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1. Human rights futures for the internet[1]

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Biographical Note

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Introduction

In 2015 the UN General Assembly launched the Sustainable Development Goals, successor to the Millennium Development Goals from 2000. Another declaration from the same meeting

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[1] This chapter is an adaptation of a six-part essay entitled *Championing Human Rights for the Internet*, Hunan Rights and the Internet, OpenDemocracy, 31 January 2016; https://www.opendemocracy.net/hri.

renewed a set of undertakings, begun in 2003 under the auspices of the International Telecommunications Union and entitled the *World Summit on the Information Society*. This declaration makes explicit the merging of future decisions on internet-design, access, and use with these renewed Development goals and the human rights dimensions of achieving these goals in a world premised on the *supraterritoriality* of internet-dependent media and communications[2].

> "We reaffirm our common desire and commitment to…build a people-centred, inclusive and development-oriented Information Society...premised on the purposes and principles of the Charter of the United Nations, and respecting fully and upholding the Universal Declaration of Human Rights".[3]

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[2] See Jan Aart Scholte, *Globalization: A Critical Introduction*, 2nd Edition, Palgrave Macmillan, 2015. The term *internet* (uncapitalized) is used here as a broad rubric for computer-dependent media and communications that include internet design, access, use, data and content management. This term includes goods and services, and cultures of use that are not covered in the more restricted engineering definition of the Internet (capitalized) as a computerized communications architecture comprising a planetary "network of networks". For more on these distinctions see Giampiero Giacomello and Johan Eriksson (eds),*"Who Controls the Internet? Beyond the Obstinacy or Obsoleteness of the State"*, *International Studies Review*, vol. 11, issue 1, January 2009: 205–230

[3] UN General Assembly, 2015, *Outcome Document of the High Level Meeting of the General Assembly on the Overall Review of the Implementation of WSIS Outcomes*, Paragraph 6, December 2015; http://workspace.unpan.org/sites/Internet/Documents/UNPAN95707.pdf; UN News Centre, "UN Member States outline information technology roadmap to achieve sustainable development", 17 December 2015; http://www.un.org/apps/news/story.asp?NewsID=52851#.VnqNLFK0KO2. For more information on UN Resolutions and related reports on the Right to Privacy in the Digital Age see the UN Human Rights Office of the High Commissioner for Human Rights at http://www.ohchr.o The Right to Privacy in the Digital Age rg/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx

Even at a symbolic level, high-level utterances such as these have been a source of some encouragement for those mobilizing across the spectrum of human rights at this particular policymaking nexus. Edward Snowden's whistleblowing in 2013 on US-led programs of state-sponsored programs of mass online surveillance - deployed in the name of western democratic values -played no small part in the shift from the margins to the centre that human rights-based agendas for the online environment have made, in the internet heartlands at least[4].

Geopolitical and techno-legal power struggles over ownership and control of largely commercial web-based goods and services, and how these proprietary rights implicate shared guardianship of the internet's planetary infrastructure with UN member-states, were being thrown into relief two years after Edward Snowden went public with evidence of US-led programs of mass online surveillance. Presaged by Wikileaks and worldwide social movements for social and political change (e.g. the Arab Uprisings, *Occupy* and *Indignados* campaigns), these revelations have contributed to the politicization of a generation of "digital natives". The rise in mobile/smart phone usage and internet-access in the Global South, and in Asia underscores a longer-term generational shift towards an online realm of human experience and relationships. Ongoing disclosures of just how far, and how deeply governmental agencies and commercial service providers can reach into the online private and working lives of billions of internet users have thereby exposed how passionately young people regard internet access as an entitlement, a "right", their mobile, digital and networked

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[4] Ian Thomson, "GCHQ mass spying will 'cost lives in Britain,' warns ex-NSA tech chief", The Register, 6 January 2016; http://www.theregister.co.uk/2016/01/06/gchq_mass_spying_will_cost_lives_in_britain/.

communications devices (currently called smart-phones) as indispensable to their well-being and sense of belonging.[5]

This rise in the public profile of the human rights-internet nexus has accompanied a comparable leap up the ladder of media, and scholarly interest in how traditional human rights issues play out on - and through - the internet's planetary infrastructure, as the web becomes a global platform for bearing witness to rights abuses on the ground [6]. Going online (e.g. using

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[5] Internet World Stats, *The Internet Big Picture: World Internet Users and 2018 Population Stats*; http://www.internetworldstats.com/stats.htm, ac=cessed 8 February, 2018.

[6] See Nicholas Jackson, "United Nations Declares Internet Access a Basic Human Right", The Atlantic, 3 June 2011; http://www.theatlantic.com/technology/archive/2011/06/united-nations-declares-internet-access-a-basic-human-right/239911/. See Andrew Clapham, 2007, *Human Rights: A Very Short Introduction*, New York: Oxford University Press, and Andrew Vincent, 2010, *The Politics of Human Rights*. Oxford, UK: Oxford University Press for accessible overviews of the legal and political dimensions to international human rights that do not address information and communication technologies in general, or internet media and communications in particular. For a critical reappraisal of international human rights institutions see Nicolas Guilhot, 2005, *The Democracy Makers: Human Rights and the Politics of Global Order*, New York: Columbia University Press. Analyses that focus on the human rights-information and communications technology nexus, in part or as a whole, include Rikke F. Jørgensen (ed.), 2006, *Human Rights in the Global Information Society*, Cambridge, MA: MIT Press; Wolfgang Benedek and Matthias C. Kettemann, *Freedom of Expression on the Internet*, Strasbourg, Council of Europe Publishing, 2014: Toby Mendel, Andrew Puddephatt, Ben Wagner, Dixie Hawtin, and Natalia Torres, *Global Survey on Internet Privacy and Freedom of Expression*, UNESCO Series on Internet Freedom, Paris: UNESCO, 2012: Navi Pillay,2014, *The Right to Privacy in the Digital Age*, A/HRC/27/37, Report of the Office of the United Nations High Commissioner for Human Rights, Human Rights Council, Twenty-seventh session, Agenda items 2 and 3, Annual report of the United Nations High Commissioner for Human Rights, 30 June 2014; http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf

email for interviews, being active on social media platforms) exposes web-dependent generations of bloggers/journalists, political dissidents, and human rights defenders to threats of another order, enables perpetrators with a digital, computer-mediated constitution. This is not only because our online presence – personal information, activities and networks - can be tracked and monitored, but also because these activities can lead to networked forms of abuse, bullying and harassment. In some parts of the world, posting material seen as overly critical of vested interests or a challenge to social and political power incurs prison sentences, beatings, and even death when blocking and censorship do not suffice [7]. The normalization of internet censorship techniques (e.g. denial of access, content filtering, or website blocking) go hand-in-hand with the legalization of the pervasive and sophisticated forms of state-sponsored online surveillance that Snowden brought to the public domain. On the other hand, they reveal comparable excesses from commercial service providers whose intimate monitoring of what people do online include automated forms of data-tracking and data-retention practices without clear forms of accountability. As campaigns and reports from media, and internet-based civil liberties watchdogs show (e.g. Witness, Reporters Without Borders, Article 19, Privacy International, or Global Voices), these policies have substantial implications for the protection of fundamental rights and freedoms not only on the ground but also online[8]. As these practices become less extraordinary, repackaged as pre-emptive security measures if not acceptable levels of intrusion into the private online lives of individuals and whole

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[7] Media Freedom and Development Division of the Organization for Security and Co-operation in Europe (OSCE); http://www.osce.org/media-freedom-and-development, accessed 8 February 2018.

[8] Electronic Frontier Foundation (EFF), 2015, *Chilling Effects of Anti-Terrorism: "National Security" Toll on Freedom of Expression:* https://w2.eff.org/Privacy/Surveillance/Terrorism/antiterrorism_chill.html; Necessary and Proportionate Campaign, 2014, *International Principles on the Application of Human Rights to Communications Surveillance*, May 2014: https://en.necessaryandproportionate.org/,

communities, they underscore the ways in which public and private powers at the online-offline nexus have succeeded in normalizing practices that render citizens as putative suspects (guilty until proven innocent) and commodities ('you are the product' as the saying goes) in turn[9].

Official recognition, from the UN Human Rights Council this goes as far back as 2012, that online human rights matter too points to the legal and ethical complexities of this techno-political terrain however. It begs the question of how human rights jurisprudence can account for the digital and the networked properties of internet-dependent media and communications that are trans-border by design; or how emerging issues, such as online anonymity or automated data-gathering and analysis, challenge legal jurisdictions and jurisprudence based on customary law but also pivoting on the landed borders of state sovereignty[10]. Recognizing

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[9] Herold Benjamin, "Google Under Fire for Data-Mining Student Email Messages", *Education Week*, 13 March 2014: http://www.edweek.org/ew/articles/2014/03/13/26google.h33.html: See also Bruce Schneier, *Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World*, W. W. Norton & Company, 2015

[10] US Mission Geneva, 2012, "HRC Affirms that Human Rights Must Also Be Protected on the Internet (Resolution Text)", 6 July 2012: https://geneva.usmission.gov/2012/07/05/internet-resolution/; United Nations Human Rights Council, 2014, *Resolution A/HRC/26/L.24: Promotion and protection of all human rights, civil, political, economic, social and cultural rights,*

including the right to development, Twenty-sixth session, Agenda item 3, UN General Assembly, 20 June 2014; http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/L.24

. For a US-based perspective see Mike Masnick, 2014, "UN Says Mass Surveillance Violates Human Rights", *Techdirt*, 17 October 2014: https://www.techdirt.com/articles/20141015/07353028836/un-says-mass-surveillance-violates-human-rights.shtml.

that human rights exist online is not the same as being able to fully exercise and enjoy those rights. In this context, the glacial tempo of intergovernmental treaty negotiations, or legal rulings, have a hard time keeping up with the hi-speed velocity of commercial applications and market penetration of today's Tech Giants.

Are Digital Rights also Human Rights?

That there are inherently digital and internet-worked dimensions to the legal, moral, and political complexities of international human rights brings legislators, software designers, and judiciaries face-to-face with an inconvenient truth of the age. If human rights law and norms are indeed applicable to the online environment then disproportionate levels of automated personal data retention, alongside the insidiousness of pre-emptive forms of online surveillance, imply suitable and internationally acceptable law. A next generation of legal instruments that can articulate more clearly how existing human rights, such as Freedom of Expression or Privacy, should be guaranteed if both state surveillance measures, and commercial forms of monitoring, data-collection, and retention continue along their current trajectories are in their infancy. The tension between how judiciaries and politicians are reconsidering their own remits in this regard, their relative ignorance of the technicalities of internet-design, access, and use is one pressure point. Conversely, technical standard-setters, engineers, software developers, and corporate strategists have to confront the ethical and legal demands that rights-based sensibilities bring to their de facto authority as technical experts and proprietors in the global business of internet-based products and services. The difference between the respective areas of expertise and commitment that reside within these decision-

making constituencies stretches out beyond the "internet freedom" versus "internet sovereignty" rhetoric of lobby-groups and opinion-makers. It affects the terms of debate about who does, or who should control the internet in ways that shifts the usual positioning of states and markets as antagonists, polar opposites in this stand-off, to where they have been along the internet's timeline to date, co-protagonists.[11]

Several high-profile court cases notwithstanding[12], for most people knowing your rights as they may apply when you are online are only one side of the coin. Being able to fight for your

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[11] Joe Wolverton, "TPP Copyright Provisions Threaten Internet Freedom, U.S. Sovereignty", The New American, 1 September 2012: http://www.thenewamerican.com/tech/computers/item/12685-tpp-copyright-provisions-threaten-internet-freedom-and-us-sovereignty; Nancy Scola, "Defining the 'We' in the Declaration of Internet Freedom", The Atlantic, 9 July, 2012; http://www.theatlantic.com/technology/archive/2012/07/defining-the-we-in-the-declaration-of-internet-freedom/259485/. See the late John Perry Barlow "A Declaration of the Independence of Cyberspace", Electronic Frontier Foundation, 8 February 1996; https://projects.eff.org/~barlow/Declaration-Final.html, accessed 7 October 2016. A 21st century riposte revises the title of Barlow's much-cited declaration. See Daniel Castro, "A Declaration of the interdependence of Cyberspace", *Computer World*, 8 February 2013; http://www.computerworld.com/article/2494710/internet/a-declaration-of-the-interdependence-of-cyberspace.html, accessed 7 October 2016. I discuss these battles over the narrative of the internet's origins in M.I. Franklin, Digital Dilemmas: Power, Resistance and the Internet (Oxford University Press 2013).

[12] Maximillian Schrems v. Data Protection Commissioner. ECLI:EU:C:2015:650; Electronic Privacy Information Centre (EPIC), 2015, *Max Schrems v Irish Data Protection Commissioner (Safe Harbor)*; https://epic.org/privacy/intl/schrems/: Robert Lee Bolton, "The Right to Be Forgotten: Forced Amnesia in a Technological Age", 31 J. Marshall J. Info. Tech. & Privacy L. 133 (2015): 133-144; Jeffrey Rosen, "The Right to Be Forgotten", 64 Stan. L. Rev. Online 88, February 13, 2012; Andrew Orlowski, "Silicon Valley now 'illegal' in Europe: Why Schrems vs Facebook is such a biggie", The *Register*, 6 October 2015; http://www.theregister.co.uk/2015/10/06/silicon_valley_after_max_schrems_safe_harbour_facebook_google_analysis; The Economist, 2014, "The right to be forgotten: Drawing the line", 4 October 2014;

rights online is another. Having the know-how goes alongside the want-to and the wherewithal in this regard. Addressing this particular "disconnect" has been one of the main reasons behind various campaigns to raise awareness of human rights for the online environment on the one hand and, on the other, for how international law places obligations on designers and policy-makers at the national and international level. Yet, arguments about why indeed human rights matter for our online lives, and who is responsible for taking action - the individual, the government, or the service provider - rage over most people's heads. Recent public debates, in the EU at least, are steeped in a post-neoliberal rhetoric of whether the "not so bad" of government regulation is an antidote for the "not so good" of runaway market-leaders in internet services who have access to the private online lives of up to one in seven people on the planet. The disconnect between this everyday level of onlineness and what people know about how their digital footprints are being monitored, let alone what they believe they can do about it, is underscore by the entrenchment of commercial service provision; in the workplace, schools and universities, hospitals and government departments. For instance, "free" cloud computing services come with a price as commercial service providers set the terms of use of essential services (from email to data-storage) in the long term. With that they become private gatekeepers of future access to public, and personal archives of digital content (so-called big data) housed in corporate server farms around the world. [13]

http://www.economist.com/news/international/21621804-google-grapples-consequences-controversial-ruling-boundary-between.

[13] Brandon Butler, "Recent cloud critics, including Wozniak, intensify debate", NetworkWorld, 9 August 2012; http://www.networkworld.com/article/2190427/cloud-computing/recent-cloud-critics--including-wozniak--intensify-debate.html; Jonathan Nimrodi, "10 Facts You Didn't Know About Server Farms", *Cloudyn Blog*, 8 September 2014; https://www.cloudyn.com/blog/10-facts-didnt-know-server-farms/.

Shifting Historical Contexts and Terms of Reference

Some points from a wider institutional and historical perspective bear mentioning at this point. First, any talk of human rights has to take into account the trajectory of successive generations of international human rights law and norms. The UN system and its member-states is the progenitor and inheritor of existing human rights norms has an implicit stake in any decisions that affect the future of internet-design, access, use, data and content-management. This means that human rights advocacy for the internet enters ongoing debates about the legal stature and implementation of so-called first generation human rights treaties and covenants that make up the International Bill of Rights, i.e. the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966), and the often overlooked International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), inter alia. In this respect human rights treaty negotiations and a patchy record of ratification over seventy years are branded by the ways in which the US continues to exercise its political, military and hi-tech hegemony in material and discursive ways. [14]

Second, as scholars and judiciaries start to tackle these issues, as they play out online but also at the online-offline nexus, they are confronted with the political and legal limits of the Westphalian international state system and its jurisprudence. Despite notable exceptions (e.g. agreements on the Law of the Sea, Outer Space, on custodianship of the environmental

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[14] This position of incumbent power has had a role to play in debates about whether existing human rights law are best implemented diachronically (one by one, step by step) or synchronically (as an interrelated whole). See Patrick Macklem, Human Rights in International Law: Three Generations or One? October 28 2014: http://ssrn.com/abstract=2573153; Vincent op cit.

integrity of the Antarctic and Artic regions) and debates about the security implications of conceiving the internet and its cyberspaces as a *global commons* [15], the current system is fuelled by the aforementioned institutionalized privilege of state-centric rule of law and bounded citizenries thus structuring the horizon of possibility for change. The ways in which ordinary people, corporate actors, social movements, and transnational networks - from global financial markets to criminal organizations - use internet technologies have been rattling the cage of this geopolitical status quo for some time however. The rest of the text of the UN resolution cited above attempts to link this historical world order to the emergence of *multistakeholder* decision-making as a substitute to multilateral institution-building[16].

Third, alongside the formative role that prominent civil society organizations, and emerging global networks representing the 'technical community' play (the Global Network Initiative, Internet Society, or the Internet Engineering Task Force for example) in promoting so-called multistakeholder participation as the sine qua non of internet policymaking, corporate actors play no small part in delimiting this horizon of possibility as well[17]. This is a role that grants

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[15] Mark Raymond, "The Internet as Global Commons?" Centre for International Governance Innovation (CIGI), 26 October 2012; https://www.cigionline.org/publications/2012/10/internet-global-commons

[16] UN General Assembly, 2015, op cit. For more on these two seemingly mutually exclusive terms in official statements ssee M.I Franklin, "(Global) Internet Governance and its Civil Discontents" in *Cybersecurity: Human Rights in the Age of Cyberveillance*, edited by Joanne Kulesza and Rob Balleste, Rowman and Littlefield/Scarecrow Press, 2015

[17] Examples of relevant meetings include the NETmundial: Global Multistakeholder Meeting on the Future of Internet Governance, 23-24 April 2014; http://www.netmundial.br/ ; the annual Internet Governance Forum meetings hosted by UN-DESA; http://www.intgovforum.org/cms/ . For a further discussion on the politics of terminology, see Franklin, op cit: 105-128

these players policymaking power - in kind rather than by international treaty - through the proprietary rights of commercial enterprise, and copyright[18].

In this respect it is a misnomer to talk of the influence that internet-dependent media and communication have on society, culture, and politics in simple, techno-determinist terms. Nor is it elucidating to continue labelling the last quarter-century's successive generations of internet-service provisions, news and entertainment, and user-generated content as "new" media. It is tempting. But recourse to such binaries serves to derail more nuanced, and informed interventions. One reason is that an ongoing preoccupation about value that undergirds these entrenched binaries (e.g. "existing" versus "new" rights, "old" media versus new/social media) obstructs considerations of how the exercise, or being deprived of our rights already matter in online settings. It also presumes that pre-internet and/or offline domains of sociocultural, or political engagement are of a higher moral order, innocent and without violence. The record shows they are not.

This insight then can then shift entrenched value-hierarchies that position successive generations of internet-based mobilization, forms of solidarity and dissent (e.g. e-petitions, social media campaigns, community-building) lower on the political pecking order of authenticity, such as the pre-internet forms of mobilization and publicity of 20th century civil rights and other social movements. More familiar displays of solidarity such as street marches, hardcopy petitioning, print and televisual media presence, are also not without abuses of privilege, empty rhetoric, or opportunism. Besides, these once older 'new social movements' have gone online, gone digital also, adopting commercial social media tools as

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[18] See Rebecca McKinnon, "Playing Favorites" in *Guernica: A Magazine of Art and Politics*, 3 February 2014; https://www.guernicamag.com/features/playing-favorites/.

fast as possible over the last five to ten years. It also means to stop worrying, quite so much, about whether younger generations who are now living, and loving through their mobile and other computer screens for that reason alone[19]. What is needed instead is to explore *how* these modalities for social interaction and intimacy *matter* to these web-embedded generations, on their own terms within the changing terms of proprietary, or state-sanctioned access and use. These conceptual, even philosophical issues are as integral to the outcome of social mobilization around human rights online as they are for decisions that affect the hardware and software constellations that make internet-based communications function in design and implementation terms. These no longer simply added to our world, they increasingly frame and co-constitute the world in which we live.

But what we have to focus on here is how the Snowden revelations underscore, as did whistleblowing trailblazers before him[20], that nation-states' chequered human rights record in the offline world are integral to international human rights advocacy for the online world. Incumbent and emerging powers in the UN system, from within and outside the internet's historical heartlands, have different views of their "roles and responsibilities" and with that different degrees of tolerance to civil society demands for equal footing in decisions about its future operations. Likewise for those global corporate players objecting to state interference,

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[19] Daria Kuss, "Connections aren't conversations – while technology enables, it can also interfere", *The Conversation*, 21 December 2015: https://theconversation.com/connections-arent-conversations-while-technology-enables-it-can-also-interfere-51689. See also Sherry Turkle, *Alone Together: Why We Expect More from Technology and Less from Each Other*, Basic Books 2011; Dave Everitt and Simon Mills, "Cultural Anxiety 2.0" in *Media, Culture and Society*, vol. 31, no. 5, 2009: 749–768.

[20] Government Accountability Project (GAP), 2016, *Bio: William Binney and J. Kirk Wiebe*; https://www.whistleblower.org/bio-william-binney-and-j-kirk-wiebe

with or without the tacit support of their allies in government, whose business models go to the heart of how contemporary, increasingly privatized internet goods and services operate [21]. There has also been a move towards at least a nominal recognition that human rights and the internet-policymaking do and, indeed, should mix within powerful agencies opposed to direct forms of government regulation as a point of principle; e.g. the once US-incorporated Internet Corporation of Assigned Names and Numbers (ICANN) [22]. The ante has been upped thereby for governments, post-Snowden, claiming the higher moral ground by virtue of their legal responsibilities under international human rights law in the face of state-sponsored abuses of fundamental rights and freedoms in turn.

What does this mean at the techno-economic and political level of national and international negotiations between public and private players who control the national and international policy agendas?[23] First, it brings representatives of those intergovernmental organizations, non-governmental organizations such as standard-setting bodies of expert networks used to working behind the scenes under public scrutiny. Second, this increased scrutiny implicates

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[21] Daniel Sepulveda, "Negotiating the WSIS+10 and the Future of the Internet", DIPNOTE: US Department of State Official Blog, 23 December 2015; http://blogs.state.gov/stories/2015/12/23/negotiating-wsis10-and-future-internet.

[22] Article 19 *Policy brief: ICANN's Corporate Responsibility to Respect Human Rights*, 6 February 2015; https://www.article19.org/resources.php/resource/37845/en/icann%E2%80%99s-corporate-responsibility-to-respect-human-rights; Gautham Nagesh, "ICANN 101: Who Will Oversee the Internet?" *Wall Street Journal*, 17 March 2014; http://blogs.wsj.com/washwire/2014/03/17/icann-101-who-will-oversee-the-internet/; ICANN, *NTIA IANA Functions' Stewardship Transition: Overview,* 14 March 2014; https://www.icann.org/stewardship.

[23] One infographic of the "internet ecosystem" is available from the Internet Society at http://www.internetsociety.org/who-makes-internet-work-internet-ecosystem.

commercial actors also, whose global market share also imputes to them decision-making powers normally reserved for governments, national sovereigns of old [24]. I am referring here to the geographical and proprietary advantage of those largely but not exclusively US-owned corporations that own and control the lion's share of devices, applications, and platforms that control what people do, and where they go once online. Their emerging competitors, counterparts in China and Russia who also exercise power over their citizens' access and use of respective social media tools, online goods and services are not beyond reproach either [25].

No power-holder, public or private, has been left untouched by Snowden's whistleblowing. Now in the spotlight incumbent powerbrokers have started to concede, at least in principle, that the "hard" realities of technical standard-making, infrastructure design are not separate from "soft" human rights considerations; "only" a technical problem, business matter, or state affair. What has been achieved in getting human rights squarely on technical and legislative agendas is not negligible from a wider historical perspective. Even if this means only looking back over the last decade or so, ten years is a lifetime in computing terms. In this period, industry and government sponsored "high-level" declarations of principles alongside UN-brokered reviews of global internet governance frameworks, and diverse intergovernmental

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[24] McKinnon op cit.

[25] Statista, "Market capitalization of the largest internet companies worldwide as of May 2017 (in billion U.S. dollars)", https://www.statista.com/statistics/277483/market-value-of-the-largest-internet-companies-worldwide, accessed 8 February 2018; Paul De Hert and Pedro Cristobal Bocas, "Case of Roman Zakharov v. Russia: The Strasbourg follow up to the Luxembourg Court's Schrems judgment", Strasbourg Observers, 23 December 2015; http://strasbourgobservers.com/2015/12/23/case-of-roman-zakharov-v-russia-the-strasbourg-follow-up-to-the-luxembourg-courts-schrems-judgment/.

undertakings have taken off [26]. There has also been a mushrooming of rights-based

declarations for the online environment from civil society organizations and lobby groups, the

business sector, and national political parties around the world[27]. Organizations and networks

that were once quite shy of the "human rights" label have started to frame their work in

various sorts of (digital) rights-speak even if, for some critics, these changes in strategy

presage the excesses of regulations[28].

Futures and Pasts - Charting a Course

Those with an historical disposition may also note that these practical and ideational

contentions retrace the history of competing social justice and media advocacy agendas at the

international level repeating itself. There is some truth to this given an under-recognized

genealogy of human rights-based approaches to the media/internet that go back to the earliest

days of the UN (e.g. Article 19 of the Universal Declaration of Human Rights), into the late

20th century (the New World and Information Communication Order) and this one (the initial

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[26] NETmundial, *NETmundial Multistakeholder Statement*, 24 April 2014; http://netmundial.br/netmundial-multistakeholder-statement/; UNESCO WSIS+10 Review Event 2013, "Towards Knowledge Societies, for peace and sustainable development", 25-27 February 2013; http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/wsis-10-review-event-25-27-february-2013/homepage/; OECD, *Internet Governance*, 2015; http://www.oecd.org/internet/internet-governance.html ; Council of Europe "Declaration by the Committee of Ministers on Internet governance principles", 21 September 2011; https://wcd.coe.int/ViewDoc.jsp?id=1835773.

[27] See Rolf H. Weber, *Principles for governing the Internet: A comparative analysis*, UNESCO Series on Internet Freedom, 2015; http://unesdoc.unesco.org/images/0023/002344/234435E.pdf.

[28] Jim Harper, 2012, "It's "Declaration of Internet Freedom" Day!" Cato Institute, 2 July 2012; http://www.cato.org/blog/its-declaration-internet-freedom-day

World Summit on the Information Society 2003-2005) [29]. As a consciously dissenting voice civil society rights-based initiatives along this historical media-internet spectrum have also had their precursors; the *Communication Rights for the Information Society* (CRIS), and the *Internet Rights Charter* campaigns from the Association for Progressive Communications (APC) are two cases in point.

More recent 'digital rights' initiatives tacitly take their cue from these earlier iterations as they also do from at least three, formative initiatives that encapsulate these efforts up to 2014; namely the *Charter of Human Rights and Principles for the Internet* from the Internet Rights and Principles Coalition (IRPC) launched in 2010-11, the Brazilian *Marco Civil*, underway at the same time and finally passed into law in 2014, and the Council of Europe's *Guide to Human Rights for Internet Users* endorsed in 2014. Taken together they comprise they address lawmakers, judiciaries, and broader publics in a modality that is distinct from, yet resonates with human rights advocacy. [30]

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[29] UNESCO, 1978, "Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, apartheid and incitement to war", 28 November 1978; http://portal.unesco.org/en/ev.php-URL_ID=13176&URL_DO=DO_TOPIC&URL_SECTION=201.html, accessed 7 October 2016: International Telecommunications Union (ITU), *World Summit on the Information Society 2003-2005*; http://www.itu.int/net/wsis/index.html.

[30] Internet Rights and Principles Coalition, 2014 [2011], IRPC *Charter of Human Rights and Principles for the Internet* Booklet, 4th edition; http://internetrightsandprinciples.org/site/; M.I. Franklin (2013), op cit; M.I. Franklin, "Mobilizing for Net Rights: The Charter of Human Rights and Principles for the Internet" in *Strategies for Media Reform: Communication Research in Action*, edited by Des Freedman, Cheryl Martens, Robert McChesney, and Jonathan Obar, Fordham University Press, 2016: 72-91; Glyn Moody, "Brazil's 'Marco Civil' Internet Civil Rights Law Finally Passes, With Key Protections Largely Intact", *Techdirt*, 27 March 2014;

Even the harshest critics of institutionally-situated forms of rights activism, or of human rights themselves on philosophical grounds, are witnessing such undertakings that focus on internet media and communications become public record, housed online in the UN archives, used as primary documentation and reference points in emerging jurisprudence and research. This is, I would argue, a victory in the medium-term given years of concerted indifference from prominent governments, industry leaders, and civil society organizations uneasy about seeing human rights shift "up" into cyberspace in the face of unaddressed abuses on the ground. For this reason this boom in rights-based utterances can be seen as a good thing, at this stage in the road. More is, indeed, more. By the same token, to be sustainable, human rights advocacy for the internet and, conversely, approaches that isolate specific rights as they pertain to particular design issues have their work cut out to make these techno-legally complex issues meaningful in practice. The ways in which the economic benefits of the "real name systems" underpinning social networking business models and projected usefulness of the same for law enforcement agencies trip up fundamental freedoms such as privacy, freedom of expression, and association for vulnerable groups is one example[31]. The relatively high entry-threshold of terminology and specialized knowledge that confronts not only the average person, but also the average manager, or university, school, or hospital administrator

https://www.techdirt.com/articles/20140326/09012226690/brazils-marco-civil-internet-civil-rights-law-finally-passes-with-key-protections-largely-intact.shtml; Council of Europe, 2014, A *Guide to Human Rights for Internet Users*, 16 April 2014; https://wcd.coe.int/ViewDoc.jsp?id=2184807.

[31] Ravin Sampat, "Protesters target Facebook's 'real name' policy", BBC News, 2 June 2015; http://www.bbc.com/news/blogs-trending-32961249; Timothy B. Lee, "South Korea's "real names" debacle and the virtues of online anonymity", *Arstechnica*, 15 August 2011; http://arstechnica.com/tech-policy/2011/08/what-south-korea-can-teach-us-about-online-anonymity/.

is another challenge in this regard. That work has barely begun and those organizations and grassroots networks doing this kind of educational and support work at the online-offline nexus of structural disadvantage get little enough credit. [32]

Even before news of mass online surveillance by the US and its allies (the UK, Canada, Australia, and New Zealand) hit the headlines in 2013, agenda-setters at the UN and regional level (e.g. the EU, Latin America) were stepping up the pace in order to make the internet-human rights interconnection more explicit, if not take control of setting the wider agenda. In doing so the hope is that such high-level declarations of intent will become concrete policies, change existing internet-business models pave the way for affordable forms of legal redress[33]. This change of heart is palpable at the highest level of international political appointments. In the wake of a strongly worded statement from the previous UN High Commissioner for Human Rights, Navi Pillay about the human rights implications of US surveillance programs, the UN Human Rights Council appointed Joe Cannataci as its first Special Rapporteur on the right to privacy in 2015. The UN Special Rapporteur on the right to freedom of expression,

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[32] For example, the Tactical Technology Collective, the Take Back The Tech initiative at https://www.takebackthetech.net/, the Hivos IGMENA Program at http://igmena.org/activities, and the International Network of Street Papers (INSP) which was first established in 2002; http://insp.ngo/.

[33] Mohit Kumar, Treasure Map- Five Eyes Surveillance Program to Map the Entire Internet", The Hacker News, 14 September 2014; http://thehackernews.com/2014/09/treasure-map-five-eyes-surveillance.html#author-info; Agence France-Presse,"NetMundial: Brazil's Rousseff says Internet should be run 'by all', Gadgets360, 24 April 2014; http://gadgets.ndtv.com/internet/news/netmundial-brazils-rousseff-says-internet-should-be-run-by-all-513120; John Ruggie, 2011, *UN Guiding Principles on Business and Human Rights*, UN Human Rights Council; http://business-humanrights.org/en/un-guiding-principles.

David Kaye, continues to develop the digital and online sensibility to this work begun by his predecessor. [34]

It is also evident in the eventual engagement of international human rights organizations such as Amnesty International, or Article 19 in this domain. These participants are now looking to combine their advocacy profile with an awareness of the rights-implications of hi-tech research and development trajectories; e.g. the implications of Artificial Intelligence, the Internet of Things, state and commercial intrusions into private lives as the rule rather than the exception. They are also addressing more systematically the security needs for carrying out advocacy work on the ground, increasingly based on mobile phones, internet access and

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[34] Bea Edwards "UN Human Rights Commissioner Supports Snowden and Denounces US Surveillance Programs", Huffpost Politics, 17 July 2014; http://www.huffingtonpost.com/bea-edwards/un-human-rights-commissio_b_5596558.html; UN Office of the High Commissioner for Human Rights, "Special Rapporteur on the right to privacy", July 2015; http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx, accessed 7 October 2016; La Rue, Frank, 2011, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* Human Rights Council, A/HRC/17/27, 16 May 2011; http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.PDF; See also the intervention to the European Commission by David Kaye, La Rue's successor, on issues about censorship arising from the European Union draft directive on copyright in the digital single market, Kaye, David, 2018, *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, OL OTH 41/2018, Palais des Nations, Geneva, Swizerland, 13 June 2018; https://assets.documentcloud.org/documents/4516209/OL-OTH-41-2018.pdf

related social media outlets [35]. The ninth Internet Governance Forum meeting in Istanbul in 2014 was a first for both Amnesty and Human Rights Watch in this respect, even if the latter's assessment of this UN-brokered event was less than enthusiastic[36]. These sorts of UN-brokered consultations are drenched with diplomatic protocol, hobbled by the constrictions of *Realpolitik* and limitations of the host country's attitudes to media and press freedoms. No surprise then that grassroots activists and dedicated civil society networks with the technical know-how and want-to would prefer to bypass these channels to concentrate on mobilizing and educating in more immediate, media-friendly ways. Without such initiatives working both against and alongside officialdom the mumbo-jumbo of UN-speak coupled with commercially invested cyber-babble that lays claim to internet decision-making as a private rather than public concern would be even more impenetrable. They would be even more disconnected from the inch-by-inch, face-to-face work that has characterized both traditional and internet-focused human rights advocacy to date. Ten years may be a lifetime in computing terms but it is not very long at all for organizations like Amnesty or, indeed the time it took for iconic documents such as the Universal Declaration of Human Rights to be granted the status of customary international law.

No Time for Complacency

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[35] Sherif Elsayed-Ali, "We must understand threats in the technology we use every day", openDemocracy, Human Rights and the Internet series, 13 June 2016; https://www.opendemocracy.net/sherif-elsayed-ali/we-must-understand-threats-in-technology-we-use-every-day

[36] Eileen Donahoe, "Dispatches: An Internet Freedom Summit … in Turkey?", Human Rights Watch. 10 September 2014; https://www.hrw.org/news/2014/09/10/dispatches-internet-freedom-summit-turkey.

The time for rejoicing has been brief. The pushback from incumbent powers has begun, and in earnest. As Lea Kaspar and Andrew Puddephat note "cybersecurity has become wholly conflated with 'national security', with no consideration of what a 'secure' internet might mean for individual users" [37]. What this amounts to is the squeezing of robust rights-based standards at the online-offline nexus by national security and, now global cybersecurity imperatives. On the one hand we are seeing bills before legislatures around the world that are legitimizing extensive policies of online surveillance that now include hacking and other forms of telecommunications tapping at the infrastructural level[38]. Freshly minted rights-based frameworks in one part of the world such as the Brazilian Marco Civil have come under pressure as judiciaries and global corporations lock horns over their competing jurisdictional claims for users' personal data. The 48-hour blocking of Facebook's Whatsapp in Brazil in December of 2015 in the face of this US service provider's purported refusal to recognize Brazilian jurisdiction under the aforementioned Marco Civil is one example[39]. The UK Investigatory Powers Act of 2016 still stands, the outcome of current litigation that Liberty UK has brought against the Conservative government in the European Court of Human Rights is pending while the Dutch government awaits the outcome of a national referendum on its

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[37] Lee Kaspar and Andrew Puddephatt, "Cybersecurity is the new battleground for human rights", openDemocracy, 18 November 2015; https://www.opendemocracy.net/wfd/andrew-puddephatt-lea-kaspar/cybersecurity-is-new-battleground-for-human-rights.

[38] Andrew Murray, "Finding Proportionality in Surveillance Laws", 11 December 2015; https://paulbernal.wordpress.com/2015/12/11/finding-proportionality-in-surveillance-laws-guest-post-by-andrew-murray/

[39] Jonathan Watts, "Judge lifts WhatsApp ban in Brazil after ruling block punished users unfairly", The Guardian, 17 December 2015; http://www.theguardian.com/world/2015/dec/17/brazil-whatsapp-ban-lifted-facebook?CMP=share_btn_tw, accessed 7 October 2016.

version of the UK 'Snooper's Charter' in turn. Meanwhile a raft of practices are already in place that entail disproportionate levels of online tracking, data collection, retention and manipulation on the part of those powerful commercial service providers who currently monopolise global market-share [40].

This dependence on private service providers for basic access if not internet goods and services is particularly acute in parts of the Global South where internet access is still patchy and expensive. Yet it is also evident in parts of the Global North where health, education, and public access to government services depend on outsourced, cloud computing services [41]. For these reasons I would argue that the human rights-internet advocacy nexus is at a critical stage. Becoming visible in the increasingly search-engine defined domain of public policymaking and related scholarly debates is one thing. Staying visible, not being drowned out by hostile agendas, or captured and then defused by lobbies of every ilk is another. Not only governments but so also are powerful vested interests in the commercial sector using the law and electoral agendas, instrumentalizing different legal jurisdictions and public sentiments to confound this newly gained ground.

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[40] Alex Hern, "Facebook accused of deliberately breaking some of its Android apps", *The Guardian*, 5 January 2016; http://www.theguardian.com/technology/2016/jan/05/facebook-deliberately-breaking-android-apps?utm_source=esp&utm_medium=Email&utm_campaign=GU+Today+main+NEW+H&utm_term=147979&subid=7611285&CMP=EMCNEWEML6619I2.

[41] Peter Novak, "Why 'zero rating' is the new battleground in net neutrality debate", CBC News, 7 April 2015; http://www.cbc.ca/news/business/why-zero-rating-is-the-new-battleground-in-net-neutrality-debate-1.3015070,; Save the Internet Team, 2016, *What Facebook won't tell you or the Top Ten Facts about Free Basics*; https://docs.google.com/document/d/1Sj8TSC_xXUn3m5ARcVqZpXsmpCZdmw3mitmZd9h4-lQ/edit?pref=2&pli=1/ .

So why indeed pursue a human rights approach, rather than one in which terms such as

'digital rights' seem to have more traction in public imaginaries, sound less bogged down in

the complex and chequered cultural record of international human rights? Should advocates

adjust these terms of reference if appeals to existing human rights legal standards are still so

contentious, bound by national experiences and interests? Is the term *human rights* too

politically loaded, past its use-by date given the contentious historical legacy of international

human rights law and institutions? "Because we must" is one short answer. Another is that

campaign slogans such as 'digital rights are human rights' put the digital cart before the legal

horse. Whilst human rights may now be recognized as ipso facto digital rights, the converse is

not the case. Hence evoking human rights for the internet (however defined) remains a

political act, whatever the current state of international and national jurisprudence[42].

Shami Chakrabarti, former director of the civil liberties charity, Liberty, points to another

response to the 'why bother?' challenge. Namely that cynicism and disinterest are the

privilege of those who believe they have "nothing to hide", nothing to lose [43]. Taking human

rights protections for granted is for those who believe their worldview, liberal democratic way

of life is beyond the need to re-examine the obligations that these historical and legal norms

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[42] Connor Forrest, "Why an internet 'bill of rights' will never work, and what's more important", *TechRepublic,*
13 March 2014; http://www.techrepublic.com/article/why-an-internet-bill-of-rights-will-never-work-and-whats-more-important/; M. I. Franklin (2015) op cit.

[43] Shami Chakrabarti, *The Reading Agency Fourth Annual Lecture at the British Library*, 30 November 2015;
http://readingagency.org.uk/news/blog/shami-chakrabarti-lecture-in-full-on-liberty-reading-and-dissent.html:
Jathan Sadowski, "Why Does Privacy Matter? One Scholar's Answer", *The Atlantic*, 25 February 2013;
http://www.theatlantic.com/technology/archive/2013/02/why-does-privacy-matter-one-scholars-answer/273521/

mean for our times. As formative, and necessary as they are, engaging in critical debates in academe about the philosophical and legal vagaries of human rights norms are of a different order of business to the advocacy work required to address how the full spectrum of human rights norms relate to the future internet, to future visions for digital, plugged in and logged on polities[44]. The need to move along the rest of this spectrum implies a longer-term historical view of change. For instance, the reduction and parsing out of certain rights (freedom of expression or privacy) ahead of others is one obstacle on this journey, because this privileging of earlier, first generation treaties and covenants is the default position of incumbent powers. Those legal standards that follow – for persons with disabilities, of the rights of children for instance - and those that bespeak the whole panoply of international human rights norms such as gender and women's rights, and those pertaining to where the internet and the 2015 Sustainable Development Goals intersect are the points where scholars, and activists need to keep on the pressure. [45]

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[44] Stephen Bowen, "'Full-spectrum' human rights: Amnesty International rethinks", *openDemocracy*, 2 June 2005; https://www.opendemocracy.net/democracy-think_tank/amnesty_2569.jsp; Council of Europe, 2014, *The rule of law on the Internet and in the wider digital world*, Issue paper, December 2014, Strasbourg: Council of Europe Commissioner for Human Rights;
https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/IssuePaper%282014%291&Language=lanEnglish&Ver=origin al&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864; Rikke F. Jørgensen, 2013, *Framing the Net: The Internet and Human Rights*, Edward Elgar Publishing, Franklin 2013 op cit.

[45] Geetha Hariharan, "Comments on the Zero Draft of the UN General Assembly's Overall Review of the Implementation of WSIS Outcomes (WSIS+10)", The Centre for Internet and Society (CIS), 16 October 2015: http://cis-india.org/internet-governance/blog/comments-on-the-zero-draft-of-the-un-general-assembly2019s-overall-review-of-the-implementation-of-wsis-outcomes-wsis-10; Sonia Livingston, 2015, "One in Three: Internet Governance and Children's Rights", Blog Post, IRP Coalition;
http://internetrightsandprinciples.org/site/one-in-three-internet-governance-and-childrens-rights/; Liz Ford,

Indeed, as this contribution goes to press in early 2018, I would argue that it is time to become more daring in staking a claim that internet futures, however defined, behove all, not just some of the international human rights law currently on the books. It is all too convenient from an advocacy, social justice point of view, to note that international human rights, forged by mid- 20th century horrors, are regularly contravened by those actors, UN member-states and related agencies designated as custodians and enforcers of these laws and norms. Different societies, their changing political regimes, and judiciaries interpret and institutionalize these legal norms in ways that are both internally contradictory or challenge the unitary understandings of these norms as universal. It is also a given that judiciaries and legislatures are still catching up with how people – companies and state authorities – use internet media and communications have already made a difference to the ability of existing or pending laws to respond appropriately, and in good time. [46]

And there is another reason why we should bother, rise above the comfort of intellectual cynicism or sense of entitlement. Human rights frameworks, however contentious in sociocultural terms, can provide a constructive and sustainable way to re-examine existing democratic models and institutions as they reconstitute themselves at the online-offline nexus, are deployed and leveraged by digitally networked forces of control and domination. Human rights, as soft and hard law confront all internet-users whether they are laypersons or experts,

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"Sustainable development goals: all you need to know", The Guardian, 19 January 2015; http://www.theguardian.com/global-development/2015/jan/19/sustainable-development-goals-united-nations; Bishakha Datta, Belling the trolls: free expression, online abuse and gender, *openDemocracy*, 30 August 2016; https://www.opendemocracy.net/bishakha-datta/belling-trolls-free-expression-online-abuse-and-gender.

[46] *Independent Reviewer of Terrorism Legislation*; https://terrorismlegislationreviewer.independent.gov.uk/

political representatives and business leaders to be accountable for the outcomes of both policy and design decisions. This challenge also applies to highly skilled employees of the military-industrial establishment from which online surveillance programs (e.g. *Echelon*, *PRISM*) and international collaborations between intelligence agencies (e.g. the aforementioned Five Eyes program) have been developed. And it applies to educators, managers, emerging and established scholarly and activist communities with a stake in the outcome of this historical conjuncture. This is a time in which powerful forces have at their disposal the computer-enhanced means to circumvent existing rights and freedoms, and do so on a scale that begs discomforting comparisons with twentieth-century war machines of industrialized domination, totalitarianism that now deploy 24/7, Big Brother-like forms of surveillance-as-entertainment. If, as Bill Binney former technical director of the NSA turned whistle-blower of the first hour, the "issue is the selection of data, not the collection of data" [47] then these engineering, software-design decisions are also sociopolitical issues. Putting humans at the centre of the techno-led power matrix of thought and action that currently dominates how internet policymaking is communicated is one way to confront anti-democratic designs on the planet's future no less.

Two Steps Forward, Six Steps Back

The first iteration of a UN Resolution on the Internet and Human Rights in 2012 (A/HRC/20/L.13) was a fillip to human rights advocacy for the internet in the years leading up to Snowden. Its eventual endorsement in 2014 intact underscored results already achieved.

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[47] William Binney and Anthony Barnett, "'We had to wait for Snowden for proof', an exchange with NSA whistleblower William Binney", *openDemocracy,* 5 June 2014; https://www.opendemocracy.net/william-binney-anthony-barnett/%E2%80%9Cwe-had-to-wait-for-snowden-for-proof%E2%80%9D-exchange-with-william-binney.

That said it has possibly already outlived its use-by date given the thinness of the wording, despite the reiteration of these sentiments in the aforementioned UN General Assembly's adoption of the Outcome Document of the WSIS+10 meeting in 2015 [48]. As Parminder Jeet Singh argued in an address to the UN General Assembly in this same meeting:

> People, directly or through their representatives, alone can make public policy and law. Neither business nor technical experts can claim special, exalted roles in public policy decisions. Such a trend, as parts of civil society have noted with concern, is an unfortunate anti-democratic development in Internet governance today. [49]

Singh's stance is from the Global South, a view from a trenchant critic of US corporate ownership and control of the internet's architecture and services. It is a position under fire as the extent to which the public-private partnerships that developed and funded the online surveillance and data-retention practices brought to light in recent years point the finger at democratically elected governments. Nonetheless, for those member-states with less geographical and techno-economic clout than those ruling over the UN Security Council, and General Assembly, the aforementioned UN Human Rights Council Resolution and those declarations that have ensued are landmarks in resisting techno-economic hegemony at the

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[48] Article 19, "UNHRC rejects attempts to dilute Internet freedoms", 26 June 2014; https://www.article19.org/resources.php/resource/37602/en/unhrc-rejects-attempts-to-dilute-internet-freedoms; UN General Assembly 2015 op cit.

[49] Parminder Jeet Singh, Statement at the UN General Assembly High Level Meeting on WSIS+10 Review, 16 December 2015; http://www.itforchange.net/UNGA_WSIS10?ct=t%28IT_for_Change_Newsletter_Dec_2015_FINAL12_22_2015%29.

global rather than national level[50]. This is the point that Singh is making the ongoing fragility of ordinary people's ability to assert their rights under the law. The hopefulness in this pronouncement pits international rights-based framings of internet design, access, and use against the increasing tendency for governments around the world to retreat into national security narratives, dust off laissez-faire approaches to the business of internet policy-making that, at the end of the day, contradict these obligations.

The differences between how public and private actors work with successive generations of human rights norms within and between national jurisdictions underscore these complexities. Take for instance arguments around the legal status of privacy or freedom of speech in different jurisdictions (e.g. between the US and EU) and their respective political economic implications. Another case is the way in which competing rules for data retention in the European Union, Latin America and Caribbean, or Asia-Pacific regions come up against respective statutes of limitations, different national experiences of dictatorship (e.g. South Korea, Latin America), and vast differences in infrastructure (India or Sub-Saharan Africa). Looking ahead in light of the UN's focus on all-things-internet in the Sustainable Development Goals, the environmental and social costs of "connecting the next billion" in the

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[50] United Nations Human Rights Council, Resolution A/HRC/26/L.24: *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development,* Twenty-sixth session, Agenda item 3, UN General Assembly, 20 June 2014. See also Peter Higgins and Katitza Rodriguez, "UN Human Rights Report and the Turning Tide Against Mass Spying", EFF, 16 July, 2014: https://www.eff.org/deeplinks/2014/07/un-human-rights-report-and-turning-tide-against-mass-spying.

Global South at any price reveals internet heartlands' dependence on the precious metals and unprotected labour of IT manufacturing and knowledge workers in these same regions. [51]

Thinking about contemporary, and future of internet-media and communications within human rights frameworks has changed the terms of debate, generated concrete action plans that engage communities unused to these considerations. This shift from the margins to the policy centre has also provided inspiration for a range of community-based and national campaigns from civil society organizations. But what have yet to get going are more informed discussions in local (schools, universities, hospitals, town halls) and national (parliaments and businesses) settings. Until then debates about who, or what agency is responsible for tackling the complex practicalities of human rights-informed decisions on the future of internet design, access, use, and content management will stall in the quagmire of mutual recriminations between vested interests. This is where historically aware and thorough critical scholarship can start to unpack the sociocultural and techno-economic nuances of everyday online-offline realities; not simply parrot the gung-ho rhetoric of vested interests looking to ring-fence internet futures as business-as-usual, wherever these voices may reside.

Implementing human rights for future internet visions demands a next step at the level of public discourse as well, from raising public awareness to education and international coordination. Only then can human rights talk for how to run the internet make a difference in those decision-making domains where ownership and control of the world's 'digital imaginations' take place without due democratic process, accountability, or with respect to affordable, and culturally appropriate avenues of legal redress for ordinary "netizens". This is

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[51] UN Sustainable Development Knowledge Platform, 2016, *Sustainable Development Goals* Home page; https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals .

where a lot of work remains; raising awareness and education but also developing robust accountability mechanisms for not only disproportionate governmental surveillance agendas but also the excesses of commercial exploitation of our digital footprints, and other misuses of these technological capabilities for 'global surveillance' [52]. Only then can human rights frameworks in the round, and how specific rights and freedoms apply to the fast-changing online environment at any given moment, be more than an exercise in empty rhetoric. Chakrabarti puts her finger again on the sore spot - without mentioning the implications of an Internet of Things - when she notes that to

> scoop up everyone's data on the off chance that at some indefinite point in the future some of us will fall under suspicion, or for the purpose of a "trawling expedition" to find potential suspects, is the twenty-first-century equivalent of planting cameras and microphones in every family home. [53]

These considerations are not a western indulgence, pivoting on the history of human rights as a response to the holocaust and refugee crisis in the aftermath of the Second World War. Rather it is one that changes the political, and with that the techno-legal conversation about the sociocultural dimensions to a generation of information and communications technologies whose uses have been construed in narrow technical terms by and large. It demystifies the way they work in terms of meaning making, community formation by social beings – and

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[52] This term is from the late Caspar Bowden in his concluding comments on the human rights implications of cloud computing services, Human Rights in a Digital Age, Public Debatem 25th February 2015, https://www.opendemocracy.net/can-europe-make-it/marianne-franklin/defending-human-rights-in-digital-age See also Robert Booth, "Facebook reveals news feed experiment to control emotions", The Guardian, 30 June 2014; http://www.theguardian.com/technology/2014/jun/29/facebook-users-emotions-news-feeds.

[53] Chakrabarti op cit.

their avatars. It puts them back firmly in the remit of political struggle, democratic praxis, and responses to the power modalities by which both consent and dissent are being "manufactured" (to borrow from Noam Chomsky), reproduced, and re-circulated on a planetary scale.

In Conclusion: Too much or not enough?

Bringing these reflections to some sort of conclusion, let us note an earlier UN Resolution as Snowden's revelations of mass online surveillance started to make the news headlines. This resolution, on the right to privacy with respect to the online environment makes clear official concerns at the

> negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights, Reaffirming that States must ensure that any measures taken to combat terrorism are in compliance with their obligations under international law, in particular international human rights, refugee and humanitarian law…the same rights that people have offline must also be protected online, including the right to privacy…[54]

But there is still a long way to go if these sorts of high-level statements are able to meet the challenges raised by the ways in which people using the internet already outstrip the legal conventions and horizons of possibility that constitute national and international institutional politics. Even if such recognition has symbolic value, and it is often easy to under-estimate the power that resides in symbolic gestures, this statement of 'deep concern' is one reason to be cheerful.

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[54] UN General Assembly, 2013, Resolution 68/167: *The Right to Privacy in the Digital Age,* A/RES/68/167.

Three points to sum up: First, what is needed from an advocacy and engaged intellectual perspective is a strengthening not a weakening of resolve and analysis respectively. Hence I would take issue with the claim by some commentators that "human rights aren't enough any more" [55]. Notwithstanding a significant critical literature of how human rights in practice can be more problem than cure, claiming that they do not go far enough misses the historical conjuncture at which we find ourselves. It is moreover a short distance between this notion and its counterpart, that human rights frameworks are "too much", neither the "real thing" nor up to scratch from a particular ethnocentric experience [56]. In all respects such casual dismissals overlook, if not wilfully misread the need for due diligence when forging new laws that couple human rights with issues arising from how states, businesses, and individual (mis-) uses of digital and networked communications. The relegation of human rights norms to the dustbin of pre-internet times also dismisses the suffering of those millions these laws and norms still address. Second, engaged scholars/activists need to keep intervening in what are increasingly polarized debates, in so doing keep accompanying terms of reference, legislative measures, and jurisprudence that would evoke human rights under critical scrutiny. Not all rule of law is good. Nor are all judgments in human rights tribunals beyond reproach; these treaties and covenants are themselves historical, and sociocultural artefacts. As such they are contested outcomes, as are the precedents set by ensuing judicial rulings, in national and international tribunals.

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[55] Cathleen Berger,"Human rights aren't enough any more - we need a new strategy", *openDemocracy*, 17 December 2015; https://opendemocracy.net/wfd/cathleen-berger/human-rights-aren-t-enough-any-more-we-need-new-strategy

[56] The Declaration of Internet Freedom campaign at http://declarationofinternetfreedom.org/

Third, polemics on whether future visions for sustainable and inclusive internet-dependent societies are either too much, or not enough mask another hazard. This is the popularity of "internet freedom" narratives that instrumentalize rights-speak for short-term, self-serving political or commercial agendas. Along with governmental and think tank pronouncements that put jingoistic understandings of security ahead of civil liberties they obstruct the public debates needed to consider sustainable internet futures in the longer-term. The selective approach these discourses take by putting some rights and freedoms ahead of others also dismisses the long, hazardous routes being travelled by current generations of suffering as they struggle to get to the safety of the would-be free world. In this respect Walter Benjamin's reflections on Paul Klee's 1920 image, *Angelus Novus,* have a cyberspatial dimension that we would be ill advised to ignore[57].

The hard work is only just beginning, that is the drip, drip, drip of legal, political and intellectual labour to ensure that future generations on this planet get the media and communications they deserve, in full, not in part. For these reasons alone both old hands and new arrivals to human rights advocacy for the future internet cannot afford to get bogged down in positions of power, status, entitlement, or privilege.

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[57] Benjamin writes, as a witness to the rise of the Nazi war machine and impending holocaust, about how this image depicts an angel being blasted backwards by the violence of the past, into a future as yet unseen. Klee's image is of "an angel looking as though he is about to move away from something he is fixedly contemplating. His eyes are staring, his mouth is open, his wings are spread. This is how one pictures the angel of history. … The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise; it has got caught in his wings with such violence that the angel can no longer close them. The storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress", Walter Benjamin, "Theses on the Philosophy of History" (1940) republished in *Illuminations*, edited by Hannah Arendt, trans. Harry Zohn, Schocken Books, 1969.