be regarded as human rights and how to justify these particular rights (Bell 1998). In addition, if the normativity of human rights is solely based on moral agreements, a culture that regards racism, for example, as morally acceptable might not be blamed at all for its racist practices (Beitz 2011, 78).

The *progressive moral agreement* is an agreement that can be gradually and progressively achieved, inasmuch as a genuinely global morality is developing at present (Beitz, 2011: 88). The very fact of modernity's development and the related globalization of life, one could argue, has brought about a new form of morality that is global in its reach and influential in its impact. Along these lines, agreements can be reached by referring to the common ground established by this new global morality (Beitz 2011, 88-90). But Beitz argued that although it might be empirically possible that such a morality might fully emerge via frequent international interactions, he believed that it is not clear at the moment whether such a global morality is in fact being formed. For Beitz, the realization of this sort of global morality depends, finally, on a single best interpretation of global moral practice, and this is not so plausible (Beitz 2011,

92). Moreover, the progressive moral agreement model does not say much about the addressing of human rights concerns. Such an idea embraces a thread of optimism that is supposed to be open to empirical testing. There should be a radical difference between an accepted homogeneous worldview and a worldview that has yet to be achieved. Therefore, to apply such an idea and to carry out interventions on its basis might simply be imperialistic (Beitz 2011, 93).

The second position Beitz calls a naturalistic conception of human rights. Here he refers to a school that considers human rights to be natural rights that belong to humans as such (Beitz 2011, 49-68). There are three salient characteristics of this tradition: *first*, the normativity of natural rights is derived from the significance of some basic human interests that are indispensable to a particular sense of human nature, such as, for instance, the interest of the preservation of life itself for human existence; *second*, these rights are *natural* in the sense that they are *pre-institutional* and *trans-historical*, which means that people have these rights simply because they are human beings, and such rights do not depend on any institution or human history for their normativity; *third*, since human rights are meant to protect the most basic human interests that are indispensable to human nature, they are *universal* (Beitz 2011, 52-53).

Beitz noted that not all natural rights theories, as they are thus loosely defined, should necessarily cover these features, nor did he say anything that would conceive natural rights theory to inevitably exclude some rights – social and economic rights in particular – from the human rights list (Beitz 2011, 53). He acknowledged that natural rights theory could be extended to cover these rights that are not in the same sense pre-institutional and independent of specific historic developments. However, an extension of rights will clearly dilute the normativity of naturalness in natural rights theory, whereas sticking to an extremely rigid natural rights theory risks losing its connection with

international human rights practice. For Beitz, there is always a tension between natural rights theories and actual human rights practice (Beitz 2011, 59-68).

Beitz argued that it makes sense to understand a right to food, considering its significance for protecting human nature, as a human right. In addition, naturalistic theories can provide us with principles that avoid, to some extent, the inflation of human rights: for instance, Griffin's theory is by its own account a minimalist theory, as it refers only to the protection of the most austere human conditions (Griffin 2009, 53). However, Beitz asked a simple but profound question: Why do we so badly need to conceptualize human rights and regulate human rights practice on the basis of one specific philosophical tradition, while deliberately neglecting the fact that the formulations of human rights documents, such as the UHDR, clearly leave the justification open for all traditions (Beitz 2011, 68).

Beitz argued that we cannot, from a historical point of view, see international human rights as independent from any comprehensive human rights schools, natural rights theory for instance, that were developed solely after World War II in political practice. However, notwithstanding the fact that human rights may be rooted in the natural rights tradition, the concept of human rights has taken on quite a new form as a normative tool for regulating international interaction, particular those sorts of interaction that might trigger international intervention (Beitz 2011, 103-106).

### **III Beitz's approach to human rights**

Recognizing that agreement and naturalistic theories are insufficient in light of actual human rights practice, Beitz developed his own practical conceptualization of human rights. We should note in advance that the radical difference between so-called naturalistic and agreement theories and his

practical conceptions of human rights is that the latter does not understand human rights through any specific comprehensive doctrines, for instance one comprehensive religion or philosophy, nor *any ad hoc* and assumptive consensus reached by various systems of morality; rather, Beitz conceptualizes human rights to be an independent enterprise that derives its normativity from the role it is expected to play in international politics. Beitz grasped this idea originally in his reading of John Rawls, and was particularly inspired by the discussion on human rights in *The Law of Peoples*. He extends Rawls' view systematically. To address Beitz's theory in detail, I will first introduce Rawls' view of human rights as background.

**(i) Rawls' conceptualization of human rights**

John Rawls' treatise on international justice, *The Law of Peoples* (Rawls 2001), should be understood against the background of his two major books, *A Theory of Justice* (Rawls 1999) and *Political Liberalism* (Rawls 2005). In the former, Rawls developed the principles by which a just society should be guided, and in the latter he considered how a stable liberal-democratic society with an enduring pluralism of conceptions of the good might be possible. In *Political Liberalism*, Rawls argued that free societies will inevitably be characterized by a plurality of worldviews and religions (or, as Rawls calls them, 'comprehensive doctrines') (Rawls 2005, 36-40). Consequently, questions on which agreement is needed to enable people with different comprehensive doctrines to live together should not be decided on the basis of one of these doctrines. Instead, they must be decided on the basis of public values, which will be the subject of overlapping consensus between all reasonable comprehensive doctrines (Rawls 2005, 253).

After addressing the principle of coexistence of different doctrines within the national state, Rawls proceeded to apply such a principle to an international community with many national states. In *The Law of Peoples* Rawls developed his views on a just international society by reflecting on the appropriate foreign policy of a liberal society

(or, as he calls it, a ‘people’). He took as a starting point the claim that an international society, too, will be characterized by differing ways of life based on differing perception of goods. Rawls proposed that certain societies that are not fully liberal, in the sense that they have not embraced constitutional democracy, should also be respected as full and equal members of the international social order (in Rawls’s own words, they should be ‘tolerated’) if they meet certain conditions.

Rawls called societies that meet such conditions ‘decent societies’ (Rawls 2001, 64). One of their features is that they are not aggressive; a second is that they consult their members in certain ways when making important social decisions and justify these decisions by referring to widely accepted conceptions of a common good; and a third is that they respect human rights, which for Rawls refers to a very short list of urgent rights, including life, liberty (for example, freedom from slavery), and formal equality (the assurance that like cases be treated alike) (Rawls 2001, 65). Hence, liberal and decent societies agree about the importance of human rights. Societies that are either unwilling (‘outlaw states’) or unable (‘burdened societies’) to meet the aforementioned conditions – the upholding of human rights included among them – should not, according to Rawls, be tolerated (Rawls 2001, 90-95).

Rawls’s distinctive conception of human rights emerges from the assumptions described above: his understanding of human rights is primarily based on the roles that they are supposed to play on the international stage. There are, most notably, three roles: *first*, the fulfillment of (Rawls’s short list of) human rights is a necessary condition for a society to be called decent; *second*, the fulfillment of human rights is a sufficient condition for a society to be exempted from foreign intervention (military, economic, etc.); *third* (connected to the first role), human rights set a limit to the acceptable pluralism of societies (Rawls 2001, 80). The idea explicit in Rawls’ writing is that the very idea of human rights is a political tool for regulating international coexistence. This is the role human rights are expected to play, and the content of human rights should be restrained by this role and its conceptualization should not simply fall back on the comprehensive doctrines of distinct cultures – if

this were so, human rights might inevitably be parochial and even imperialistic. Here we can see Beitz taking his lead from Rawls.

**(ii) The fresh start**

Beitz took from Rawls the idea that ‘the discursive role [of human rights] in the public reason of international society might influence thinking about their content as well as their nature’ (Beitz 2011, 100). Yet Beitz is unsatisfied with other elements of Rawls’ approach. As discussed above, Rawls proposed a very short list of human rights in which many important human rights mentioned in the UDHR are simply excluded, including some extraordinarily important rights such as the right to freedom of speech. As such, Beitz noted that Rawls’ account of the role of human rights failed to grasp the dynamics of contemporary international human rights practice (Beitz 2011, 101-102): current human rights practice, according to Beitz, is a dynamic process which has been undergoing changes and evolution, as evident from the proliferation of rights in human rights documents. The human rights to adequate living, education, freedom of speech, access to technology, and even the right to paid vacation are enshrined in the UHDR, which is the most influential human rights document in international politics. The very role of human rights, as it is proposed by Rawls as a tool for justifying international toleration, does not seem to catch the momentum of our contemporary moment.

However, Beitz did acknowledge, along the lines of Rawls’ thinking, that the conceptualization of a human right should be related to its expected political role, and yet he specified more systemically, and with clearer awareness, that the expected social role should be seen as the normative basis for conceptualizing human rights and specifying its content (Beitz 2011, 8-10). To be more precise, the expected role of human rights, as observed from actual human rights practice in today’s world, gives it its normative weight and helps identify what concerns can be categorized as properly the concern of human rights.

In Rawls' work, international peace and collaboration are among the crucial political goals that states are expected to achieve through their joint efforts. The striving to achieve these goals gives us an important incentive to embrace a regulative authority in the international community, and this authority justifies the need to conceptualize human rights as a tool for international regulation. Considering that the proposed political goal is very minimalistic, because it is focused strictly on peaceful coexistence rather than more comprehensively on prosperity, the political role mainly involves the justification of conditions for membership in the international community or the regulation of the extreme case of a just war. A society where human rights are grossly violated is, to cite Rawls' term, an outlaw society, which through its actions becomes disqualified as a member of the international community and is regarded as deserving punitive measures. Therefore, according to Rawls, the content of human rights is rigidly restrained by its specific role, which is fundamentally justified by the fixed political goal it is meant to achieve.

Beitz adopted this role for human rights – to serve as a tool for justifying international intervention – without necessarily accepting Rawls' theoretical division of liberal, decent, and so-called outlaw societies. Rawls' human rights list might be used as criteria to identify outlaw societies, and therefore the list is quite short, for if it were not so, its terms might be too demanding. The right to freedom of speech is excluded, for instance, as this is supposed to be characteristic only of liberal societies. However, human rights lists of the sort we find in current human rights documents, particularly the UHDR and its related covenants, clearly enshrine this right, not to mention other socio-economic rights such as the rights to work and to a proper education. Beitz did not embrace Rawls' distinction and his discussion of liberal, decent, and outlaw society outlined above, and he did not necessarily commit to a short human rights list; rather he held that human rights, as they are comprehensively enshrined in current human rights documents, are important for protecting urgent interests against threats of state-sponsored neglect or oppression (Beitz 2001, 11)

Beitz further argued that what interests lie in human rights concerns are a result of

historical political interaction (Beitz 2001, 14-27): the UHDR was an unexpected and unprecedented achievement mainly developed in the immediate aftermath of World War II. However, the empirical fact is that the concept of human rights has become incredibly influential, notwithstanding a still-emerging political language being used worldwide to justify demands and actions. As such, the question we must then address concerns how the political role that human rights are supposed to play helps determine the content of these rights. I will now elaborate how Beitz deals with this issue.

#### **IV Beitz on human rights criteria**

To reiterate: for Beitz, the political goal that is derived from political practice determines the proper role of human rights. Furthermore, the political role places restraints on the content of the list of what should properly be deemed human rights. In this framework, the normativity of the human rights concept directly depends on its political role.

Reasoning in this way, Beitz further articulated how the role of the human rights concept helps to restrict its content. Holding the view that the role of human rights is to justify international actions, including both support and intervention, he proposed that human rights concerns should meet the following standards: (i) interests protected should be so important that it would be reasonable to recognize them across a wide range of possible lives; (ii) in the absence of the protections embodied in the right, there is a significant probability that domestic-level institutions will behave, by omission or commission, in ways that endanger this interest (or, in Beitz's terms, will be a standard threat). Furthermore, (iii) there should be permissible means of international action such that, if they were carried out, interests would be less likely to be endangered and that these means would not be unreasonably burdensome for those who have reason to use them (Beitz 2011, 111). I will explain these points more fully.

*First*, with regard to point (i), Beitz referred to certain interests that can reasonably be

seen as important across a wide range of lives in contemporary societies. In doing so his generalization was based on those interests that most of the human rights specified in international doctrines seem designed to protect. These interests are recognized via the constant interaction and communication that involve the exchange of views and perspectives from different stakeholders. They do not necessarily overlap, but they represent recognitions based on mutual understanding. Actually, people do not even have to value them themselves. What is really required is that they at least understand that these values might be significant for others living in contemporary society (Beitz 2011, 109-112). For instance, I might not consider religion to be an important interest for me, but I would have no problem understanding that it is significant for a pious Christian. As such, these rights are universal not in the sense of being crucial for human nature, but in the way they could be universally accepted by all when accompanied by the exercise of reason.

Beitz recognized that there might be a need to identify a threshold for our judgments about which interests are and are not sufficiently urgent; this would require the drawing of a line between what is and what is not a human rights concern. However, he was reluctant to provide a determinate analytical response to this issue. For Beitz, the urgency of an interest is often considered in a context with values intertwined within it: people need to consider the importance of the interest, the likelihood of any threat to it, the cost and feasibility of protection, etc., in order to accurately evaluate its urgency. Therefore, Beitz argued that a model can draw attention to relevant considerations, but it cannot settle judgments (Beitz 2011, 110).

Beitz very briefly discussed such a distinction by criticizing Hart's choice theory of rights. For Hart to say 'A has a right against B' means that 'A has some authority to restrain some aspects of B's freedom'. It is the freedom-restraining feature of rights that justifies that there is a right. Hart (1955, 1983 17) generally differentiates two types of rights, namely the *special rights* people have due to a special relationship or because of specific transactions (like contracts), and *general rights* that everyone possesses who is capable of making choices. Hart saw only general rights as human

rights (Beitz 2011, 68-69). Beitz criticized Hart's theory as being, first and foremost, disinflationary, as it fails to cover many rights deemed human rights in international doctrines, particularly socio-economic rights whose fulfillment depends very much on institutions. Moreover, he argued that there is no reason to simply take one comprehensive philosophical theory, that of Hart for example, for the conceptualization of human rights, as international human rights practice deliberately tries to make this task open to all interpretations. Beitz did not attempt to criticize the will theory in general, yet he discusses Hart's theory in only a cursory way (Beitz 2011, 69-72). Surely, his short discussion does not refute the will-based human rights in general. His book just did not focus on it.

As such, it is quite clear that Beitz adopted an interest-based formulation of human rights (not a theory) in contrast to a will-based formulation. However, he did not do so by committing to a specific moral theory regarding human rights, as he did not refer directly to morality in deciding what were urgent interests. In addition, it should be noted here that Beitz used the term 'interests' in a very broad sense. In line with his argument, the sort of freedom one experiences, for instance one's political liberty, can be seen as one's own special interest. Therefore, his attempt is novel and is not biased against other human rights theories.

*Second*, Beitz's human rights model is *state-based*. It regards the nation-state to be the first and primary agent that acts to protect its citizens' human rights. The state is clearly the most capable and dominant agent in human rights practice, although the legitimacy of human rights is grounded not solely on their recognition by a state government.

However, Beitz did not hold that human rights should necessarily be crystallized in a national constitution and basic laws; rather, the state should simply use all means available for protecting human rights (Beitz 2011, 114). Some rights, such as the right not to be arbitrarily detained, might demand legislation, whereas some social economic and cultural rights could be achieved 'in accordance with the organization

and resources of each State' (Beitz 2011, 161). On the flip side, Beitz noted that the state is also a potential primary perpetrator of human rights violations. In fact, Beitz argued that human rights primarily deal with violations made by the state against its citizens. If a man kills another man, this is not usually regarded as a case of a human rights violation, but the persecution of a political dissident is clearly such a violation (Beitz 2011, 115). The threat made by national institutions to human rights is regarded as a 'standard threat', as it is often institutionalized and is predictable (Beitz 2011, 189).

*Third*, considering that the state is a potential perpetrator of human rights abuses, Beitz's point (iii) shows that the responsibility to protect human rights does not exclusively fall upon its shoulders. When the state fails to carry out the first-level obligation, international agents might have a *pro tanto* reason to act.<sup>52</sup> If the protection of one's interest is seen as a human rights issue, there needs to be permissible means available for protecting such an interest, and the cost of help should be bearable. If protecting one's interest would exact an unbearable cost on others, considering that interest as a human right would clearly endanger others' urgent interests, and this would clearly be a human rights concern – and would introduce an unresolvable conflict between basic human rights.

Having addressed Beitz's discussion on what criteria should be met by human rights concerns, I will now investigate whether the candidate human right to Internet access meets these criteria.

## **V A human right to Internet access**

As I have already extensively shown, there is a tendency in the contemporary discussion of rights to see Internet access as a candidate for a human right. Countries

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<sup>52</sup> For Beitz, a *pro tanto* reason is a reason that to a certain extent justifies a specific act, while it does not necessarily always override competing reasons (Beitz 2011, 117).

such as Estonia have already made Internet access a civil right.<sup>53</sup> The UN recently made an explicit attempt to foster the widening of Internet access, considering it to have an enabling role in the realization of a variety of human rights.<sup>54</sup> In the legal arena, a French court negated the law that had allowed the government to cut off one's Internet access if illegal downloading was detected on one's computer.<sup>55</sup> The current human rights movement in both the legal and political arenas have suggested that Internet access should be deemed a human right. However, in order to find out whether the right to Internet access is in fact a human right, we will need to investigate whether it meets Beitz's three criteria – whether it is (i) concerned with very urgent interests which (ii) may be threatened by the government, and is a case (iii) where the international community could permissibly and effectively help.

**(i) Are very urgent Interests at stake?**

As shown above, Beitz held that human rights only concern the most urgent human interests that are endangered by standard threats. When it comes to the human right to Internet access, we need to investigate whether Internet use, positively considered, would significantly contribute to the protection of some of our most urgent interests against standard threats, or, negatively considered, whether depriving someone of his Internet access would severely endanger his most urgent interests.

As such, the focus here is to study the interplay of Internet use with our most urgent interests. As I have comprehensively shown in chapter I, a huge amount of literature has emerged since 1990 concerning the effect of Internet use on the protection or

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<sup>53</sup> Coin Woodard. 'Estonia, Where Being Wired Is A Human Right'. Accessed July 1, 2014. <http://www.csmonitor.com/2003/0701/p07s01-woeu.html>

<sup>54</sup> Frank La Rue. 'Special Rapporteur On the Promotion and Protection of The Right to Freedom of Opinion and Expression'. Accessed July 2, 2014. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)  
[http://www.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

<sup>55</sup> 'Top French Court Declares Internet Access Basic Right'. Accessed June 26, 2013. <http://www.foxnews.com/story/2009/06/12/top-french-court-declares-Internet-access-basic-human-right/>

promotion of important human interests. In fact, this particular technology has thrilled many scholars, who regard it as possessing deeply emancipatory characteristics. I will limit my discussion to studying how Internet use might contribute to our urgent interest in democracy.

As Beitz noted, after the end of the Cold War, there was (and continues to be) a growing demand that democracy be regarded as a human right. Such a right has now been enshrined in several declarations of international law. The human rights committee of UN also embrace a human right to democracy, and even provides detailed analysis of its requirements for being such. In short, that there is a human right to democratic institutions has become a commonplace in international doctrine and practice (Beitz 2011, 174).

Beitz exclusively discussed the instrumental justification of democracy, referring primarily to the work of Mill and Sen. In Beitz's interpretation, Mill (1861 404) generally held the idea that, compared to other sorts of political regime, democratic government is more likely to protect individual rights against threats, for there is no better way to protect one's interests than to hold this authority oneself. A citizen in a democratic society is a voter who can express his demands or interests via the election of representatives, and he can reasonably expect that his voice would influence, to a certain extent, the making of democratic decisions (Beitz 2011, 175). Beitz also referred to the work of Sen and Drèze (1991 277-278), arguing that, based on various empirical studies, democratic societies will be less likely to experience famine, for these sorts of societies have well-established channels of communication (the free press, for example) through which potential agricultural and food-supply problems can be exposed before the situation turns disastrous. According to all these arguments, democracy is significant for the protection of any interest, including, of course, the most urgent interests (Beitz 2011, 176).

However, Beitz hesitated to accept a human right to democracy. He had mainly two concerns: *first*, the instrumental argument mentioned above is contingent on empirical

studies. Several studies even suggest that China, which is not a democracy, has shown itself more capable of relieving poverty than India, which is. More studies need to be made before any final conclusion about this topic can be drawn (Beitz 2011, 177-180). More importantly, in line with Rawls' theory on differing societies, Beitz worries that having a right to democracy in international human rights doctrines will violate the basic value of self-determination for so-called decent societies. He imagined a society in which the economy is weak and the idea of democracy, characterized by ideas of political equality and efficacy, is radically alien to its indigenous political culture. In such a society, Beitz argued that if people's interests are represented and there are rights of dissent for all, and the government explains its decisions in reference to a widely accepted conception of the common good, then this society should not be forced to be democratized. As such, his main concern is that there is a potential conflict between self-determination and democracy, which is, as I will argue, not necessarily the case (Beitz 2011, 80-185).

Yet Beitz himself did not seem to completely reject a human right to democracy in general, but only the human right to liberal democracy in particular. It should be noted that Beitz was clearly addressing a specific, liberal version of democracy, one that embraces a group of particular institutional features, such as the 'one person, one vote' system (Beitz 2011, 175-178). However, as I have already argued, democracy is justified by the requirements of the PGC not merely as an instrument but as something that is intrinsically desirable, since denying it would inevitably also deny one's agency. Democracy denotes an equal political and moral status for every individual, but 'one person one vote' is not necessarily a feature that democracy must embrace. If a society could respect everyone as moral equals, its adoption of different institutional features should not *necessarily* mean that it could not be called democratic. Along these lines, there should be no fundamental conflict between democracy and self-determination, as one would necessarily embrace a right to democracy while leaving its institutional design open.

Beitz's critique of the right to liberal constitutional democracy seems not to rule out

the right to democracy in general, particularly if one considers democracy mainly as a universal value. Specifically, he even acknowledged that the human right to democracy has gradually become a commonplace for regulating international interaction (Beitz 2001, 174). This trend might suggest that people around the world recognize that democracy is relevant to our most urgent interests, and in addition, specific international regulation might be used or designed to address severe violations of democratic practice. Therefore, Beitz's formulation of human rights, despite being skeptical towards a human right to the form of liberal democracy that possesses specific institutions, suggests a possibility of embracing a right to democracy as a universal value, allowing that democracy can manifest itself via various institutional designs.

In chapters I and II, I presented both generally and specifically a discussion of how Internet use would contribute to the development of democracy. China in particular is the state in which the Internet is the only tool that makes possible any sort of development towards greater democratization. At the moment, we still might be a bit hasty in generalizing this observation; however, considering the widely adopted practices of e-voting and e-governance, and the emancipatory power of the Internet in transitions to democracy, we have good reason to expect that there is a universal democratizing potential inherent in Internet use. As such, I can conclude that Internet use is crucially relevant to our urgent interest of democratic governance.

## **(ii) Threats by the government**

Above, I argued that Internet access is of great significance for protecting our most urgent interest in living under a democracy, and therefore it is normatively important. Now the question is whether the human right to Internet access is extremely vulnerable in the face of state power. My answer is simply: yes.

*First*, governments are often the dominant agents for the development of Internet infrastructure, because initial investment is costly and not so profitable, at least at first.

Particularly in countries where the market is not mature, the central government is often the only agent that can afford investment. For instance, the early spread of Internet access depends very much on established post infrastructure initiated by the government. Sociological research showed that the penetration rate of Internet access in Africa is positively related to telephone density (Oyelaran-Oyeyinka and Lal 2005). Also, the Chinese government is surely the only agent which has invested in a telecommunications business during its nascent stage, and it made use of its well-established post system to roll out the nation's Internet infrastructure (Tan, Foster, and Goodman 1999).

Moreover, the state plays a very important role in spreading Internet access even in developed countries such as the United States. The prototype of the Internet, which is often referred to as Arpanet, was originally developed by the US government for military use. In 1980s, the US National Science Foundation financed the construction of a new backbone. In 1986, TCP/IP network access expanded dramatically when the National Science Foundation provided access to supercomputer sites at certain universities and research organizations. Later on, pressured by commercial and university elites, the US government decided to make this technology available for commercial use (Chadwick 2006, 38-47).

In addition to being the main agent for establishing Internet infrastructure, the state is also the main agent, although surely not the only agent, to enact policies that might regulate online content in certain specific ways. More broadly, the government is often the strong agent in setting in place the macro-regulatory framework that regulates responsibilities, access, accountability, etc., all of which are prerequisites for the growth of the Internet market.

In particular, the Chinese central government is the leading agent for developing China's telecommunications industry. It first reformed its post administration so as to separate government functions from enterprise management, transforming the government from being a micro-manager of the telecom business to being its

macro-regulator. As a result, it established China Telecom as a company. Then the government deliberately divided China Telecom into several small companies specializing in different telecom services and let them compete with one another. Specific laws and policies were designed and used by the state office for facilitating competition and raising funds for further development (Guan 2003, Lin, Liang, and Wan 2001, Xia 2000). However, as discussed at length in Chapter II, the Chinese government has adopted a very sophisticated strategy to censor online information and regulate Internet content providers. It should be noted that China is not a unique case: many democratic countries have made attempts to regulate online content as well. Australia, for example, has even developed a blacklist system used to fence off pornography (Bambauer 2009). As such, the Internet in general is very vulnerable to governmental action.

### **(iii) Possible means of regulation**

Lastly, according to Beitz, to have a right to Internet access it must be possible to identify or possibly construct feasible means for providing corrections and protection at a bearable cost. As already noted, support for a human right to Internet access is clearly emerging. However, according to Beitz's argument, if we find that there are no possible means to organize international action that would prevent such a right from being violated, we should be very skeptical about having it as a human right. However, current political practices do suggest the possibility of identifying possible means of intervention.

In 2010, Hillary Clinton, then the US secretary of state, gave a speech in which she criticized China's Internet policy.<sup>56</sup> This effort might reflect a possible change in the perception of the appropriate role of foreign policy, namely a shift from 'interest-based diplomacy' to a partly 'value-based' conception. This can also be seen

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<sup>56</sup> 'Hillary Clinton criticizes Beijing over Internet censorship'. . Accessed Feb 3, 2013.  
<http://www.theguardian.com/world/2010/jan/21/hillary-clinton-china-Internet-censorship>,

with regard to the European Union. The EU holds that a nation's commitment to protecting human rights is a precondition for granting such a nation membership in its union, and human rights concerns would be appropriate motivation for foreign policy decisions made and actions taken across a wide range of issues involving international cooperation.<sup>57</sup> Accordingly, human rights violations might pose problems for further economic cooperation – where this cooperation might not, along the lines of Rawls' thinking, concern minimum standards for maintaining peace but rather be aimed at achieving greater economic prosperity.

The United Nations has been a uniquely leading agent for stimulating telecommunications development around the world through various means (McPhail 2009, 57-65), and currently it is moving in the direction of supporting a human right to Internet access. The Human Rights Council has the unique authority to evaluate and criticize its members concerning their upholding of human rights: it issues supervision reports, and in the most extreme cases it might even authorize an armed intervention. In less extreme cases, the UN is expected to organize aid so as to prevent human rights violations in burdened states.

In addition to the UN's efforts, various international agents have also been involved in the spreading of Internet access. For example, the World Bank has been carrying out numerous projects, and has funded various telecom projects in many countries.<sup>58</sup> The National Computing and Networking Facility of China, for instance, was partly initiated and has been financially supported by the World Bank. Roughly speaking, this type of international agent is oriented towards the public interest and is thus particularly suited to bear this sort of responsibility. Since both organizations require that countries meet certain conditions in order to obtain membership, human rights

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<sup>57</sup> 'Membership Criteria – Who Can Join?' Accessed Feb 2, 2013.

[http://ec.europa.eu/enlargement/policy/conditions-membership/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm)

<sup>58</sup> For details about the projects, check the official website:

<http://www.worldbank.org/projects/P003675/telecommunications-project?lang=en&tab=overview>;

concerns could be added to admission requirements.<sup>59</sup> In fact, actual political practices (such as a proposed bill introduced in a subcommittee of the US House of Representatives) demonstrate how the right to Internet access might be protected in reality.<sup>60</sup>

As such, we do see some possible means at hands that might be used to prevent violations of the right to Internet access or facilitate its promotion. I can fairly conclude that Beitz's formulation of human rights can properly accommodate a human right to Internet access. Having now addressed the human right to Internet access in the context of Beitz's conceptualization of human rights, I will turn to discuss the possible problems that might confront such an approach. Addressing these questions will help me to articulate my own argument more thoroughly.

## **V Criticism**

### **(i) Problems of a statist conceptualization of human rights**

So far I have explained how Beitz's conceptualization of human rights would be congenial to the embrace of a human right to Internet access. Nevertheless, as noted above, Beitz adopts a statist understanding of human rights, in which the state government is regarded as the main protector of human rights. Such an understanding might pose a great challenge to the embrace of a human right to Internet access, as the statist view of human rights might not be able to adequately take account of the 'anarchistic' features of this technology. To explain: for Beitz, the primary agent to ensure the protection of human rights is the state. But the Internet is a technology that

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<sup>59</sup> Confronted with ever more severe criticisms, the World Bank vowed a reform to engage more NGOs; however, national governments are still the dominant agents.

<sup>60</sup> On March 27, 2012, the Subcommittee on Africa, Global Health and Human Rights of the US House of Representatives approved the Global Online Freedom Act of 2012. This act was expected to provide legislation to prevent US companies from doing business with governments that censor or filter the free flow of information online. It was not enacted into law, however. 'Promotion of Global Internet Freedom'. Accessed December 2, 2012. [http://chrissmith.house.gov/uploadedfiles/hr\\_3605\\_ans.pdf](http://chrissmith.house.gov/uploadedfiles/hr_3605_ans.pdf).

is global in its reach and influence, and therefore it cannot be fully controlled by one state government – and we should add that many essential Internet resources are now controlled by NGOs.

One of the most influential global Internet regulatory authorities is ICANN (Internet Corporation for Assigned Names and Numbers). ICANN was originally established by the US government and later gained independent status. ICANN is the main NGO responsible for IP address distribution and the management of the DNS root zone. Despite its independent status as a NGO, ICANN maintains a particularly tight relation with the world's governments via the Governmental Advisory Committee (Bäßler 2011). The representatives of ICANN are selected by people around the world. ICANN has an authority great enough that it can, despite contestation, extend its influence to the policy-making process. As Klein (2001) rightly pointed out: 'Although ICANN's mandate is technical and administrative in nature, its decisions are inextricably linked to global public policy'.

Here we see that the statist conceptualization of human rights risks neglecting the importance of NGOs in the protection of human rights, and consequently, it seems it is not able to really protect a human right to Internet access. However, this is not necessarily the case. First, Beitz discussed two levels of responsibility. He indeed held that the state government should be the main agent to bear the first-level obligation of protecting human rights and refraining from violating them, but he did not exclude other, non-governmental agents from the sphere of action in this regard. Moreover, if the state government is not able to bear the first-order responsibility vis-à-vis these rights, other agents, and in particular international/transnational organizations such as the UN and the EU, should play crucial roles in the protection of human rights (Beitz 2011, 114-116).

In addition, states and NGOs are nowadays tightly knit together both in their institutional settings and functions, especially when it comes to issues concerning international trade and human rights regulation. Both the UN and the World Bank

have successfully managed to include NGOs in their meetings in order to forge connections with such organizations, and it is to be expected that ever more NGOs will probably be involved and will be better represented in the discussion. NGOs play comprehensive roles in these international bodies, including the facilitation of information collection, presentation, and consultation. More importantly, the UN and the World Bank rely heavily on NGOs for rolling out many of their projects, as they are more familiar with local conditions and more capable of reaching distant places (Otto 1996, Alger 2002, Goldman 2006, 93-97). On the flip side, NGOs, for instance ICANN, also tries to involve the voices of national governments when global interests are at stake. The Governmental Advisory Committee of ICANN is supposed to advise it on matters of public policy, especially when there is an interaction involving ICANN's decisions, national laws, and international agreements.<sup>61</sup>

As such, although Beitz's formulation of human rights regards the state government to be the primary agent of protecting and ensuring human rights, it does not suggest that the state is the only agent that can carry out this task. Nor does it mean that state governments will perform such work alone, without delegating some of it to other agents, NGOs for instance. Especially when it comes to the Internet, diverse agents are engaged, some of which might have more authority in certain aspects than the state government (the work of ICANN is an example).

I will now turn to discuss the critique centered on human rights inflation.

## **(ii) Human rights inflation**

One might wonder, since Beitz's conceptualization of human rights is not based on the most austere conception of human nature, whether it might not be too open and would therefore devalue the normativity of human rights. Consequently, some human rights might just end up as mere aspirations.

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<sup>61</sup> Governmental Advisory Committee. Accessed June 20, 2013.  
<https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>

As I have shown, Beitz's conceptualization of human rights, despite its openness, also provides restraints. First, not all interests but only the most urgent interests can possibly be seen as falling under the concern of human rights. Moreover, in order to actually enshrine an interest in a list of human rights, such an interest must be vulnerable to state power, and we need to find identifiable agents and means, or possibly to establish means, that will prevent the violation of acknowledged human rights. These criteria help, to a large extent, to restrain the expansion of the human rights list, leaving protected only the most important interests of human beings. As such, Beitz's conceptualization of human rights is not necessarily unrestrictedly open; rather, it can be used to criticize current human rights practice, particularly the question of human rights inflation.

## **VI Conclusion**

In this chapter, I first discussed Beitz's conceptualization of human rights. For Beitz, human rights should not be conceptualized from one particular philosophical or cultural tradition, but from the careful investigation and reflection on its specific role-related function that it plays in international human rights practice. Based on this understanding, he proposes his model. According to this model, a human right must first concern the most urgent interests; second, it is very vulnerable to governmental action; and lastly, its violation should be able to trigger international actions in response. Then I moved to argue accordingly that the right to Internet access could fairly meet these criteria. Internet access, in the first place, is instrumentally important for democracy, which concerns our most urgent interests. Second, by recasting chapter II, I pointed out that governments are usually the main agent for online censorship and the blocking of Internet access. Lastly, I identified various agents and means for protecting such a right from being violated.

It should be noted here that my argument here is not conclusive but suggestive. The correlation between Internet use and the practice of democracy needs to be further studied so as to permit a more generalized judgment. International practice

concerning a possible human right to Internet access is in a very dynamic and emergent phase, in which certain laws, rules, policies, and politics are complexly entangled. An insightful discussion would surely demand heavy input from empirical studies. However, what I have shown here in this chapter is enough to give us a prima facie reason to seriously consider a human right to Internet access. In next chapter, I will go one step further and discuss whether we could take into account diverse cultural perspectives for the justification of such a right. I will argue that such a justification, in comparison with the political justification, should be more informative in providing directives for actual human rights practice.

## **Chapter V Internet and Confucian Ethics?**

### **I Introduction**

In 2011, the number of Internet users in China reached 51.3 million, which is 40% of the country's population. By then the number of mobile phone Internet users had reached almost 35.6 million. Besides making an enormous effort to spread Internet access, China – among several other countries – also controls with a heavy hand the flow of information in cyberspace through its adoption of a very sophisticated regime of supervision (Zittrain and Edelman 2003, Dowell 2006, Xu, Mao, and Halderman 2011) At first glance, it would seem contradictory that China has been taking great pains to spread Internet access, which is widely assumed to represent freedom of speech and expression, and at the same time has attempted to suffocate the Internet's liberal spirit (Cullen and Choy 1999, Endeshaw 2004, Lagerkvist 2005).

The Chinese government has tried to justify its Internet policy by criticizing the framework of the so-called Western values in which Internet use is purportedly embedded, and by accusing the United States of 'Internet Imperialism'. Political researchers have attempted to make the case that a communist mentality has deeply influenced the perception of the Internet in China, and that this mindset explains much about the dynamics of the country's contradictory policy (Taubman 1998, Bi 2000). However, awareness of the influence that communist thought has had on the understanding of the Internet lacks the power to refute the charge of Internet imperialism and the country's paradoxical policy toward Internet use. What is needed in evaluating the Chinese strategy of Internet supervision is a better understanding of the relation between the concept of Internet access and Confucian culture.

In chapters III and IV, I discussed how arguments from moral and political philosophy can justify a human right to Internet access. Yet culture, too, bears significant meanings with regard to cultivating people to become rational agents (in a Gewirthian sense) or protecting urgent interests (in a Beitzian sense). Therefore, were

the Internet shown to be incompatible with Confucian culture, we would need to be more cautious about regarding it as a human right. As such, it is worthwhile to investigate how a human right to Internet access would be received in Confucian culture. To achieve such an understanding, I will discuss in this chapter whether Internet use is compatible with the fundamental values and norms of Confucian ethics, and in a later chapter whether a Confucian conception of the good life would even demand that there be a human right to Internet access.

Here I will refer to Raymond Williams's classic discussion of the idea of culture. For Williams, conceptions of culture change alongside the developments of human history. It was transformed from the 'tending of natural growth' to the 'culture of something', then to 'culture as such' having an independent status, and lastly to the "general state of intellectual, moral, arts development", covering the entirety of a way of life – material, intellectual, and spiritual (Williams 1960, 16). The 'tending of natural growth' refers generally to husbandry, the raising of animals and crops. The idea of culture is then extended to also cover human development, as with, for instance, the culture of the mind. Later, 'culture' gradually becomes an independent term, representing not concrete but more general developments of humankind. In this regard, it becomes a synonym for civilization, loosely covering every aspect of development in human communities. Confucian ethics and its related way of life, as a specific development, belongs to Chinese culture. My discussion here refers mainly to ethical developments in Chinese culture, which involves both the understanding and the practice of the Confucian good life.

In addition, the Confucianism discussed here exclusively concerns its scholastic tradition and not its use as a political ideology. As an ethical school, Confucianism was not so much aligned with political power, focusing instead mainly on exploring the question of how to lead a good life. During the Han dynasty (206 BC-220 AD), it was gradually adopted by the central authority in an effort to form a homogenous culture and identity for the people under its governance. Dong Zhongshu (179-104 BC), counselor to Han emperor Wu, made specific policy decisions to enable the

domination of Confucianism over other schools. In general, Confucianism as a political doctrine can be repressive in the sense that it promotes an orthodox Confucian ideology (Zhiping 2005).<sup>62</sup>

In this chapter, I will first review the arguments of two authors who hold that the use of the Internet is fundamentally incompatible with Confucianism. To evaluate the plausibility of their claims, I will outline the basic features of the framework of Confucian ethics: I will home in on the notion of *tian xia* (under the heavens) and elaborate the Confucian understanding of moral space. From this viewpoint, I will then discuss in further detail some possibilities and problems regarding the compatibility of Internet use and Confucian ethics. More concretely, I will argue that it would be wrong to assume that Internet use cannot be plausibly thought to cohere with Confucianism. The notion of *tian xia*, as a basic structuring principle of Confucian philosophy, provides an account of moral space in which all the world's inhabitants are thought to participate as members – as different individuals who are moral equals. As such, this chapter is devoted to refuting the arguments that Internet use is in radical conflict with Confucian ethics. In next chapter, I will discuss whether Confucian morality could also *embrace* a human right to Internet access.

## **II Bockover and Wong: confucianism VS Internet use**

China is obviously not alone in hesitating to embrace Internet access without ambivalence: it is not uncommon to associate Internet use with moral corruption, and there are even communities, for instance the Amish community in the United States, that have altogether rejected the Internet and modern technology in general, due to a desire to protect their cultural integrity. Regarding China more specifically, Bockover (2003) and Wong (2013) made the first systematic philosophical attempts to argue that Confucianism is incompatible with Internet use, arguing that it is not clear that

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<sup>62</sup> Pre-Qin Confucianism was developed before 221 BC; the neo-Confucianism in this paper refers to Confucianism largely developed in the periods of the Song (960-1279) and Ming (1368-1644) dynasties.

the core values and norms grounding Confucian ethics are *not* in direct conflict with Internet use. Surprisingly, since their papers have been published, no specific follow-up work has been carried out. I will now discuss their specific arguments with the aim of contributing to this discussion.

**(i) Mary Bockover**

Bockover (2003) attacks criticisms of China's Internet policy, which stress that it infringes on individual liberty. She begins with the empirical observation that 'the Internet is currently the most effective form of communication available to promote the first-world value of autonomy' (Bockover 2003, 163). For her, the spread of Internet access is driven by the ideas of consumerism, free expression, equal opportunity, and free trade. This stands in sharp moral contrast with traditional Confucian system of values (Bockover 2003, 163). Elsewhere she states that anyone who has an Internet access can say anything and be heard, and even believed if the presentation is convincing enough. This is allowed because it is based on the American value of free expression (Bockover 2003, 165).

What Bockover means to say is that the Internet is not a value-neutral technology. Rather, both in its justification and its application, the Internet embraces a specific and comprehensive Western concept of freedom. Individual freedom is methodologically treated by Bockover as a form of political and personal autonomy: one should have authority (rights) over specific goods above and beyond the power of the state. Bockover argues that even this freedom has been contested throughout American history in specific cases, and that historically the development of the concept of freedom in Anglo-American philosophical tradition has been complex. The adoption of the Internet can be justified by reference to specific values, e.g., freedom of speech; also, its technical structure is such that its very application promotes exactly the values and concepts associated with consumerism, free trade, etc.

The specific concept of freedom embedded in the Internet is, Bockover argues,

inspired by authors such as Mill and Locke, and idea of freedom is turned absolutist' by Kant (Bockover 2006, 166): Kant, in his a priori justification of 'autonomy as being necessary for moral agency', advocates a conceptual connection between humanity and freedom – which Bockover deems to be philosophically problematic because it illegitimately lays claim to universality. According to Bockover, the 'absolutist' Kantian concept of moral agency has ended up serving the interests of a select group of people in the United States who have enough power and money to 'determine their own destiny', as well as to shape the future of others who are not so fortunate (Bockover 2006, 168).

Bockover argues further that we find no comparable concept of freedom in Confucian ethics to the aforementioned Western conceptualizations. The Confucian viewpoint yields a relational concept of the person, who is thought of in terms of interdependence and duties towards others. As such, harmonious interdependence is certainly preferred over autonomous independence (Bockover 2003, 164). Without dogmatically assuming that such a difference renders Confucianism simply wrong, Bockover's point is that we should reflect on whether the idea of individual freedom, as a conception of liberty rights, should be regarded as universally valid when confronted with a Confucian critique (Bockover 2003, 170-172).

Bockover's argument is prudent in the sense that she highlights the *possibility* of conflict, and does not claim that Confucianism and Internet use are inherently incompatible. But her elaboration of the history of the concept of freedom in the Western tradition is not as strong, especially her reconstruction of Kant's understanding of freedom. However, her insight that culture is deeply constitutive vis-à-vis our understanding of technology is very important. Acknowledging that Internet technology cannot be justified as a universally desirable technology, but that its value is dependent on specific cultural circumstances, we should no longer ask whether China's Internet policy indeed harms freedom of speech; we should rather explore how culture plays a role in justifying the adoption of one specific technology.

**(ii) Pak-hang Wong**

Wong (2013) has recently responded to the question of Confucianism's compatibility with Internet use, focusing especially on the nature and role of social media. He agrees with the conclusion drawn by Bockover, but holds that her argument is flawed because she is working with an outdated conception of the Internet. The Internet has been revolutionized by the invention of Web 2.0 technology. With the emergence of Web 2.0, people can now contribute online content directly, making social-media giants such as Facebook and Twitter extremely popular (Wong 2013, 287). Wong, based on Boyd's (2010, 49) work, discusses three features of social media that are potentially in conflict with Confucian ethics: (i) invisible audiences, (ii) collapsed contexts, and (iii) the blurring of public and private. I will now briefly discuss these in turn.

First, according to Wong, Confucianism understands moral action to be role-based: one's duties, acting in accordance with *rites (li)*, are embedded in and determined by the specific social role or position that one adopts. To act in accordance with *li* means something different for a father than it does for a king; thus, the concept of moral action presupposes knowledge of a web of social relations and one's own specific role therein. But since anonymity is a characteristic of Internet use, such knowledge becomes impossible: the audience, one's social peers, become invisible in the sense that one cannot with any degree of certainty know with whom one is engaging, and this appears to stand in direct conflict with the concept of moral action. Second, and relatedly, is Wong's point about the collapse of context. Wong states that 'contexts are ethically constitutive of the Confucian way of life, as they require people to have a proper set of conducts and attitudes which are context-dependent' (Wong 2013, 219). The potential problem posed by Internet use is that the demarcation lines necessary to separate contexts from each other become blurred or even disappear; as such, the entire concept of cyber-communication, characterized precisely by the absence of a context's regulating force, is in tension with Confucianism.

Last, the blurring of the public and private spheres would be problematic from the Confucian viewpoint. For Wong, the familial sphere is very important for Confucian ethics. It is the root of morality, in the sense that familial relationships are 'prototypical natural affectual relationships', wherein one first learns how to be moral (Wong 2013, 289). As such, Wong argues that Confucianism regards all non-familial relationships as an extension of the moral relation and concomitant obligations one holds toward one's family members (Wong 2013, 289). As such, Wong concludes that the blurring of the distinction between the public and private spheres infringes upon the familial sphere, and as such it stands in direct conflict with moral actions: if the familial sphere is fully destroyed due to the use of the Internet, a Confucian would have no place to learn morality, as only through the family can one learn to be a good son, a father, etc.; these social roles and their interconnection represent and materialize what is morally permissible and what is not (Wong 2013, 292).

Wong and Bockover thus each come to the same conclusion – that Internet use may very well be in conflict with Confucianism – but Wong has provided an elaboration and specification of this claim. The Internet's internal structure, he argues, inherently infringes upon Confucianism's understanding of *socio-moral space*. This is an interesting claim, and if it holds it would indeed imply that Internet use could not be permissible from a Confucian perspective. I conjecture that it does not hold, as his critique (and that of Bockover) can be valid only if based on interpretations of Confucianism that are quite exclusive and fail to see other theoretical possibilities. Confucian thinking is not monolithic but diverse. I will turn to discuss the Confucian concept of *tian xia* and its related moral philosophy. In so doing, I will return to evaluate both Wong's and Bockover's arguments through the lens of *tian xia* and related aspects of Confucian thinking.

### **III The concept of '*tian xia*' [under the heavens] and Confucianism**

#### **(i) The geographical and cosmological concept of '*tian xia*'**

The idea of *tian xia* first put forth in Chinese antiquity is an explicit concept in the Confucian tradition which has been continuously evolving over the course of China's history (Dalong 2007).<sup>63</sup> The term literally means 'under the heavens', and covers at least two interpretations: one is geographical and cosmological, the other moral and epistemological. Historically, *tian xia* emerged during the Zhou Dynasty (1046-256 BC), when the military power of the *zhou tian zi* (son of the Heavens: the carrier of the Heavenly Mandate) was very tenuous. *zhou* was then composed of many tribes, which were unified by *zhou li* (rites of *zhou*): these shared rites constituted a homogeneous cultural identity.

The legitimacy of *zhou's* authority was self-evident, and was understood to stand at the center of the world. A geographical model was developed to accommodate the interpretation of its authority: the world was conceived as resembling a series of concentric circles, from which the authority of the *tian zi* ripples outwards. The way of governance resembled, as Du Zhenteng(2011) argues, a process of colonization. Depending on the geographical distance to the *tian zi*, different obligations were ascribed to people for paying tribute to the central authority.<sup>64</sup>

In this way there developed a very rough perception of the space of *zhou*. It is important to realize, though, that the understanding of *tian xia* cannot be reduced to geographical space. *Zhou*, importantly, also connotes a 'symbolic space' – i.e., it refers to the cultural unity of the people ruled by *tian zi*. As many scholars have noted, one could not plausibly imagine the size of *zhou* by what was written in *zhou li* and *shang shu*. As He (2004) rightly points out: 'If we postulate the territory of Zhou according to what was described in *guo yu*, it would be 100 million square kilometers, which is obviously impossible'; moreover, He argues that it is very hard to believe that the borders of the different states in *zhou* shapes like a full circle as it is envisioned in the

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<sup>63</sup> For a systematic discussion on the development of the *tian xia* view, see 'The Four Corners, All Under Heaven Commanderies and Kingdoms: Transformation and Development of Views of *tian xia* in Ancient China' (You 2009).

<sup>64</sup> In '*Guo yu: zhou yu*', five districts were proposed according to their distance to the central authority (Qiuming 2009, Yinda 1999).

*tian xia* model.

Rather, *tian xia* is better understood as a concept elaborating the cosmological order: the ancients used *tian xia* as a basic structuring principle that made comprehensible the very concept of space (Mingming 2012). As such, *tian* is thought of as a hemisphere covering every inch of land, over which the son of Heaven claimed authority. It should be noted that the concept of space as *tian xia* should not be taken to refer to any specific territory: precisely because it is a basic structuring principle, it does not refer to any land in particular but encompasses all the lands below the heavens.

This cosmology lies at the basis of Confucian ethics. *tian xia* is beyond the borders separating tribes, and later states: the concept is therefore an all-inclusive concept of space. Everyone on earth, regardless of the state where they live, is an inhabitant of the community of *tian xia*, this community being understood as not so much a geographical unit but rather an ethical community. In other words: *tian xia* is a concept that refers to an idea of a moral community of which every human being is a member – it is the basic structuring principle of 'moral space'. Let me discuss this in greater detail.

## **(ii) Moral and epistemological interpretation of *tian xia***

As Wong argues, in Confucianism, *tian* (the heavens) is also a fundamental normative concept. In its high and encompassing stature, *tian* represents the ultimate moral authority which gives all moral judgments their normativity. The *dao* of *tian*, the way/law of Heaven, is the highest moral principle that functions as a normative source to base justifications of human conduct (Wong 2012b). *tian dao* is seen to possess two generic features. First, as the ultimate natural law, it is stable and unchangeable. As Xun Kuang (1995) claims: *tian dao* is constant, it does not preserve itself for Yao's (a wise king in China) benevolence, or perish because of Xia's (a king during the Shang dynasty) brutality. *tian dao* is thus a normative principle that is

general in that it is not dependent on the contingency of circumstance.

Second, *tian dao* is represented in the human world by the concept of *ren* (humanity/benevolence), which is made specific and concrete through requirements that enable people to determine what they ought to do in their daily lives. *li* (rites) represent the application of *ren* and prescribe the right form of conduct in specific situations. Confucian rites prescribe a variety of acts in daily life, encompassing how one should act properly according to one's social roles and how one should cultivate oneself. The concept of *tian xia* is, then, a notion that is both general and concrete, and represents our life-world as it is structured around the concept of *ren*.

In Confucianism, a true gentleman ought to relate himself to the concept of *tian xia*. Contrary to understanding one's 'being-in-space' as the occupation of part of a geographical unit, Confucians perceive one's presence in *tian xia* as an extension of one's moral cultivation. In Confucianism, as Munro (1969) rightly put it, every person is granted equal moral potential by the heavens, and everyone has a direct duty to practice *li* according to the requirements of *ren*, so as to fully achieve his moral potential to be a gentleman.<sup>65</sup> The practice of *li* is role-based, meaning that a person should behave according to what is expected of him in light of his specific social role(s); he could become degraded into something non-human if he fails or is unwilling to do so.<sup>66</sup>

Roughly speaking, as a person, one is expected to carry out the roles of interpreting, specifying, and cultivating *dao*; as a family member, one is expected to respect one's parents, to educate one's children, etc.; as an official, one is expected to serve the government well and *ping tian xia*, bring harmony to all who live under *tian xia*.<sup>67</sup> So

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<sup>65</sup> Confucianism holds that moral potential lies in human nature. A human being, by nature, is capable of behaving morally. This potential is equally shared by all. However, the extent to which one can realize this moral potential depends on one's effort of self-cultivation.

<sup>66</sup> Mencius said, 'That whereby man differs from the lower animals is but small. The mass of people cast it away while superior men preserve it' (Mencius 8B: 19).

<sup>67</sup> Different roles give rise to different duties, which are specified by *li*; however, I am not going into much detail here.

construed, the space of *tian xia* is the extension of the moral cultivation of the gentleman. The concept of *tian xia* forms the basic principle structuring moral space and obliges people to respect all other people, *bai xin*,<sup>68</sup> regardless of the particular state that they inhabit, as members of the land *tian xia* are all moral equals due to their equal moral potential granted by heaven. People who make great efforts to fully achieve their moral potential are praised, while those who do not are deserving of rectification. Respect for people's moral potential gives rise to the duty that others should help those who are either burdened or not willing to realize the possibility of fulfilling this potential by means of education or even, under certain circumstances, punishment.

**(iii) The concept of '*tian xia*' and the principle of '*he er bu tong*' (harmonious differentiation)**

*tian xia*, as it is understood in Confucianism, refers to a space that is both moral and geographical, and is a basic structuring principle of Confucian ethics. However, it would be mistaken to think that Confucians advocate a conception of society that is homogeneous. Quite the opposite: Confucianism, as a philosophical school, fundamentally endorses diversity. People in *tian xia* are thought to co-exist according to the principle of *he er bu tong* (harmonious differentiation). '*he*' refers to a state of affairs in which people do not compete with one another out of egoistic self-interest; *bu tong* means difference or differentiation, which implies that people should not lead lives that are homogeneous with those of their neighbors and peers, or endorse opinions that are identical to those of others.

One interpretation of *he er bu tong* acknowledges that even gentlemen might have different opinions and ways of approaching *dao*; it is thought that they can live in

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<sup>68</sup> *bai xin* is the particular term used to describe people living on earth. It differs from what is denoted by citizens in many ways. *bai xin* (literally meaning 'the people in the different family names') is necessarily affiliated only to the family bond, and not necessarily to any sovereign power.

harmony with one another when they do not only strive to satisfy their egoistic interests (Mu 2002). The Confucian way of life also takes the form of universality. All Confucians should share some basic characteristics in common: First, they should all strongly engage in pursuing the *dao* by making the effort to comprehend the idea of *ren*. Second, Confucians should commit themselves to an established rite system with a sense of flexibility, meaning that they ought to recognize and practice the de facto rites but also be able to adjust and even reform these rites if need be. The *ren*-oriented and rites-based idea provides the common ground of life for all Confucians. However, Confucianism leaves proper space for different practices: People might reasonably disagree about the conceptualization of *ren*, or the reforming of rites. Debates revolving around these disagreements are characteristic of Confucianism's later development, particularly neo-Confucianism.

On the other hand, despicable people will also strive to satisfy their own interests, and yet they will not be able to live in harmony since they constantly fight with one another. Egoism is thus understood as the striving to maximize one's material interests without acknowledging others' due share: this will naturally cause conflict if everyone is acting egoistically. By contrast, since gentlemen are genuinely concerned with *ren*, the moral realm is such that different forms of *dao* can coexist without internal contradiction.<sup>69</sup>

Indeed, Confucianism understands differentiation to be necessary if people are to live in harmony: difference functions as the precondition for the entire idea of harmonious wholeness. Differences manifest themselves in different interpretations of *ren*, different practices of rites, and consequently different ways of living. We can illustrate this through an analogy to the a piece of symphony: its harmony depends on the differentiation of its various tones. The difference in tones makes it possible to compose a coherent piece of music that we are capable of experiencing aesthetically; without harmonious differentiation a sonata would be nothing over and above the

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<sup>69</sup> Legge, *The Doctrine of Means*, P427

sound of your average alarm clock or ambulance. This principle of *he er bu tong*, since it is thought to structure *tian xia*, applies not only to the moral realm, but also the cosmos – which again supports the idea that *tian xia* is the structuring principle underlying both the cosmological-geographical and the moral orders. As was stated in *guo yu*: differences make things, and sameness cannot be sustained.<sup>70</sup>

It is clear that claiming that harmony implies difference is not equivalent to claiming that difference implies harmony: in some or even most cases, different lifestyles within one society would lead to chaos. Difference needs to be structured by a law or principle; it needs to be limited in order to constitute harmony. In Confucianism, this law is *ren*: *ren* transforms difference as part of wholeness by structuring action and experience as purposive – as aimed toward the same end or telos. However, neither Confucius nor later Confucian scholars ever attempted to define *ren* metaphysically; rather, they tended to provide an action-guiding articulation of *ren* according to contextual information within which the question was raised.

Confucius addressed *ren* from various perspectives in the *Analects*. What is clear is that he was reluctant to give *ren* a definition; instead, he explicitly addressed what *ren* actually means to us. In the *Analects* *ren*, positively understood, is to love people (*Analects* 12:22), that is to genuinely care for others, to be sympathetic to others' feelings and act upon them accordingly. Along these lines, the Confucian golden rule teaches us in the first place 'do not do to others what you don't want others to do to you' (*Analects* 12:2); more positively, the man of *ren*, 'wishing to be established himself seeks also to establish others; wishing to be enlarged himself, seeks also to enlarge others' (*Analects* 6:30). More concretely, *ren* means that we should not act if *li* does not permit us to do so (*Analects* 12:1). *zhou li*, as the exemplar of rites, prescribes in detail what is permissible and what is not. Thus the way to achieve *ren* is to moderate our desires. Confucius also talks about how to approach *ren* by prescribing what we should do: that is, to cultivate virtues and to properly respond in

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<sup>70</sup> It is stated that only harmony would give birth to everything, yet sameness would not be sustained (Zuo 2009).

various situations according to the expectations of different social roles. A man of *ren* should be gentle, grave, prudent, peaceful, etc.; he should be someone who pays careful respect and attention to his parents and brothers (*Analects* 1:2; 1:6; 12:1; 13:19; 13:27; 15:10; 17:6). In general, *ren* prescribes universal principles for moral actions while also giving concrete guides for one to act morally within different contexts.

#### **IV Bockover and Wong revisited**

I will now reconsider the arguments made by Bockover and Wong, and show why both are ultimately flawed.

##### **(i) Confucianism and the right to individual freedom**

Bockover holds that the notion of individual freedom stands in tension with Confucianism's conception of personhood. Indeed, in Confucianism, the person is understood to be a role-based agent who is required to act in accordance with rites, and thus individual freedom in the sense of a free choice of lifestyles is never reflected as a constitutive part of humanity in Confucianism. The concept of freedom, which affirms this understanding of individuality, is often constructed in the Western context as the right to liberty that one should have against the power of the state or other individuals. In Confucianism, it might not make a lot of sense to explicitly talk about the right to freedom to choose a particular lifestyle, as the person is primarily understood as a member who has a duty to contribute to the well-being of the whole, rather than as an individual unit who has a claim right upon his fellow persons. As such, Bockover is right in holding that Confucianism does not explicitly endorse such a concept of individual freedom as we tend to talk about it in the West.

Indeed, there exists more or less a consensus that there is a no conceptual equivalent of 'right' in China anteceding the Qing dynasty (1616-1912) (Donnelly 2007; Ching and de Bary 1998; Chan 1997). This in itself does not imply that Confucianism is incompatible with a concept of individual rights. It can reasonably be argued that the

concept of rights, as a individual claim upon others to be entitled to something, mentioned in my discussion of Held's conceptualization of rights in chapter II, is implicitly assumed, despite its not being explicitly articulated in Confucian social philosophy and through its social order.

A society that implicitly endorses a right could be very different from one that explicitly embraces such a right. In the latter case the concept of a right might have a central place in both a shared vocabulary and discourse, and therefore would enable us to conceive, discuss, or even contest it; it might be even crystallized in the society's constitution and laws. In such a society, it is possible to publicly reason about the meaning and status of rights, and to communicate about the interpretation and specification of rights. In this strictest sense, the concept of rights is indeed not found in China's public discourse; but as I will argue in the next chapter, this does not mean that it is not implicitly present. But let me, in evaluating Bockover's position with more scrutiny, assume for now that the notion of rights is incompatible with Confucianism, even implicitly: would this mean that Confucianism denies any account of freedom?

I submit that it does not. If one does not adopt the explicit concept of a liberty right (although it might be implicitly assumed), one's choice to have a better life in term of wealth does not necessarily imply denying the objectives that individual freedom is supposed to protect. Consider the right to food security, for example: in Confucianism, where the concept of duty occupies a central place, people have a general duty to protect and enhance the well-being of others and of themselves. For instance, it is the duty of the king to formulate proper economic policies to ensure that his people live decent lives: Mencius argued that the king has the obligation to provide education and formulate good policies so that people could have decent lives: 'Let mulberry trees be planted around households of five *mu* [*mu* is a measure of area; 6.6 *mu* equal 1 acre], and people of fifty will be able to clothed in silk. In the raising of chickens, pigs, dogs, and swine, let not their times of breeding be neglected, and person of seventy years may eat flesh... Let careful attention be paid to education in

schools, including it especially the filial and fraternal duties, and grey-haired men not be seen upon the roads, carrying burdens on their backs or on their heads' (Mencius 1A: 3).

In the same vein, ideas of consumerism and free trade that Bockover presents as being exclusively protected under the Western conception of freedom can just as easily be protected by referring to the duty of securing well-being in Confucianism. Let me illustrate: when Mencius notices that Xu Xing, the leader of the school for agriculture, claims that the world would be a better place if everyone would farm for himself, he replies negatively. He asks Chen Xiang, a follower of Xu Xing, where Xu Xing got his cooking pot. He got it from a vendor, answered his follower. Mencius then questions why he does not make it himself, as he claims one should. Mencius argues that people are born with different talents, and the ability of different people to be allowed to do what they are good at concerns the welfare of all (Mencius 5A: 4). As such, the ideas of consumerism and free trade might be allowed or even promoted so that the level of common welfare can reach its greatest potential.

So, although Bockover is right in attacking attempts to criticize China's politics on the basis of lack of respect for individual freedom, she is wrong in holding that Internet use in itself is incompatible with Confucianism, because even though Confucianism does not embrace a notion of freedom as a right, the objectives of freedom could well be protected under the rubric of duty.

### **(ii) Confucianism, anonymity, and collapsed contexts**

Wong's argument regarding anonymity concerns the role-based tenets of Confucian ethics. What is here thought to be problematic is that one can communicate in cyberspace without necessarily revealing one's (genuine) identity, which may render it difficult or even impossible to ensure that people conduct themselves in a proper manner. This relates to the problem of collapsed context: the identity of the interlocutors constructs the context in which communication takes place, and since

the role-dependent account of action is determined by contextual features, proper conduct, again, is problematized.

First, as Wong notes, anonymity and the collapse of context are challenges that cyber-communication poses for ethics *in general*, not Confucianism in particular (Wong 2013, 291). Second, Wong fails to see that the concept of *tian xia* can provide precisely the understanding of moral space that could mediate the potential problems related to anonymity and the collapse of context. As Wang Yangming (2006, 968-969), a leading neo-Confucian of the Ming Dynasty, argued: 'A gentlemen sees everything under the heavens in himself. *tian xia* is a big family, and *zhong guo* (the central state) is just one family member. Anyone who strive to distant people is despicable'. The reason why the true gentleman thinks everything is in him is not because of his will, but because *ren* underlies the workings of his mind.

People living in *tian xia* are all family members in a big family of *tian xia*. They are understood to be different, but when guided by *ren* this differentiation is precisely constitutive of harmony. The concept of *tian xia* can be seen as providing a normative context, in contrast to Wong's accusation of the collapse of context, that helps to regulate people's online behavior: they treat one another as *tian xia ren*, people who live under heaven, caring about one another as if they were all family members. That is to say, if a Confucian were to be confronted with an online stranger, or would initiate a talk with strangers for the sake of, say, spreading Confucian teachings, he could still manage to behave properly according to the general rituals he performs toward his family members. Indeed, one behaves differently toward one's father than toward one's son, and yet each ought to be treated with a genuine sense of care. I will elaborate this point below.

Third, what Wong neglects is the fact that ultimately the most fundamental duty put forth by Confucianism is the duty to be a *jun zi* (a morally cultivated person, the person who pursues *ren*), who is to act in such a way that he embodies *dao*. As mentioned, *ren* demands that Confucians acquire certain virtues. Even though certain

virtues, such as being respectable, are role-based, there are several cardinal virtues are to be practiced regardless of one's social role, such as kindness, thriftiness, uprightness, temperateness, honesty, etc. (*Analects* 1:8; 1:10; 13:19). This makes it clear that although Confucianism proposes a role-based understanding of moral duty, Confucian ethics cannot be reflexively reduced to a set of role-dependent obligations.

As such, it is already important to point out that where Wong initially goes wrong is in his failure to see that Confucianism may well be capable of accommodating and regulating anonymous communication, because it can hold, through a consistent reconstruction, that in online communication a Confucian can treat others as potential family members – with kindness, uprightness, honesty, etc. In particular, a Confucian, for precautionary reasons, might treat all his addressees as if they possessed a higher social status, which would mean treating them as if they were older or held a higher official rank, so as to initiate communication and prepare for the adjustment to specific rituals once the addressee's identity is progressively revealed. To sum up, although anonymity will naturally cause pragmatic problems, Confucianism's understanding of moral space in terms of *tian xia* can provide resources to deal with such problems. Note here that I am not saying that Confucian ethics already has a well-developed strategy to cope with anonymous communication; instead, what I have presented above is nothing more than one among many plausible reinterpretations of Confucian ethics that could be used to do so.

Now, the question that remains to be addressed is whether anonymous communication would inevitably endanger role-based communication, particularly the communication done within the Confucian family. First, it is not so problematic for a Confucian father to take part in a Skype call with his son. The Internet can be used to provide a space where Confucian familial rites can be carried out. Although values embedded in the Internet might suggest end-to-end communication, the Internet does not inevitably invalidate the default communicative structure of a particular culture or cultures. It is as difficult for an average contemporary citizen to chat with his president as it would have been for an average Confucian to have had

the chance to talk to his emperor. In fact, people's use of social media reflects the culture in which they reside (Boyd 2007)

On the other hand, the Confucian familial rites system is not a self-contained system but rather a flexible one, which demands continuous reinterpretation and specification. For instance, Confucius himself proposed reforming traditional funeral practices. He was not only strongly against human sacrifice, but even against sacrifices which take a human shape (Mencius 1A:4). What is clear is that the Confucian attitude towards rites is an ever-evolving perspective that is open to changes. Even if anonymous communication becomes indispensable, Confucian ethics might still be able to develop specific new rites that are guided by the principle of *ren*. The golden rule of *ren* demands that the Confucian treat other people, no matter whether or not their identity is known, just as they would be treated themselves. Therefore, Confucian ethics might provide some leeway in the scenario raised by Wong.

### **(iii) The problem of the blurring of public and private spheres**

Wong's argument regarding the relationship between the public and private spheres is problematic because it depends on a questionable interpretation of Confucianism. Confucian thought is quite diverse. Unlike what Wong suggests, in Confucianism the family is surely not *the only* sphere in which a person receives his moral education. The moral space, as I have aimed to show, extends from the mind of a person to his family, then to the state and *tian xia*. Moreover, the family is not even necessarily prioritized in certain circumstances. A long debate in the Confucian tradition concerns the conflict between filial piety and loyalty to the king, which in some situations can override the commitment to one's family.

Some Confucians, for instance Zhu Xi (1130-1200), see the family as the necessary space where people can learn what is morally required of them to develop their moral

potential to become gentlemen.<sup>71</sup> Yet one of the most influential neo-Confucians, Wang Yangming (1472-1529), held that what is really prioritized is the obligation to restore the *fang xin* (lost moral conscience); to restore one's moral conscience is an obligation directly derived from *ren*, which demands an effort of meditation-like self-reflection rather than simply the performance of one's roles.<sup>72</sup>

On Wang's view, it is natural for someone to behave in accordance with his familial roles if he has successfully restored his moral conscience – not the other way around. When one's moral conscience is expressed in a father-son relationship, it manifests itself as filial piety; when expressed between the king and his officials, it is loyalty. Thinking along these lines – to draw a bold but plausible conclusion – the disappearance of the family in cyber-communication does not *necessarily* create an insurmountable difficulty for Confucianism, if it would not harm the development of a person's moral conscience. It might even contribute to such development.<sup>73</sup>

Surely a full answer to the question that what role family plays in Confucian morality would require a systematic reconstruction of Confucian ethics, which I do not have the space to do here; yet it will suffice to point out the potential that the family is not necessarily the origin of morality but can be just a space in which morality is practiced. Another problem is that, as mentioned above, people tend to duplicate the normative structure of the family in cyberspace rather than simply abandon it, and thus the blurring between public and private space might not be so radical.

In addition, it seems that Wong tends to disconnect the online world radically from

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<sup>71</sup> Zhu Xi sees family life as the indispensable means to achieve one's moral potential due to his specific methodology of practicing moral self-cultivation. He proposes an approach called *ge wu zhi zhi*, meaning that one should study the nature of things in order to be enlightened with moral knowledge. In this way, one is required to learn from family life in order to be moral (Zongxi 1986).

<sup>72</sup> The Complete Works of Wang Yangming. P6

<sup>73</sup> One should be fully aware of the comprehensiveness of Confucianism. As a strong ethical tradition, it is surely not monolithic but consists of a variety of different interpretations. Thus, it is not feasible to attempt to give a conclusive interpretation. What I have presented is a nothing but one possible reconstruction among many.

the offline world, assuming there is no connection or interaction at all between the two spheres. In real life, even if the family is in no sense involved in online communication, it is involved in the offline world. Not all of our communication is digital, nor it is unlikely that it will be exclusively digital at any time in the conceivable future. It is not directly a problem when people communicate in cyberspace without much involving the family, because this does not imply that the family is eliminated.

The point here indeed concerns whether anonymous communication would destroy the moral space, the space that, in line with Wong's conception, differentiates the public realm from the private sphere – specifically the Confucian family – which makes morality possible. The communication that acknowledges no differentiation between public and private spheres might indeed radically endanger Confucian morality, as Confucian ethics is based on the extension of one's moral concern from his familial affections to people in general. Although Confucian ethics does not necessarily make an explicit differentiation between public and private spheres in the modern sense, its very structure implicitly assumes a necessary distinction between one's family and one's public life, which is based on and is supported by the Confucian anthropological assumption that the family bond lies at the very essence of human beings. The point is that the use of the Internet does not necessarily suggest the disappearance of public-private differentiation. The more realistic expectation is that both the public and private spheres might be reshaped and reconsidered due to the use of the Internet, even as the differentiation is meaningfully sustained. Empirical evidence strongly supports this view. As shown in Chapter I, average Internet users might be annoyed by noticing that their public information is being published online instead of on paper, or feel regrets about carelessly posting their location on social-media platforms. The confusion generated by the use of the Internet at the moment triggers more awareness about understanding the differentiation between public and private spheres.

## V The Internet and the concept of '*tian xia*'

As indicated above, I would hold that the Confucian concept of *tian xia* can ground a worldview that perfectly accommodates Internet use. More positively, as Zhao (2006) argues, the concept of *tian xia* helps to introduce a political principle of 'world-ness' that can be used, via a careful reconstruction, to transcend the principle of 'internationality'. If the value of universal communication means that everyone should be allowed to be connect with one another, regardless of nationality, then the Confucian understanding of *tian xia* might provide us with grounds for embracing Internet access.<sup>74</sup>

This particular conceptualization of space is, after all, borderless. Moral space as structured by *ren*, through a proper reconstruction, is thought to include everyone living under the heavens as members of a human community who share the same moral potential. Thus it transcends the boundaries of the national state, and Confucianism can accommodate the idea of a world wherein people can freely interact with one another. It should be noted here I am *not* arguing that the concept of *tian xia* will immediately provide a ready-to-use concept as an alternative to cosmopolitanism. It is quite implausible to think so, as the concept of *tian xia* was developed in a context where no clear sense of sovereignty and internationality had been formulated. What I have attempted to do is to articulate the potential of such a concept for accommodating the spirit of Internet use: the proposal, namely, that people should be allowed to communicate freely regardless of their geographical location.

Furthermore, Internet use might even support and enhance the realization of the Confucian doctrine of 'harmony in difference'. Confucianism, as an ethical school and

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<sup>74</sup> See John Perry Barlow's Declaration of the Independence of Cyberspace (1996): 'Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather'. Last accessed July 2, 2014, <https://projects.eff.org/~barlow/Declaration-Final.html>.

not as a political ideology adopted by the state to control people, is very open to diversity (Wei-Ming 1996). Historically, from the Han dynasty (206 BC-220 AD) onwards, feudal China treated Confucianism as the only legitimate political doctrine by institutionalizing its teachings in the official state examination. In this historical manifestation, Confucianism leaves little room for diversity. However, as an ethical school it is very open to contestation and reinterpretation. Confucianism does not necessarily refer to what Confucius the historical figure himself held as an opinion; the key concepts of his teachings should be understood as flexible vis-à-vis the historical context.

For instance, Confucius regarded the music of the state of *zhen* as obscene or obsessive and proposed that it be banned. His attitude clearly represented his personal opinions and was dependent on what was regarded as obscene in a specific historical context. But since Confucianism does not provide a definition of such concepts, their precise meaning is open to contestation and input from different viewpoints – e.g., Neo-Confucianism, a Confucian school that became highly developed in the Song (960-1279) and Ming (1368-1644) dynasties, is widely acknowledged to be the result of interaction between classic Confucianism, which was developed before 221 BC, and Buddhism.

As I have hinted, this openness is not merely a contingent historical development but a central feature of Confucianism: harmony is thought to be dependent on difference, where difference is thought to be limited by *ren*. Cyber-communication allows us to engage in discussion with people holding very different viewpoints, and such discussion contributes to the harmony of the whole. Differences in cyberspace are also tolerated and even affirmed insofar as they do not violate the practice of *ren*. In other words, *ren* can be seen as the very *telos* in which all differences can be structured toward the achievement of harmony; otherwise, differences would only generate conflicts. Nevertheless, to be liberating, the concept of *ren* is specified neither as a principle nor as a group of moral requirements in Confucianism. What *ren* is, in general, is articulated in the comprehensive rites system, which is open to

reform and adjustment.<sup>75</sup> Yet how precisely we should understand this would require a separate essay.

## VI Conclusion

In this chapter, I have discussed the compatibility issue of Internet use and the philosophical school of Confucianism. I have reviewed the arguments made by Bockover and Wong, who both claim that Internet use is not compatible with Confucian ethics, arguing that it embeds a specifically liberal value of freedom (Bockover), and that its features of anonymity and de-contextualized communication are completely alien to or destructive for Confucian life, as Confucian ethics is grounded on the concept of duty, which mainly prescribes what we owe to one another, and on role-based and context-sensitive communication (Wong).

I then argued that both Bockover and Wong's arguments are based on piecemeal interpretations of Confucianism, which fail to grasp its comprehensiveness. I argued that, in the first place, without presupposing an idea of the right to freedom, the objectives of freedom could be well protected by the idea of duty. Thus, so-called universal communication, free trade, or consumerism, under which the concept of freedom has been placed, can also be fulfilled within the Confucian sense of proper life and conduct. Then I proposed a reconstruction of Confucianism, where I explained how *tian xia* is related to *ren* as the condition for differentiated harmony.

The Confucian idea of *tian xia* is a moral concept that addresses everyone under the heavens as family members. In addition, a principle of harmony with differentiation applies to the space of *tian xia*, which allows and promotes the adoption of different opinions and related lifestyles within the restraints of *ren*. Based on my reconstruction of some key concepts of Confucianism, I argued that Confucian ethics could very well accommodate the use of the Internet. If my argument is sound, then

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<sup>75</sup> For instance, in Confucius's time, there was a tradition of burying slaves with their dead masters as an act of respect. Confucian condemned this tradition because it ran counter to the requirements of *ren* (*Mencius* 1A: 4)

Confucianism is compatible with Internet use, although – through recourse to the demands of *ren* – it may place constraints upon what is permitted in cyberspace, and the way the Internet is used in achieving particular goals. Thus, the ‘Internet imperialism’ argument is altogether misguided as it stands. Having argued this position, I will in the next chapter discuss the possibility that Confucian ethics can justify a human right to Internet access.

## **Chapter VI Internet and Confucian Society**

### **I Introduction**

In the previous chapters, I have discussed the possibilities of justifying a human right to Internet access, as either a moral or a practical idea drawn from the Anglo-American philosophical tradition. In addition, I have attempted to refute arguments that hold that Internet use is not compatible with Confucian ethics. Nevertheless, even if my refutation is true, it does not immediately follow that Confucian ethics possesses certain resources that might be used to embrace a human right to Internet access. I do not suggest that justifications presented in previous chapters cannot be universalized; rather, I tend to think that if they are accompanied with careful argumentation they can be accepted by different traditions.

Nevertheless, I committed myself to the importance of culture in the process of understanding, embracing, and appreciating human rights conception(s), as we are not purely rational individuals who can opt in and out of different cultures as we choose. Taking this into consideration, it makes a great deal of sense to explore further whether Confucian ethics can be shown to have, through a careful reconstruction, the resources to accept and value the idea of a human right to Internet access. To address this question, I will first study whether Confucian ethics, through reconstruction, can accommodate the idea of human rights at all; if it can, I will address whether it can accept and value the human right to Internet access in particular.

### **II Is there a concept of ‘right’ in Confucianism?**

Among historians, it is widely accepted that there is no word equivalent to the Western concept of ‘right’ in Confucianism (Ching and de Bary 1998, Donnelly 2007, Chan 1997). The first translation of ‘right’ into Chinese, *quan li*, was made by the American missionary William Alexander Parsons Martin in his translation of the *Law*

*of Nations* in the nineteenth century. The Chinese character *quan*, as a verb, literally means ‘weighing between different options,’ while *li* means ‘interests’ (Ming 2002). Thus, this translation fails to cover the Western meaning of rights. However, the word’s not being not explicitly found in the traditional ethical vocabulary does not in itself imply the complete absence of the idea.

As I have argued in a previous chapter, Hohfeld divides the uses of rights into four categories: power, privilege, claim, and immunity. To summarize once again very quickly: to say A has a right as power means that A is capable of constructing a relationship in which he could hold someone in obligation to do something he wants that person to do. For instance, the power of the police officer gives him or her the capability of obliging a driver to pay a speeding ticket. The correlative of power is the liability of his addressee, meaning precisely in the speeding case that the driver is not entitled to reject the fine.

The right as privilege means that one can do what one wants, because one does not have the duty to refrain from doing it, and others do not have a right to prohibit that person from doing it. For instance, a right to surf is a privilege insofar as you do not have an obligation to do it and others have no right to demand that you surf. Thus, the opposite of privilege to P is that A has a duty to P. The correlate is that others have a right to hold A to be obligated to P.

The right as immunity means that one has the power to reject the obligation that someone else puts on him. For instance, according to ancient Chinese conscription rules, if one of two brothers in a family has already joined the army, the second son could decide freely whether to opt in or out of military service. The juridical correlate of this immunity right is disability, meaning that someone is not capable of waiving the obligation placed on him.

Last but not least, the right as claim means that one’s demand would hold others in obligation to do or not do something in order to fulfill A’s rights. Thus, a claim right

conceptually relates to the concept of another's duty. The opposite of one's having a claim right is simply not having a claim right. The question for us here is now whether in Confucianism we also find the use of one of these conceptions.

In Confucianism, there are some ideas that are close to an understanding of the right as power. The Chinese character *quan*, as a noun instead of verb, literally means authority, which can be seen as referring to institutionalized power. The emperor, in most dynasties, had *quan* to select and punish officials. In other words, he had the power to hold others in obligation to follow his commands. We can also possibly find an idea of right as privilege in Confucianism, as I have shown in the example of military service given above. There is also the idea of right as immunity. For instance, in Confucianism, the emperor does not have legitimate authority to command his officials to persecute innocent people. Mencius made it quite clear that it is wrong to gain the whole world if one kills even one innocent.<sup>76</sup> In this case, officials have immunity from following the command and can abstain from doing so.

The question remains whether Confucianism can embrace an idea of claim rights. I think it is quite plausible to think so. We can interpret various Confucian writings in a way that causes us to wonder whether they logically presuppose the rights of others. Methodologically, one can ask the following question: Do not specific duties only make sense if you reconstruct them in a way that logically requires another agent to have a right? That means if we – in a Hohlfeldian sense – assume that claim-rights correspond to strict duties possessed by other agents, then it is methodologically possible to investigate whether some duties necessarily presuppose correlative claim-rights. So, one can say that if A has a right to x (e.g., not to be killed), then all others have a duty y (not to kill human beings). If we find only the terminology of duties and not that of rights, we can turn this around and say: If there is a duty y (not to kill human beings), can that duty be justified without assuming a right to x (not to be killed)? In what follows I will use this methodology when interpreting certain

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<sup>76</sup> 'None of them, in order to obtain the throne, would have committed one act of unrighteousness, or put to death one innocent person...' (Mencius3A:2).

Confucian texts.

For instance, the classical textbook *san zi jing* (Three-Character Scripture) states that it is the father's fault if his children are not educated (Qitong 2010). Since Confucianism prescribes that parents have a duty to provide children with education, as a correlate, their children can be seen as having a claim to education. In addition, a wife can also be seen as having a claim right to her husband in certain situations. For instance, it is stated in the Book of Rites (Pinzhen 1983) that a wife should not be divorced from her husband if her parents were to die after her marriage, since she would have nowhere to go.

In this case, the wife can be seen as having a claim right to not to be divorced from her husband. It should be noted here that the claim rights of education and not to be divorced certainly do not presuppose a modern understanding of the person, which would regard the husband, father, children, and orphaned wife as equal individual right-holders in the full-blown sense. A man's good and honorable treatment of children and a wife might derive its necessity and normativity from his desire to be a virtuous man, and henceforth has nothing to do with human rights. However, certain ways of treating one's children and one's wife in Confucian ethics can be seen as being derived from their inner worth and dignity. I will explain this point further below.

### **III Can Confucianism embrace the human rights concept?**

I have shown so far that the fact that 'right' as a linguistic term cannot be found in the Confucian tradition does not necessarily mean the idea of right is absent from it. Along these same lines, the fact that the term 'human right' is lacking does not entail that the concept is not implicitly assumed within Confucian ethics. Yu Yingshi (2000), for instance, argues that the absence of 'human rights' as a term does not in itself imply an absence of the concept.

Yu argues that human rights in Confucianism are clarified and specified in terms of

the ruler's duty. As merely terminology, the human rights concept would have been redundant in ancient China. He quotes Mencius to explain how the duties of the emperor are clarified and specified, and notes that once these have been clearly conceptualized, the rights of the people can be derived. Mencius argues explicitly that the emperor has various duties towards his people. In general, he should acknowledge four: first, he has to respect his people; second, he is obliged to provide them with basic security; third, he is obliged to enhance their wealth; fourth, he has the duty to provide them with basic education (Mencius1A: 3). These four basic duties, when we exchange the ruler for the people as addressee, can be seen to correspond to rights on behalf of the latter.

Compared to Yu Yingshi, who approaches the question of human rights from the perspective of the ruler's duties, Stephen Angle (2002) makes a more direct argument concerning human rights in Confucianism, focusing on the needs of people and arguing that Confucianism endorses the legitimate desires of all. For instance, he concludes along the lines of Zhu Xi (1130-1200) that only an excessive desire for elegant taste should be condemned, whereas the natural desire for food is condoned by the law of heaven. On this view, people's desires can be understood as a normative basis for equal claim rights – derived from the law of heaven. The law of heaven is understood, as I explained in the previous chapter, as the ultimate source of normativity. Specific actions are considered to be morally right because they meet the demands of rites.

In light of this view, Confucian ethics can be read with an emphasis on its inclusion of many basic desires, such as the need for food and sex, security, education etc.; moreover, it holds that these interests are legitimate, and that all are entitled to them. These interests correspond to others' obligation not to infringe upon them, and when possible even to support their realization. The question now before us is whether this is where the normativity of these plausible universal right claims lies. To address this question, a discussion of human dignity should be mentioned.

Zhang Qianfan (2000) argues, along with Murno's (1969) investigation, that Confucian ethics holds that all human beings have inherited from the heavens the same moral potential, which partly constitutes their dignity. This dignity, in turn, prescribes certain actions and prohibits others. To elaborate: according to Zhang, Confucianism can be read as supporting a dualistic model of human dignity. First, all human beings, regardless of their sex, race, or social status, inherit an equal share of moral potential from heaven. So construed, all human beings are capable of making moral effort. Second, endowed as we are with this precious potential by heaven, we are obligated to fully realize it in order to become a true gentleman.<sup>77</sup> Thus, in the Confucian framework, we are dignified persons and deserve a certain sort of treatment with care simply because we are humans as such. Confucius even opposes the ritual of burying clay figures for immolation, as they have been given human shape. At the second stage, once one has become a gentleman through strict self-cultivation, one is dignified in the full sense that wins us certain entitlements to perform particular actions: to serve the government is one of the paradigmatic examples.

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<sup>77</sup> Mencius argued that by nature every human being has *si duan* (four resources of morality) and each has an obligation not to deny but to fulfill them. In addition, he argued that people should be allowed to fully develop them, and this development should be facilitated. "We may perceive that the feeling of commiseration is essential to man, that the feeling of shame and dislike is essential to man, that the feeling of modesty and complaisance is essential to man, and that the feeling of approving and disapproving is essential to man. The feeling of commiseration is the principle of benevolence. The feeling of shame and dislike is the principle of righteousness. The feeling of modesty and complaisance is the principle of propriety. The feeling of approving and disapproving is the principle of knowledge. Men have these four principles just as they have their four limbs. When men, having these four principles, yet say of themselves that they cannot develop them, they play the thief with themselves, and he who says of his prince that he cannot develop them plays the thief with his prince. Since all men have these four principles in themselves, let them know to give them all their development and completion, and the issue will be like that of fire which has begun to burn, or that of spring which has begun to find vent. Let them have their complete development, and they will suffice to love and protect all within the four seas. Let them not to be denied that development, and they will not suffice for a man to serve his parent with" (Mencius3A:6).

I am not defending the position that Confucian ethics embraced a full-fledged concept of human rights. This cannot be true, especially when we acknowledge the fact that the human rights concept is a modern invention that is largely indebted to Western Enlightenment thinkers (McCrudden 2013 p4-5). What I have tried to do, by introducing the idea of duty and its relation to legitimate desire and human dignity in Confucian ethics, is to explain that there are not necessarily irresolvable conflicts between human rights and Confucianism; and in addition I suggest that Confucianism, through proper reconstruction, can be used to support the idea of a human right. Thus far, I am able to conclude that Confucian ethics should not be incompatible with the idea of human rights: the universal right to have others refrain from infringing upon, and also the right to claim assistance in, the satisfaction of the human person's basic needs. Having addressed this question, I will now turn to examine whether Confucianism would accept the idea of a human right to Internet access.

#### **IV Confucianism and the human right to basic goods**

To reiterate, heaven grants the same moral potential to all human beings, and everyone is obliged to heaven to actualize this potential by the constant moral cultivation of oneself. Because of the individual's moral potential, which Zhang refers to as one part of human dignity, a person in general should be treated with care. Second, since we each have this potential, each of us is also obliged to become a gentleman. If one fails to act to fulfill this duty, one will be degraded to the level of an animal.<sup>78</sup>

Fulfilling the duty to become a gentleman requires much effort. In general, Confucian ethics proposes the taking of two approaches. The first approach involves external

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<sup>78</sup> Mencius said: 'That whereby man differs from the lower animals is but small. The mass of people cast it away, while superior men preserve it' (Mencius 8B: 19). One should not read this sentence literally; it is, rather, an expression of emotion. As Zhang Qianfan rightly points out, the moral potential granted by heaven is equally shared by both a selfish little man and a gentleman. Little men should not be allowed to govern the state, but their basic needs are of course protected.

cultivation: it requires careful study in propriety, literature, music, archery, charioting, and mathematics. The goal of studying these activities was not only the mastery of specific skills (*zhou li* 2:2); rather, Confucius saw these activities as the materialization and instantiation of Confucian virtues, and thus practicing them would help a person realize and internalize Confucian ethics.

For instance, in archery practice, the target represents the ideal model of the social role of the archer. If a father practices archery, he should bear in mind that the target represents a model of the good father. The same holds for the king, a chancellor, etc. A perfect shot is a symbolic representation that one is living up to his social roles as expected. Of course, these specific rituals are no longer practiced in everyday Chinese life apart from some Confucian events. Looking beyond the specific rituals, we could see what features in Confucianism represent its intrinsically practice-based rather than merely contemplation-based way of approaching morality. The second approach is internal, to put it simply: it requires constant reflection on what one has done in everyday life, and by doing so, one is required to differentiate between right and wrong actions and thus make an effort to realize the law of heaven.<sup>79</sup>

It seems clear that Confucian ethics prescribes a group of specific actions for self-cultivation so as to fulfill the basic moral obligation of becoming a gentleman. As such, it can be thought to support the legitimacy of people's claims to minimal material support for life and education, since these things are indispensable for self-cultivation. It is impossible to develop one's moral potential without basic goods such as food, shelter, and a decent education. These goods are, as I have shown, derived from the emperor's duties by Mencius, and later on are grounded in Zhu Xi's distinction between legitimate and illegitimate desires. If a person is denied the freedom to access these basic goods, he necessarily relinquishes the duty of becoming

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<sup>79</sup> Views on how to engage in genuine self-reflection and what we can achieve from it change from scholar to scholar. This becomes extremely important in neo-Confucianism during the Song and Ming dynasties, but I will not go into detail about this here, as it is not the focus of this chapter.

a gentleman, and this would logically contradict his humanity by preventing him from attempting to fulfill his full moral potential.

If he realizes, on pain of self-contradiction, that for the sake of carrying out the basic duty to be a gentleman, he needs to have the freedom to access the basic goods of life and education, he would, in line with Gewirth's argument presented in the previous chapter, claim that he has rights to these goods. Second, since Confucian ethics sees everyone as having the basic duty to be a gentleman, endowed as we all are with equal moral potential from the heavens, it follows logically that one needs to acknowledge that others, who are also human beings possessing the same degree of moral potential, should have legitimate claims, namely rights, to goods of minimal material support and proper education.

As such, I would say that there are certain claim rights that could be derived from the basic duty to become a gentleman in Confucianism. These rights are understood as universal in the sense that they are thought to apply equally to all in society. People have these rights simply because they are human, possessing the same baseline of moral potential and the same requirement to fully realize their morality.

Having addressed the question of whether Confucianism can accommodate the idea of human rights, I will now discuss whether Confucianism can accommodate the notion of a specific human right to Internet access. To examine this issue, I will relate Internet use to one of the most important normative concepts in Confucianism, namely *min xin* (the will of the people) as an aggregation of individual rights, and by specifying how Internet use could contribute to the actualization of this principle, I will elaborate how Internet technology is potentially significant for Confucian ethics.

## **V The concept of *min xin* as an aggregation of individual rights**

As I have argued, Confucian ethics justifies the satisfaction of people's basic needs, regarding these needs to be essential for moral self-cultivation, a specific program of purposive action underlying the Confucian sense of right living. The demand of these

needs, from the collective point of view, in ancient China was called '*min xin*'. The idea of *min xin* plays several significant roles in Confucian society, so I will explain it in much detail below.

*Min xin* literally means the will of the people; it represents their legitimate claims to what I will now call the basic rights of people. The idea of *min xin* was first introduced to advise the Zhou ruler.<sup>80</sup> Roughly stated, *min xin* was seen as a human representation of the will of heaven. As shown in previous chapter, *tian* is seen as the ultimate normative source of Confucian ethics. The general demands of heaven need to be articulated in order to function as an ethical principle. In classic Confucianism, there are two ways to articulate the demands of heaven.

First, the idea of *tian ren he yi* (heaven and people are one), which was elaborated by Dong Zhongshu (170-104 B.C.), the leading Confucian who first made the Confucian school the dominant ideology of the government, denotes that the will of heaven can be revealed through natural phenomena. More specifically, he argues that if an emperor rules the state in a way that abides by the demands of heaven, the weather will appear to be congenial for farming; if he violates heaven's demands, natural disasters, such as earthquakes, might occur as a warning. The emperor is expected to seriously reflect upon his actions, and should fast as a form of tribute to heaven if disasters occur (Zhen 2009). This tradition, superstitious as it was, acted as a strong restraint on the authority of the emperor.

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<sup>80</sup> This happened when the Zhou Dynasty replaced the Shang Dynasty. Zhou scholars concluded that one of the reasons for the Shang Dynasty's failure was the Shang emperor's belief that he himself possessed the demands of heaven. The Books of *zhou*, Book I. The Great Declaration: 'The king Zhou of Shang has behaved with cruel tyranny to his reprove and helper. He says his is the decree of heaven'. Legge (1992), P291. This idea was radically transformed in the Zhou era when it was argued that heaven does not lean to anything but *de* (virtue). Thus the king is expected to be virtuous in order to be consistent with will of the heaven in his running of the country. 'Great Heaven has no affections; it helps only the virtuous. The people's hearts (will) are not constant; they cherish only the kind. Acts of goodness are different, but they contribute in common to government. Acts of evil are different, but they contribute in common to disorder. Do you be cautious!'. The Books of *zhou*. Book XVII. The Charge to Zhong of Cai. P490

Second, it seems that Confucianism confirms an idea that the demands of heaven are represented by the will of the people. Heaven's demands, obscure as they may be, become comprehensible in the world through the articulation of the people's will. It was written clearly in the Book of *zhou* that 'Heaven sees as my people see; Heaven hears as my people hear', elsewhere: 'Heaven loves the people, and the sovereign should revere this mind of heaven'.<sup>81</sup> To this extent, the people's will can be seen as the articulation of heaven's demands in the human world, and henceforth the demands of heaven and those of the people bear the same normative weight. In addition, Confucianism also held that heaven stands in line with the needs and desires of the people.<sup>82</sup> As to how the will of the people could represent the demands of heaven, this is another topic whose investigation has to do with understanding the specific model of Confucian cosmology, which I have no place to discuss here in detail. Taking this position as a given, I will now elaborate how the idea of *min xin* can be instantiated and actualized.

The roles of *min xin* can be thoroughly understood only within the Confucian theory of the state. The relation between people and the state in classical Confucianism needs to be reviewed in order to understand the normative structure of the Confucian state. Scholars generally agree that the ideal Confucian state is one that conceives the people as its foundation (Kang-zhuang 2000). The Songs of the Five Sons, clearly suggested such a foundation, and furthermore proposed that the people could strengthen the state.<sup>83</sup> To elaborate: this shows, first, that the power of the state is

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<sup>81</sup> The Book of *zhou*, Book I. The Great Declaration. Part II. P290; P292.

<sup>82</sup> The Shoo King, part V in the Books of *zhou*, Book I, The Great Declaration. 'Heaven compassionates the people. What the people desire, Heaven will be found to give effect to.' P288.

<sup>83</sup> The Songs of the Five Sons. Part III. P158:

The people should be cherished;  
They should not be down-trodden;  
The people are the root of a country;  
The root firm, the country is tranquil.  
When I look throughout the empire,  
Of the simple mean and simple women,

derived from the people, and moreover the people are the agents that can positively support the state by strengthening its power.

On the other hand, it is widely acknowledged that the people can overturn the state if they so want. A famous, often quoted metaphor likens the relation between the state and the people to that between water and a boat; the water has the power to both raise up or capsize the boat.<sup>84</sup> Thus, the people's power is seen as a double-edged sword that should be carefully wielded. The important question is obviously whether these statements regarding the relation between the people and the state are descriptive or normative. I will argue they are both.

The king, as a representative of the state's sovereignty who is often referred to as the son of heaven, is seen as both noble and holy. He demands ultimate loyalty from his officials and from the people as a whole, and in return he provides them with security, welfare, and education. The moral authority of the king is not derived from his personal attributes; rather, it comes from his social status as a king. Thus, loyalty should be given only to he who lives up to the obligations specific to a king (*Analects* 12:11). Confucian ethics provides a theoretical foundation for this conception.

In addition, Confucianism prescribes a normative teleological order that governs the relation between the people and their king. Mencius argues that the people are the most important entity in this order; the state comes second, and the king is least important. More specifically, the idea is that the legitimacy of kingship and the state is based on how these institutions respond to the will of the people. For instance,

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Any one may surpass me.  
If I, the one man, err repeatedly;  
Should dissatisfaction be waited for till it appears?  
Before it is seen, it should be guarded against.  
In my relation to the millions of the people,

I should feel as much anxiety as if I were driving six horses with rotten reins.

<sup>84</sup> It is argued that the ruler should rule his subjects with their acceptance rather than simply impose rules and laws on them. As the 'lord is the boat; his subjects the water. It is the water that sustains the boat, and it is the water that capsizes the boat' ((Xunzi 1988 p103)

Mencius states that people are capable of overturning the state, and they can legitimately do so if necessary: when the king asked Mencius whether it was morally wrong for King Wu of *zhou*, who used to be an official of King Shang, to overthrow King Zhou of *shang* (1600-1046 BC), Mencius answered: ‘I have never heard about King Shang being killed, I only heard about a brutal ruler that was overthrown by his people’. By condemning the king's failure to fulfill the duty of his kingship to respond to the will of the people, the revolution was justified, even praised.<sup>85</sup>

Besides seeing the people's will as the normative basis of the state and of kingship, *min xin* in Confucian ethics also determines the king's political strategy in ruling the state. When King Xuan of Qi confessed to Mencius that he was obsessed with beautiful women, Mencius did not criticize his needs but suggested to the King that if he likes women, he should also affirm this as a general need for his people. To be more precise, Mencius proposed he should make sure that there are no single men and women under his rule. Elsewhere, he argued that the king should like what his people like and hate what his people hate.<sup>86</sup> On this reading, the king is seen as the representative of the people. To possess legitimate authority, the king ought to pay heed to what his people say and act according to a principle of reciprocity: the idea, that is, that the people need what he himself needs.

In addition, Mencius argues that *min xin* should be seen as one of the standards to determine rewards and punishments. The king is supposed to listen to the people with regard to his use of punishments: ‘When all those around you say this man deserves

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<sup>85</sup> Mencius said, ‘The people are the most important element in a nation; the spirits of the land and grain are the next; the sovereign is the lightest’ (Mencius 13B: 14); elsewhere he stated, “he who outrages the benevolence proper to his nature, is called a robber; he who outrages righteousness, is called a ruffian. The robber and ruffian we call a mere fellow. I have heard of the cutting off the fellow *zhou* [a king of the Xia dynasty who was famous for his brutality], but I have not heard of the putting a sovereign to death, in his case’ (Mencius 2B:8)

<sup>86</sup> ‘The King said, “I have an infirmity; I am fond of beauty.” The reply was, “Formerly, King Tai was fond of beauty, and loved his wife [...] At that time, in the seclusion of the house, there were no dissatisfied women, and abroad, there were no unmarried men. If your Majesty loves beauty, let the people be able to gratify the same feeling, and what difficulty will there be in your attaining the royal sway?”(Mencius 2B: 5).

death, don't listen to them. When all your great officers say so, don't listen to them. When the people all say this man deserves death, then inquire into the case, and when you see that the man deserves death, put him to death. In accordance with this we have the saying, the people killed him' (Mencius 2B:7). Therefore, the will of the people is not only a hypothetical source of normativity, but also something that should effectively be consulted. Nevertheless, the quotes above do not suggest that Mencius is in any sense a populist figure. As mentioned in the previous chapter, *ren* prescribes golden rules that are supposed to be carried out by all regardless of what each individual's wishes might be. Confucian teachings are designed to help people work towards and if possible realize a genuinely moral self – that is, become a true gentleman – through the restraint of one's self-centered interests and the cultivation of moral personhood. It is moral persons who constitute the idea of *min xin*.

All in all, the will of the people as the aggregation of individual justified desires that can be seen, through a reconstruction, as a conception of human rights in classic Confucianism is instantiated and actualized through its grounding of the state's legitimacy and its restraints on the king's behavior. In addition, the king should consult the people's will when making policy decisions: as mentioned in the previous chapter, the idea of *ren* is defined not metaphysically but contextually, which is to say that *ren* needs to be continually interpreted and reinterpreted in order to properly address ethical questions. *min xin* certainly contributes to the articulation of the requirements of *ren* over the course of history. As such, one could see *min xin* sharing some important similarities with the idea of democracy with respect to legitimizing governance, representing the people's will, and restraining the power of rulers; yet it does not contain the one-person one-vote prescription and does not claim that the people should rule themselves.

However, Liu Qingping (2009) argues that Confucians understand *min xin* instrumentally rather than as an end in itself, implying that *min xin* is valued by the king simply because it is instrumentally important in maintaining his authority. He argues that Confucian scholars merely discussed *min xin* with the intention of

securing the rulership of the king, who sees the whole state as his family property. If this is true, the effort to reconstruct the legitimate desires of the people as equivalent to human rights might all be in vain. More specifically, he quotes a discussion between Mencius and Wan Zhang in which Mencius praised Shun for giving his brother Xiang, who had attempted to murder him several times, a piece of land without punishing him. Wan Zhang asked Mencius why Shun punished the three others who committed less serious crimes than Xiang. It seems quite obvious that Shun cared more about his brother than his people: he even gave land to him and allowed him to live on funds raised through taxation, although he did keep him out of office.

Nevertheless, I think this is a misunderstanding of the Confucian mentality. What Mencius discussed is nothing particular to the relationship between the king and his brother, but rather concerns the relationship between family values and social justice. Confucius also praises a son's action of covering up his father's crime in certain situations. One should not interpret this attitude to mean that Confucius is indifferent toward social justice. In fact, the opposite is true, since Confucian ethics is founded on the affirmation and appreciation of human affection, or, more specifically, family values: the very idea of social justice is based on familial affection.

Without familial affection, the whole framework of Confucian ethics would collapse since Confucian values – including filial piety, fraternity, and loyalty – would be severely undermined. Confucianism simply holds that it is other people's job to hunt down the criminal, not the son's. In the case of Shun, his arrangement with his brother serves as a moral example of the familial values undergirding Confucian society. In a similar vein, one could think that he acts this way precisely because he cares about the will of the people as the aggregation of people's rights, since no one by nature would want to kill his brother.

Above I have discussed the Confucian idea of legitimate desires, which can be reconstructed as an idea of human rights. Then I discussed how the idea of *min xin*, as

an aggregation of individual legitimate desires, can be instantiated and actualized in a Confucian vision of the ideal state through the carrying out of expected roles. In so doing, I can now take my line of thinking a step further and investigate whether Internet use could have helped the actualization of the people's will, had Confucian society possessed this technology.

## **VI *min xin* and the human right to Internet access**

I will now discuss how Internet use would facilitate the concept of *min xin* and, furthermore, will try to justify a human right to Internet access in a Confucian state by articulating its instrumental value to the instantiation and actualization of *min xin*. In doing so, I will avoid, to a large extent, using implicit Western concepts in understanding the Confucian conception of the good life; this will make my justification stronger in the face of a Confucian critique. If my argument holds, it seems implausible to reject Internet technology based on a concern about cultural integrity.

I am not assuming that modern China is still the Confucian state it used to be; rather, I aim to say that Confucianism's influence on modern China is still relatively strong, especially considering increasing study of Confucianism in recent years.<sup>87</sup> Scholars such as Jiang Qing (2014) and Fan Ruiping (2012) have even suggested that China should adopt a Confucian form of constitutional politics. My goal here is humble: I simply aim to show that Confucian values are not hostile toward the use of the Internet. Online censorship and policies that cut off Internet access cannot refer to Confucian ethics for their justification.

As was presented above, the Confucian ethical framework pays great attention to *min*

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<sup>87</sup> Nowadays many more Chinese universities have established schools of Chinese classics, and much effort is put into the study of Confucianism. In addition, the Chinese government has been investing in building up Confucian institutes all around the world, aiming at promoting Confucian culture. For more information, see Joseph A. Adler's paper "Confucianism in China Today." Last accessed on August 7, 2013, <http://www2.kenyon.edu/Depts/Religion/Fac/Adler/Writings/Confucianism%20Today.pdf>.

*xin*. However, there is a large gap between theory and practice, which hinders the actualization and instantiation of *min xin*. In practice, Confucian China is surely a society that pays a great deal of respect to government officials, while the social status of average people is extremely low. Because of the emphasis on familial values, the Confucian state has also long been criticized for the problem of nepotism.

In general, the power of the emperor was so strong that sometimes he could transgress the law without consequences.<sup>88</sup> Unlike in theory, where the relationship between the emperor and his people is essentially symmetrical, in practice the emperor and his officials are still seen as pseudo-parents, though the average people, in most situations, are not treated as their pseudo-children. Confucian scholars indeed made a continuous effort to reform the political institutions so as to construct a Confucian utopia; however, in general, much effort was still given over to studying moral cultivation.

The orthodox neo-Confucian Jiang Qing (2003) argues that it is mistaken to hold that Confucianism is just about the school of *xin* or mind-heart (an influential school that focuses on investigating the methods of practicing self-reflection and meditation); rather, Jiang holds that Confucian theory, from a historical point of view, was a politically oriented doctrine. The point here is that although it is true that pre-Qin Confucianism had political significance, its focus was still on addressing moral rather than institutional questions. Confucianism had nothing to do with studying the division of power, the theory of parties, and so forth until the Ming dynasty. The

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<sup>88</sup> One should note that the power of the emperor in China has also changed over the course of history. During the Tang dynasty (618-907), for instance, the prime minister and his cabinet had an admirable amount of power before the emperor. The orders of the cabinet were carried out by three ministries. The ministry of *zhong shu* was responsible for drafting the most important official documents, to which the emperor usually gave his signature as a symbolic gesture. Then the documents went to the ministry of *men xia*, where they were examined. If the documents were rejected, they were sent back to the ministry of *zhong shu* for further changes. If approved, they were handed to the ministry of *shang shu* for execution. Nevertheless, during the Ming Dynasty, the power of the emperor became dominant. For a detailed argument about these power dynamics, see *The Gain and Loss of Ancient Chinese Politics* by Qian Mu (2001), which offers a systematic study on the vicissitudes of the power relations between the emperor and his prime ministers.

Ming scholar Huang Zongxi (2011) (1610-1695) was the first to discuss, very briefly, some of these questions.<sup>89</sup>

One might wonder how average people can be respected in a society with no recognized party competition, no rule of law in the modern sense, and no thoughtful distribution of power; as for the bureaucratic system, well-educated elites running it control the dissemination of knowledge, wealth, and also the media. It is hard to believe that only moral restraints would guarantee the legitimate desires of average people.

Traditionally, there were generally two channels through which the people's will could be instantiated and actualized. (i) Institutionalized channels: the satisfaction of the people's will is included in the official procedure for evaluating governmental officials, and the *min xin* could also be noted by the court system if people appealed to it. Moreover, imperial advisors could amass knowledge of what the people wanted and directly express those wishes in meetings with the emperor.<sup>90</sup> (ii) Informal channels: *min xin* was expressed in widely known folk songs or *qin yi* (political comments made by lower ranking officials and scholars). Some emperors dispatched specific officials to collect these folk songs so as to keep informed (Guian 2002).

The problem of these informational channels is that they are not very efficient, if only due to the state's great size and vast population. More importantly, since official informational channels are exclusively vertical, information can easily be distorted when passing through multiple intermediate layers. Additionally, the process is

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<sup>89</sup> One cannot convincingly argue that Confucianism never touches on the question of institutional design. But perhaps it is better to argue that this was not the focus of Confucianism, or that Confucianism addresses the question of institutional design in the way of specifying *li* (rituals). Nevertheless, the explicit work that addressed power distribution in terms of making certain institutional structures did not occur until the later Ming Dynasty and the efforts of Huang Zongxi (Zhang 2004)(2011)

<sup>90</sup> Imperial advisors made up a specific group of officials that were mainly responsible for judging the behavior of the emperor and advising the emperor to make changes. All the Chinese dynasties had imperial advisors, and sometimes, for instance during the Song Dynasty (960-1279), there were even institutionalized departments for them.

vulnerable to corruption, because intermediate agents have almost exclusive control over the distribution of information. Notwithstanding these problems, the collection of folk songs strongly indicates that there was clearly a demand for direct communication between the average people and officials at the highest levels.

*Min xi* could also be expressed by *qing yi*, a term that literally means ‘transparent discussion’. This tradition can be traced back to the end of the Han Dynasty (206BC-220AD) when the Confucian school was respected as the only legitimate one and Confucianism became the state ideology. Scholars and low-ranking officials, who were not at the center of power, began discussing politics. In this light, the Confucian school can be seen as the traditional Chinese public sphere for political communication and deliberation. One of the most important roles of *qing yi* was to inform the emperor of the existence of dissidents. In many cases, the emperor would take *qing yi* into consideration or even change his policies and decisions because of it. *qing yi*, referring to discussion among intellectuals, differs from the folk songs that were mainly developed by average people in being considerably more informative and deliberation-oriented (Jun 2009).

In this context, we might regard the Internet as providing a space where people can express their feelings and make comments about the authorities who govern them, and can expect their voices to be heard and to be taken seriously. This specific use of the Internet can be related to the role played by the folk song historically in Chinese politics, and thus can be properly legitimized. In fact, this phenomenon has already been consistently observed in current political practice. As presented in my case study in chapter II, Chinese cyberspace is a relatively open forum for people to express their feelings and to expose the corruption of those who govern them.

Moreover, cyberspace can also facilitate interaction between elites and average citizens, and this might eventually make a more accurate and efficient means to represent people and to correct behaviors of the ruler. The discussion in cyberspace works like the folksong in that it directly represents the thoughts and feelings of

people, and since online communication is visible, it is less likely to be truncated and twisted. The communication and interaction between average Weibo users and opinion leaders that was shown in the Guo Meimei case strongly supports this possibility.

Also, cyberspace could facilitate *qin yi* in a dramatic fashion. As modern society has developed, schools are generally no longer in the public sphere; rather, they are specific institutions devoted to independent research and education. However, as mentioned in chapter II, one should not neglect the fact that university staff and students often play a crucial political role in Chinese politics, especially in well-organized street protests. As old China has been managing to transform itself to a modern state, the politically active class has more or less been built within the universities.

In today's China, universities are still ascribed, implicitly and explicitly, certain political roles. In the most explicit sense, the study of Marxism, Maoism, and the theories of Deng Xiaoping are obligatory in all universities, and the research results are used to construct the Party's core ideology (Liang 2013). More absurdly, all the recognized university presidents in China have an official rank. Universities still play a crucial political role in Chinese politics.

Besides university influence, traditional agents who have been the main subjects of *qin yi* have changed over the course of history. Contemporary China's opening up to the world and its related productivity growth produces enough freedom to allow people to express their thoughts. In the 1980s, China had many public intellectuals, who were, compared to university professors, much more focused on discussing specific cutting-edge political topics. Nevertheless, as Xu Jilin (2003b) points out, public intellectuals are gone today, as most of them have already been absorbed into either the university or the bureaucratic system.

With the rise of the Internet, as presented in Chapter II in much detail, traditional

public intellectuals might be transforming themselves into opinion leaders in cyberspace. Many opinion leaders, especially university scholars, have millions of followers online and occasionally their readership is even larger than the most popular Chinese newspapers. Internet use could enable scholars to manage a more efficient discussion with the community and, by connecting them to the average citizens, make their discussion more publicly visible and influential.

Last but not least, what is most important about online discussion is its potential to help specify the content of *ren*. As argued before, the content of *ren* in Confucianism is not fully specified. What helps articulate it is the people's will, which is to say that the heeding and fulfillment of the people's will is the core demand of *ren*. Thus, to understand the will of the people in daily life would help to specify its content and articulate what concrete actions should be taken to fulfill the people's needs. With the Internet, *min xin* might in reality play its expected roles that would help to successfully instantiate and actualize the people's legitimate desires, namely human rights for all.

## VII Conclusion

As I have argued, in Confucianism, despite the absence of human rights terminology, the idea of the king's duty and the legitimate desires of the people can be reconstructed to accommodate the idea of human rights. Confucian ethics holds that heaven grants everyone the same moral potential, which constitutes the basic dignity possessed by all. Accordingly, everyone is subjected to the basic duty to maximally achieve his moral potential so as to become a fully dignified gentleman. Derived from this basic duty, a Confucian must claim to have basic rights of minimal freedom and well-being, otherwise he contradicts himself.

The idea of *min xin* as the aggregation of individual rights, which is expected by Confucians, ought to play significant roles in Confucian politics for legitimizing kingship, restraining the power of and prescribing duties for the ruler, and eventually

actualizing the rights of all. However, *min xin* does not function as expected in Confucian society in the actual world, for the information structure of traditional society poses great challenges for *mi xin* to carry out its functions.

Internet use, as I have argued, can facilitate *min xin* to successfully carry out these expected roles and therefore instantiate and actualize the rights of the people. If this argument is sound, then as a Confucian, one would have good reason to demand a right to Internet access. My study here suggests two things. Negatively understood, it disproves the arguments that regard Confucianism as incompatible with Internet use. Positively understood, it supports a view that a political regime built upon Confucianism should not just tolerate but should actually *demand* Internet access.

My argument might be contested based on a different interpretation of Confucianism; my reconstruction of Confucianism is not necessarily the only plausible one. Classics are classics because they can be understood in various ways. Moreover, the study presented here is still open, as it discusses just one possibility among many, to other reflections on the justification of a human right to Internet access, and provides no conclusive resolution of the issue. Hopefully my work here can trigger another round of serious academic discussion concerning the potential human right to Internet access.

## **Conclusion**

In this dissertation, I dedicated myself to investigating the question of whether we have sound philosophical reasons to embrace a human right to Internet access. In the introduction, I explained the background against which this question is raised. Both in political and philosophical discussions, the attempt to assert a human right to Internet access has gradually attracted attention. However, although there have been inspirational political discussions, philosophical arguments have been made rather sporadically. By considering these arguments, my thesis has aimed to develop a more systematic philosophical discussion on this issue. As far as I can tell, my work here is one of the earliest attempts to address this problem.

Based on a general reading of the existing literature, I argue for a right to Internet access by explaining its instrumental value for the facilitation of democracy: (i) If democracy is a human right, and (ii) if the Internet is indispensable for achieving democracy in the contemporary situation, then (iii) we may have good reason to regard it as a human right.

As discussed in the introduction, current political discussions strongly suggest the adoption of such an argumentative strategy. The role that the Internet, and social networks in particular, played in the so-called Arab Spring movements inspired many people. What has been consistently observed in these movements is the Internet's role in helping people to make democratic demands. And not only in Arab states: China, the country with the world's largest population, has also been experiencing internal democratic changes in the age of the Internet – though it is surely not yet a full-blown democracy. As such, I propose that we approach evaluating the right to Internet access, if there is such a right, by investigating the interplay between Internet use and the development of democracy.

To this end, I wrote six chapters. In the first chapter, I made a general review of the relevant literature so as to comprehend the possible forms of interplay between

Internet use and democracy, and to be methodologically attentive when inspecting China's case. I found that sociologists and political scientists alike have made many empirical studies concerning this issue. Various perspectives, such as studying the interaction between Internet use and democratic institutions, voting, social capital, civil society, transparent governance, etc., have been adopted by scholars.

However, it would not be possible here to discuss the interplay between democracy and Internet use in various states. The development of democracy in different nations might well have unique features, and in any case an overview would present a formidable empirical task. I have chosen here to focus on China. In chapter II, China was brought forward as the case study to investigate the ways that Internet use might influence democratic change.

China, with around one-fifth of the earth's people, has the world's largest population. Also, it is the largest developing country governed by a non-democratic – one might say authoritarian, if not totalitarian – political system. In addition, approximately half of China's population is now connected to the Internet. If for practical reasons we need to choose one state to serve as our case study, China is clearly one of the best options.

Based on the literature review in chapter I, I proposed that the perspective of public sphere offers an apt means of studying China's democratic changes, as it provides good variables to trace the democratic aspects of its recent transformation. Others perspective, such as studying the interplay between Internet and voting, cannot be directly applied to China, for China does not yet have an authentic voting system.

Along these lines, I examined, through a case study, how Internet use has helped facilitate the transformation of China's public sphere. According to Habermas, the development of the public sphere is one of the most important factors to influence the possibility of democratic changes, as people are empowered to take part in critical debates in the public sphere which can reach both the public at large and the powerful,

and this can eventually result in political changes. Through my case study, I showed that the Internet on the one hand provides the only space in which average Chinese people can debate political issues, while on the other hand it cultivates a sense of strong belonging that is essential to the coherence and vigor of a new grassroots class. Chinese people have started to connect with each other and to manage online discussions and protests with the idea that they belong to the same group. As such, I concluded that a Chinese online public sphere is currently being formed, and this development is gradually pushing China in the direction of democratization.

I am fully aware that more work is required to generalize my findings. Other states might not share the pattern of development we see in China and might, in fact, have a substantially different experience. Therefore, my work here is still suggestive rather than conclusive. With this empirical study in mind, though, I moved on to address whether we can justify a human right, as a moral right, to Internet access.

I discussed in chapter III how we can justify a human right to democracy in the first place. Democracy, as a form of political organization reliant upon a legal constitution, majority rule, and popular sovereignty, can be seen as universally valuable, though institutional designs may be quite different depending on the nation. To provide a justification for this claim I referred to Gewirth's (1980) PGC (the principle of generic consistency). The main argument is as follows: the value of democracy is a precondition for at least certain dimensions of rational action. According to the PGC, we need to presuppose that we have legitimate claims to basic freedom and well-being in order to act rationally at all, otherwise we contradict ourselves. The idea of popular sovereignty, the presence of a legal constitution, and the institution of majority rule can be justified by referring to the values of freedom and well-being. I then proceeded to discuss the right to Internet access. Combined with the discussion in chapter II, I argued that the right to Internet access can be justified because of its instrumental value to enable democracy that is justified by the PGC. For further specification, I discussed the nature of such a right and its related duties and how, according to the PGC, duties can be justly distributed. In so doing, I discussed the

possibility of offering a rational justification of a human right to Internet access. In this Gewirthian line of thinking, such a rational/moral justification has a claim to inform the way the political and legal order ought to be structured.

In presenting a moral justification of human rights I brought forth one way of justifying a right to Internet access. But I wanted to provide a completely different way to justify a right to Internet access as well. I did this by choosing a position that could – in a theoretical perspective – be seen as quite the opposite of the Gewirthian approach. Charles Beitz represents a school that interprets human rights idea not as a moral but rather as a political idea. Beitz assumes that the human rights instruments as developed by the United Nations, and the regime that has followed built on this foundation, presupposes such a political understanding of human rights. I referred to Beitz mainly for the political concept of human rights, for he has made the most recent, though contestable, contribution to the conceptualization of human rights as a political idea. According to Beitz (2011, 111), a qualified human right should meet three criteria: (i) it matters for our most urgent interests; (ii) it is vulnerable to domestic violation; and (iii) we have permissible means at hand to deal with its violation. I discussed whether the right to Internet access makes sense according to these criteria.

As such, I have shown that a human right to Internet access, in both a moral and a political interpretation, can be justified based on its instrumental value to democracy legitimized either by the PGC or by the most urgent interests that are expected to be protected by the international political instruments currently in place. I have systematically reviewed the concept of democracy and why it should necessarily be cherished by all, and to what extent the Internet is crucial for the fulfillment of democratic demands. In addition, I studied how Internet use is relevant for the protection of our most urgent interests, and why it is legitimate to consider it as a possible human right as a political conceptualization.

After discussing the right to Internet access, chapters V and VI turn to discuss the

interplay between a right to Internet access and Confucian ethics. Such a shift should not have been surprising. Since I first focused on China, it is important to further articulate the interplay between the right to Internet access and Confucianism, especially because scholars still contest whether they are compatible at all. A human right to Internet access is not a fundamental right but a derived right which derives its normativity from its instrumental value to democracy.

A derived right can be further specified by discussing it in the context of a specific culture. If a specific culture was found to be completely incompatible with the use of the Internet, we would have to make a complex consideration. Specific cultural contexts could be so important for the possibilities of the agents living in this culture to develop as agents that the intrusion of the Internet might have devastating effects on their agency. If this were the case, the importance of the preservation of this culture would have to be weighed against the instrumental value of the Internet for democracy in its foundational function for rational agency (in Gewirthian terms) or its necessity in the protection of basic interests (in Beitzian terms). In this regard it is of crucial importance to understand to what extent Internet access is compatible with the Confucian tradition.

As mentioned in my chapters, Confucian culture, as the expression of a long-lasting ancient tradition, is still a living tradition that has gained increasing importance in contemporary political life. In this regard, it is important to investigate how the Internet would be received in such a tradition and how a human right to Internet access would be perceived through the lens of Confucianism. If Confucianism would be radically against the use of the Internet or a human right to Internet access, this finding would require that we reconsider the legitimacy of Confucianism on the conceptual level, and related measures involved in observing and upholding such a right on the practical level. Along these lines, the application of such a right to China might trigger concerns about values imperialism – and, indeed, the Chinese government has expressed such concerns when criticizing US Internet policy.

If, however, an exploration of Confucian ethics finds Internet use to be compatible with the Confucian conception of a good life, and if, furthermore, such a life even demands the adoption of the Internet, then a human right to Internet access could be more strongly supported in Confucian society. This exploration is very much in line with the UDHR, which is expected to be open for further cultural interpretation(s) to help give the observance and upholding of concrete rights stronger cultural supports. The Internet now is a technology that is both popular and vulnerable: it is popular in the sense of being widely adopted, whereas it is vulnerable because of the challenges it faces from governmental and religious/cultural authorities. Therefore, it is of urgent interest to investigate how a human right to Internet access would be perceived and received in specific cultural settings. Studying this issue might not only help dispel concerns about cultural imperialism but might also enable there to be a more appealing idea of the human right to Internet access within specific cultures, and particularly within Confucian culture.

Chapter V thus discussed the question of whether Internet use is compatible with Confucian values, the conundrum that haunted Bockover (2003) and Wong (2013). I evaluated their arguments and argued that, in contrast to the views that they had put forth, Internet use does not necessarily pose insurmountable difficulties for the Confucian way of life. Confucian conceptions of the good life are not monolithic but rather are diverse and open to reconstruction and reinterpretation. Even it is true that it might not have a ready-to-use concept of freedom, as Bockover proposed, or a framework for accommodating anonymous and de-contextualized communication, as Wong suggested, it, Confucian ethics, and particularly the neo-Confucian school represented by Wang Yangming, can be reconstructed to cope well with these issues. As such, I concluded in this chapter that Confucian ethics is compatible with the use of the Internet. Chapter VI then extends the argument to discuss whether a Confucian society could positively embrace a human right to Internet access.

My point in the last chapter is that Confucian ethics would in fact *demand* that there be a right to Internet access. Here I do not mean to say that China is still a Confucian

state. Yet what cannot be ignored is that Confucianism is still a living tradition that continues to be present in various aspects of Chinese life. Confucianism has in fact been experiencing a revival in recent years in both academic and political circles. In addition, the Chinese government has attempted to defend its controversial Internet regulations by explicitly referring to Confucian values. Two questions need to be addressed: first, whether Confucianism can accommodate the idea of a right; second, if it does so, does it also demand that there be a human right to Internet access.

I have argued that human rights are supposed to be universal, regardless of cultural or political contexts, for there are certain rights that belong to human beings as such. Against this background, I first discussed the idea of rights in Confucianism, arguing specifically that despite the absence of a term corresponding to rights, the Confucian idea of the legitimate desires of the people could be reconstructed to accommodate the idea of human rights as it pertains to certain objectives. The Confucian idea of *min xin*, the aggregation of individual legitimate desires, is expected to play three crucial normative roles in Confucian society: (i) it legitimates the governance of the emperor and (ii) restraints his power, and (iii) it helps to specify the content of *ren* over the course of history, representing the demands of ordinary people. Such an idea shares many similarities with the idea of democracy, although there are also many differences.

Against this background, my point is that the traditional information structure fails to facilitate *min xin* to fulfill these roles, as it is radically hierarchical and thus inefficient and vulnerable to the workings of power. Even a short introduction to the history of Confucian society tells us that such a society actually demands a better information structure, one that can secure *min xin* to carry out its roles. Thus I argued further that Confucian society requires a human right to Internet access. Had such an option been available, traditional Confucian society would have adopted Internet technology.

Hence, in chapters II, III, and IV I argued that China ought to pursue a human right to Internet access considering its instrumental value for promoting democracy, which is

a fundamental right justified by the PGC; and in chapters V and VI, I argued that it is untenable to refer to Confucian culture when rejecting Internet use or justifying censorship, as Confucianism is not only compatible with Internet use but even demands it. In so doing, my work suggests two general obligations for the central government: it must (i) make a positive effort to effect the human right to Internet access, and must (ii) refrain from defending its controversial Internet policy by citing Confucian ethics.

Structured in this way, my thesis ends with the conclusion that we may have good philosophical reasons to argue for a right to Internet access. Surely my intention is not to provide a complete justification. My work here is only suggestive, aiming to reflect upon the reasons we have to expect a right to Internet access. Methodologically speaking, it certainly will take considerably more effort to study the interplay between democracy and Internet access in various states around the world so as to generalize my findings; and even when China is again under consideration, continuous effort should be made to catch up with the ever-changing interaction between Internet use and democratic transformation. We need to recognize that such an exploration is inherently interdisciplinary and dynamic, and demands a continual series of contributions drawn from empirical and philosophical investigations.

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