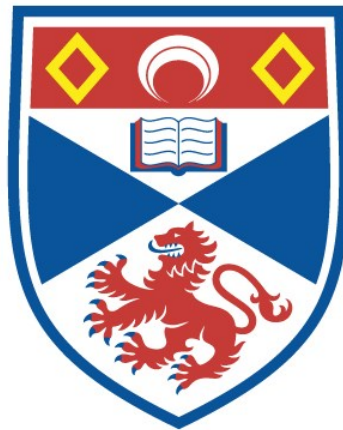


WHY THERE CAN BE A HUMAN RIGHT TO INTERNET ACCESS

Zhengyue Huang

A Thesis Submitted for the Degree of MPhil
at the
University of St Andrews



2019

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Why There Can Be a Human Right to Internet Access

Zhengyue Huang



University of
St Andrews

This thesis is submitted in partial fulfilment for the degree of

Master of Philosophy (MPhil)

at the University of St Andrews

February 2019

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Abstract

In this dissertation, I argue that it is possible to claim a standalone natural human right to internet access. The central argument is in Chapter II. I start my argument by analysing the issue of trans-historical universality of human rights. Human rights are traditionally defined as rights possessed by all human beings in all places *at all times*. It is claimed that if a human right to *X* was not possible in the past due to *X* having been unavailable at that past time, then — on pain of contradicting the universality of human rights — there cannot be a human right to *X* now, and such human right claim is invalid. If the internet as a historically contingent invention was not available in the past, then there cannot be a human right to internet access.

I refute this challenge in chapter II, particularly in section 2.1 and 2.3. On this basis, I develop a framework based on the concept ‘harm’ which I call *Theory Alpha*. I argue that Theory Alpha, with its *Human Rights Generation Conditionals*, provides a philosophical ground to justify human rights such as a right to internet access in a naturalistic approach. Chapter III, by reflecting on the current world, provides some reasons why a human right to internet access is possible according to Theory Alpha. Chapter IV addresses potential objections and issues regarding my Theory Alpha. Particularly, section 4.2 deals with how Theory Alpha would solve the issue concerning universality of human rights. I provide a more detailed preview of the dissertation in section 1.3.

I conclude that Theory Alpha provides satisfactory answers to some important questions about human rights and supports that there can be a human right to internet access.

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黄正越 Huang Zhengyue

19 September 2018 in Edinburgh, Scotland
13 February 2019 in Vienna, Austria

I. Introduction

It should not be a controversy that the internet has changed our daily life on a very deep level, and the integration of the internet with everyday life only seems to continue going deeper and wider. It is perhaps this tendency that motivates the Human Rights Council of United Nations to stress ‘the importance of applying a comprehensive human rights-based approach when providing and expanding access to the internet [...]’¹ While many people may agree with how important the internet can be, such statement has attracted criticism for inviting the thought of a human right to internet access. For example, one of ‘the Fathers of the Internet’, Vinton G. Cerf has argued that ‘internet access is not a human right.’² Tomalty has also argued that there cannot be a natural human right to internet access, though a legal right may be possible.³ But is this the case? Given that 100 years ago (by the time of 2018) British women had no suffrage, and the rapid progress of recognising and realising LGBT rights across the world has only been made in recent decades, it is possible that we could have a convincing argument for a standalone natural human right to internet access.

This dissertation aims at finding a convincing argument for such a human right to internet access. In this introductory chapter, I will first present a short legal overview on this topic in Europe. As a philosophical investigation, I will consider mainly in this dissertation if there can

¹ United Nations, Human Rights Council, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, A/HRC/32/L.20, 27 June 2016 <<http://undocs.org/A/HRC/32/L.20>>.

² Vinton G. Cerf, ‘Opinion | Internet Access Is Not a Human Right’, *The New York Times*, 4 January 2012, section Opinion <<https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html>> [accessed 11 October 2017].

³ Jesse Tomalty, ‘Is There A Human Right to Internet Access?’, *Philosophy Now*, March 2017, pp. 6–8.

be a natural human right to internet access instead of a merely legal one. Because of this general direction of the dissertation, I will have a defence against Beitz's criticism of a naturalistic approach towards philosophy of human rights in the second section of this chapter. In the last section of this chapter, I will provide a preview of the rest in the dissertation and outline the general argumentative structure.

1.1 Legal Overview

There have been legal decisions and provisions, particularly in Europe, regarding a right to internet access. Nicola Lucchi has reported that the Constitutional Council (*Conseil constitutionnel*) of France concluded in 2009 that the freedom to access online network is included in the right to freedom of communication as defined by Article 11 of the 1789 Declaration of the Rights of Man and of the Citizen (*Déclaration des Droits de l'Homme et du Citoyen de 1789*), and invasion of the freedom of internet access may be analysed as violation of Article 11 of the 1789 Declaration.⁴ Lucchi also reported in footnote 163 in his article that Estonia and Finland have recognized internet access as a human right of their citizens.⁵ In the recent years, the European Court of Human Rights has adopted a similar route, namely, to establish protection of internet access through the human right to freedom of expression. Article 10 paragraph 1 of the European Convention on Human Rights⁶ states:

⁴ Nicola Lucchi, 'Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression', *Cardozo Journal of International and Comparative Law*, 19.3 (2011), 645–78 (pp. 668–70).

⁵ Lucchi, p. 676.

⁶ In the rest of the dissertation, the acronym 'ECtHR' will be used to refer to the European Court of Human Rights, and the acronym 'ECHR' will be used to refer to the European Convention on Human Rights (formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*).

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...] ⁷

Relying on interpretations of the clause ‘to receive and impart information without interference by public authority and regardless of frontiers,’ ECtHR has concluded in *Ahmet Yıldırım v. Turkey* that Turkey has violated Article 10 by banning all sites hosted by Google Sites⁸ without a proper legal framework.⁹ By doing so, the Court has made access to internet (as a form of access to information) part of the human right to freedom of expression.

It should be noted that the ‘access to internet’ in concern in *Ahmet Yıldırım v. Turkey* is about access to certain contents on the internet, such as websites hosted by Google Sites, and therefore, more relevant to the issue of online censorship. The ‘access to internet’ I will be concerning in this dissertation is the more general access to internet service or online network, so to speak. If we define ‘the internet’ as the virtual space realized by the inter-connections of hardware and software of computers and digital devices such as smartphones, then the access to this virtual space is the ‘internet access’ that I will be concerning in this dissertation.

Nevertheless, from the brief legal introduction above, one can easily see that a right to internet access may be established — or it has been done so — through existing legal (human)

⁷ Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14*, 1950 <https://www.echr.coe.int/Documents/Convention_ENG.pdf>.

⁸ Google Sites is a webpage creation and hosting service by Google.

⁹ Research Division, European Court of Human Rights, *Internet: Case-Law of the European Court of Human Rights* (Council of Europe/European Court of Human Rights, June 2011), pp. 44–45 <https://www.echr.coe.int/Documents/Research_report_internet_ENG.pdf>. See also the press release from the Court on the *Ahmet Yıldırım v. Turkey* case: European Court of Human Rights, ‘Restriction of Internet Access without a Strict Legal Framework Regulating the Scope of the Ban and Affording the Guarantee of Judicial Review to Prevent Possible Abuses Amounts to a Violation of Freedom of Expression’, 2012 <<http://hudoc.echr.coe.int/eng-press?i=003-4202780-4985142>>.

rights, such as the right to freedom of communication as determined by the Constitutional Council of France, or the right to freedom of expression (or the right to information as included in the right to freedom of expression) by ECtHR. The research question of this dissertation — ‘Why there could be a human right to internet access?’ — may thus be considered to have been already settled by existing legal decisions. However, this dissertation as a philosophical inquiry does not concern about a *legal* right to internet access. Rather, this dissertation aims to *explore* if a human right to internet access can be ‘more’ than a legal one; that is, if this right can be a fundamental human right or a natural right by itself without being a product or an implication of some parent rights such as freedom of communication or freedom of expression.¹⁰ It is worth asking, if right to internet access can be invoked only when, say, the right to freedom of expression is invoked or if besides cases related to the conventional senses of freedom of expression, access to internet is also a human right in general. This aim is motivated by the general reality in the current era (and the foreseeable future) that internet access also facilitates economic, cultural, and political developments, as the then United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue noted in his report in 2011.¹¹ My answer to this explorative question in the dissertation is more than a simple ‘yes’ or ‘no’; I will briefly introduce my answer in the last section of this chapter and further elaborate it throughout the dissertation.

¹⁰ Notice that Lucchi reports that the Constitutional Council of France rejected that internet access is a fundamental right *per se*. See Lucchi, p. 669.

¹¹ United Nations, Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/17/27, 16 May 2011, p. 22 <<http://undocs.org/A/HRC/17/27>>.

Since a human right to internet access in concern is currently not presented in major international human rights conventions such as ECHR, this dissertation holds that the content of international human right documents can not only be challenged or amended, but also discarded if needed, as long as truths require so. This dissertation thus presumes that there can be a justification or rationale that provides the ground for this proposed human right. As such, the guiding paradigm in this dissertation can be considered to be a naturalistic theory of human rights. The first challenge that this dissertation needs to address is the objection to a naturalistic approach towards human rights.

1.2 Naturalism

Human rights are traditionally and commonly conceived (in a naturalistic way) as being ‘possessed by all human beings (at all times and in all places), simply in virtue of their humanity.’¹² This view is classified as ‘the Orthodox view’ or ‘Orthodoxy’ of human rights by Tasioulas.¹³ The Orthodox view of human rights is one part of the theoretical paradigm in this dissertation. The other part of the theoretical paradigm is using natural reason in considering all relevant facts (including social facts) about human beings, and an inclination or preference to naturalistic methodologies like those in social science for gathering and studying these facts. The

¹² A. John Simmons, ‘Human Rights and World Citizenship: The Universality of Human Rights in Kant and Locke’, in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), p. 185. Recited in Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009), p. 49. There is a similar formation in James W. Nickel, *Making Sense of Human Rights*, 2nd edn (Blackwell Publishing, 2007), p. 37. See also Rowan Cruft, S. Matthew Liao, and Massimo Renzo, ‘The Philosophical Foundations of Human Rights: An Overview’, in *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), pp. 1–41 (p. 4).

¹³ John Tasioulas, ‘On the Nature of Human Rights’, in *The Philosophy of Human Rights*, ed. by Gerhard Ernst and Jan-Christoph Heilinger (Berlin, Boston: De Gruyter, 2011) <<https://doi.org/10.1515/9783110263886.17>>.

meaning of ‘natural’ here in the term ‘natural reason’ may be explained in the following ways: 1) mirroring the elaboration of Finnis on the term ‘natural’ in ‘natural law’, natural reason is ‘higher’ than the reason in ‘positive laws, conventions, and practices’, providing ‘the premises for critical evaluation and endorsement or justified rejection of or disobedience to such laws, conventions, or practices;’¹⁴ 2) natural reason is of ‘a directiveness that consists in their pointing and directing us to genuine opportunities of flourishing, fulfilment of human nature, both in my life (my existence) and in the lives (existence) of, essentially and in principle, *anyone* else.’¹⁵

The Orthodox view has drawn criticism from scholars, and for one, Beitz claims that a naturalistic view of human rights misrepresents those of ‘international doctrine’; instead:

We do better to approach human rights practically, not as the application of an independent philosophical idea to the international realm, but as a political doctrine constructed to play a certain role in global political life.¹⁶

To further analyse why a naturalistic approach is worse than a political approach, or a ‘practical’ conception as he names it,¹⁷ Beitz has distinguished two meanings of the word ‘natural’ in the term ‘natural rights’: the first one referring to rights being held by human beings by nature, without the requirement of reference to the contingent circumstances around us, and the second one referring to rights conceived with the use of natural reason with all relevant facts of human beings.¹⁸ While Beitz mostly examines the flaws of naturalistic views of human rights on the

¹⁴ The two quotations in this sentence are from John Finnis, “‘Natural Law’”, in *Reason in Action: Collected Essays Volume I*, The Collected Essays of John Finnis, 5 vols (Oxford University Press, 2011), I, 198–211 (p. 200).

¹⁵ John Finnis, ‘Law, Universality, and Social Identity’, in *Intention and Identity: Collected Essays Volume II*, The Collected Essays of John Finnis, 5 vols (Oxford University Press, 2011), II, 100–121 (p. 102). Finnis’ emphasis.

¹⁶ Beitz, pp. 48–49.

¹⁷ Beitz, p. 102.

¹⁸ Beitz, pp. 51–52.

basis of the first conception of ‘natural’,¹⁹ he nevertheless places the following criticism on naturalistic views of human rights before his distinction of the two ‘naturalness’:

Naturalistic views can yield skeptical conclusions about the scope and content of international doctrine.²⁰

... the distortion is not simply a failure of analysis. Adopting a conception of human rights modeled on natural rights has misleading consequences for all the main questions a theory of human rights should illuminate — about their grounds, their scope, and the manner in which valid claims of human right should guide action.²¹

What should be adopted by theorists, according to Beitz, is the practical conception of human rights, which differs from the naturalistic views at a very basic level:

A practical conception takes the doctrine and practice of human rights as we find them in international political life as the source materials for constructing a conception of human rights. [...] we take the functional role of human rights in international discourse and practice as basic [...]²²

In the following I shall raise and discuss my concerns about Beitz’s criticism and present a general defence for naturalistic views — or what I would call ‘naturalism’ — of human rights.

The first concern I would like to raise is how fair it is to consider sceptical conclusions about international human rights doctrine (or documents) as a drawback of naturalism of human rights. It should be acknowledged that most or even all current international human right documents (perhaps especially the Universal Declaration of Human Rights) are products of politics and were brought into international legal and political arenas by UN or similar (primarily) political

¹⁹ Beitz, p. 52.

²⁰ Beitz, p. 50.

²¹ Beitz, pp. 50–51.

²² Beitz, pp. 102–3.

organizations. Freeman has pointed out that the seemingly neutral legal appearance of these documents is in fact illusive as ‘the meaning and application of human-rights standards is legally and politically very controversial.’²³ This is due to two undeniable factors: 1) the contemporary realm of human rights is fused with political elements;²⁴ 2) the UN-based international human right framework is built around the unaltered concept of *state sovereignty*, and states and other organizations often prioritize certain agenda over other interests or principles, resulting in the UN-based human right implementation being ‘highly politicized, and this leads to selective attention to human-rights problems, political bargaining and delays.’²⁵ Human rights and all the relevant discourses in the international realm are therefore often viewed as grounded in all sorts of political motives, leading some writers to raise the issue of ‘human rights imperialism’.²⁶ The same view are sometimes adopted by certain regimes to dismiss international pressure on their domestic human right issues and to reject relevant talks or interventions. For example, Kinzer claims that the current authoritarian regime of Rwanda (as of 2010) is ‘the best thing that has happened [...] since colonists arrived a century ago,’ and this forms part of his criticism against NGOs such as Human Right Watch and the current international human right movement.²⁷ The central government of People’s Republic of China often regards the emphasis and focus on

²³ Michael Freeman, *Human Rights*, 2nd edn (Polity, 2011), p. 5.

²⁴ For detailed explanation which I shall not repeat here, see Freeman, p. 8.

²⁵ Freeman, p. 10.

²⁶ See, for example, Conor Foley, ‘Beware Human Rights Imperialism’, *The Guardian*, 23 June 2009, section Opinion <<http://www.theguardian.com/commentisfree/2009/jun/23/human-rights-imperialism-western-values>> [accessed 2 August 2017].

²⁷ Stephen Kinzer, ‘End Human Rights Imperialism Now’, *The Guardian*, 31 December 2010, section Opinion <<http://www.theguardian.com/commentisfree/cifamerica/2010/dec/31/human-rights-imperialism-james-hoge>> [accessed 2 August 2017].

liberty rights by Western governments, figures, media or NGOs as external interference with the country's 'internal affairs' and threats to its sovereignty.²⁸ As a reaction to external criticism on liberty human rights issues, Beijing and many pro-government scholars regard highly of socio-economic rights to the extent that they claim, 'right to subsistence and development are prime human rights,' and uphold the idea that sovereignty is prior to human rights.²⁹ Although it is true that many international and regional human rights treaties have been agreed on by many countries, as a matter of fact, *not* all states — including major powers such as the UK, the US, China — have signed or ratified all UN human rights treaties and relevant optional protocols,³⁰ showing a disagreement on these international human rights treaties. If the contemporary international human rights practices can be viewed by scholars like Beitz to be pursuing the goal

²⁸ A recent and conspicuous example is China's barring Benedict Rogers (the deputy chair of the UK Conservative Party's human rights commission) from entering Hong Kong. See, for example, Karen Cheung, 'China Hits out at Britain after Human Rights Activist Benedict Rogers Is Barred from Entering Hong Kong', *Hong Kong Free Press*, 2017 <<https://www.hongkongfp.com/2017/10/12/china-hits-britain-human-rights-activist-benedict-rogers-barred-entering-hong-kong/>> [accessed 21 February 2018].

²⁹ The statement in the quotation marks (commonly '生存权发展权是最重要的（首要）人权' in Chinese) appears in various sources, including high school textbooks, and has been claimed for more than 10 years. For a representation of this official view of the Chinese government on human rights, see Hainian Liu, 'My Thoughts About Human Right View with Chinese Characteristics', *Human Rights, republished on humanrights.cn*, 5, 2016 (2017) <http://www.humanrights.cn/html/2017/zxyq_0227/26022.html> [accessed 21 February 2018]. Text in Simplified Chinese. Original title: 关于中国特色人权观之我见. Original author name: 刘海年. My translation of reference to English. The author is Honorary Chief of the Human Rights Research Centre, Chinese Academy of Social Sciences.

³⁰ As of late 2018, status of ratification of UN human rights treaties and relevant optional protocols can be checked on the following website provided by the Office of High Commissioner of Human Rights at <<http://indicators.ohchr.org/>>. Notably, China has not ratified the International Covenant on Civil and Political Rights (ICCPR), and both China and the US has not signed any optional protocol of ICCPR or the International Covenant on Economic, Social and Cultural Rights. These protocols allow treaty bodies to carry out certain actions (such as receiving individual communication) against state parties when they are accused of human rights violation (please see relevant treaty texts for details).

‘to protect urgent individual interests against certain predictable dangers’³¹ and others to be a form of imperialism or international interference with state sovereignty at the same time, then it seems clear to me that the basic ‘functional role of human rights in international discourse and practice’³² is unclear, or such functional role is subject to the views, preferences or agenda of people and governments about human rights and international politics. The unclear and disputed functional roles of human rights might be a difficult starting point for the practical approach of Beitz.

Nevertheless, if it is exactly the politicized framework and political reality which I have mentioned above that render the implementation of human rights unsatisfactory, it seems that the better way to conceptualize human rights is not to conforming with the current international human rights doctrines and practices as they are now. Naturalism of human rights, in my view, by considering the underlying common, universal and natural values or interests, the grounds or justifications of human rights, allows theorists to distance from international politics or a particular political position, so that the outcome theories, in an attempt to better refine theories or philosophy of human rights, would be critically neutral and (hopefully) universal. Or as Tasioulas puts it, ‘Orthodoxy better enables us to accommodate these possibilities by giving us a purer, moral concept of human rights, free of any such specific institutional entanglements.’³³ Here, I am not claiming that Beitz’s practical conception would necessarily fail to achieve so;

³¹ Beitz, p. 109.

³² Cf. footnote 22.

³³ Tasioulas, p. 48.

rather, I would suggest that ‘sceptical conclusions about human rights’ of naturalism as claimed by Beitz may not suffice to be a major flaw of naturalism of human rights.

Arguably, Beitz is well aware of the disputes of international human rights practice as I mentioned earlier. He also states that a practical approach of human rights needs not ‘[give] too much authority to the status quo by taking an existing practice as given.’³⁴ Though, again, Beitz holds

In the case of human rights, surely the most important consideration is that a doctrine of international human rights should be suited to the public political role it is expected to play.³⁵

And my second concern about Beitz’s approach then is: to what extent a practical conception of human rights would and would not conform with the good and bad of contemporary human rights practices, given the different expectations of the public political roles of human rights by different bodies? If the public political roles of human rights are expected to be establishing and protecting a political body’s ‘external regional legitimacy’³⁶ as a positive public relation image, and at the same time, a political organ infused with Western values to undermine or interfere Asian countries and societies, then the pursued doctrine and practices of human rights for such expected roles would likely be the ASEAN human rights system and mechanism, which is discussed and criticized by Hien Bui as insufficient.³⁷ Exactly as Beitz suggests, ‘an

³⁴ Beitz, p. 105.

³⁵ Beitz, p. 105.

³⁶ Avery Poole, “‘The World Is Outraged’: Legitimacy in the Making of the ASEAN Human Rights Body’, *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 37.3 (2015), 355–80 (p. 357). Cited in Hien Bui, ‘The ASEAN Human Rights System: A Critical Analysis’, *Asian Journal of Comparative Law*, 11.1 (2016), 111–40 (p. 118) <<https://doi.org/10.1017/asjcl.2016.9>>.

³⁷ Bui.

understanding of this public role [of human rights] constrains the content of the doctrine.’³⁸

Beitz’s practical approach in the ASEAN case may lead to limiting the contents and normative scope of human rights, which is one of Beitz’s criticism of naturalistic theories of human rights.³⁹ But to avoid this result, we cannot simply claim that the role of human rights such as the one displayed in the European systems (for example, in the system of Council of Europe and its ECtHR) is *the* expected public role of human rights, for this is not expected by many people or states, and this may again attracts the criticism of Western human rights imperialism. To clarify the roles of human rights in contemporary international political life for the construction of a better conception of human rights, the practical approach may thus need to go beyond its understanding of the current practices of human rights and seek an independent and politically neutral ground on which it is possible to stipulate the best roles that human rights *should* play. If this route is to be taken, a practical approach of human rights may coincide with a naturalism of human rights.

Indeed, depending on the content of naturalism, a naturalistic approach of human rights does not necessarily subject to Beitz’s criticism, and a practical conception and a naturalist conception of human rights may be similar. Recall that Beitz has mentioned a second concept of ‘natural’ that he does not base much of his criticism of naturalistic approaches on:

[...] the “natural” as that which would be required or permitted by the ideally best law for one’s situation—that is, the law one would discover through the use of natural reason if one were perfectly reasonable and had

³⁸ Beitz, p. 105.

³⁹ Beitz, pp. 65–68.

possession of all the relevant facts, including possibly facts about the fixed ends shared by all human beings.⁴⁰

A naturalistic approach towards human rights can follow this idea of being natural, and it does not have to be restricted to the one as described and criticized by Beitz. If one follows this second type of naturalism and construct a philosophy of human rights by considering all the relevant facts of human beings and using natural reasons to make judgements about human rights, then it is unclear if Beitz's criticism on naturalistic theories of human rights would still apply. And in terms of methodology for grounding human rights, it seems that the two approaches in contest would have something in common. This is because Beitz suggests that international doctrines are 'in their own terms an effort to identify the social conditions necessary for the living of dignified human lives.'⁴¹ If we are to identify these necessary social conditions correctly (or truthfully), we would, in order to gather all relevant facts, need the help from social science, the underlying methodology of which is a form of empiricism implemented in natural science, or at least a type of naturalistic methodology. For example, to understand and uphold the human right against torture, we would need to gather all the relevant facts about torture, such as the presumed benefits for the states to use torture, the physical and psychological effects on torture victims. With all these facts, we need to take a further step to see whether certain social conditions are indeed necessary for a dignified human life. As far as I am concern, this further step would still be of a naturalistic methodology as practiced in social science,⁴² and this methodology would likely be required by both naturalistic and practical approaches for justifying

⁴⁰ Beitz, p. 51.

⁴¹ Beitz, p. 57.

⁴² An example in the area of torture would be Fathi Ali and others, 'Consequences of Torture and Organized Violence: Libya Needs Assessment Survey' (Denmark: DIGNITY - Danish Institute Against Torture, 2015) <https://doi.org/10.1163/2210-7975_HRD-9921-2014005>.

human rights. And if the naturalistic approach adopts the same methodology for identifying all necessary and relevant conditions for human rights, it is unclear why it must deliver ‘distorted analysis’ and ‘sceptical conclusions’ as Beitz has criticized.

In summary, while the criticism from Beitz of a traditional naturalistic approach towards human rights has some merits, I contend that, as I have discussed, a naturalistic approach — such as the theoretical paradigm that I have outlined at the beginning of this section — can have its own strength resisting Beitz’s criticism. Arguably, my discussion here of naturalistic versus practical or political approaches is not a complete one, as this dispute is not the main focus of the dissertation. However, I hope that I have well-presented and defended the paradigmatic naturalistic stance in this dissertation.

1.3 Preview

In the above sections I have provided a short legal overview of the legal status of a human right to internet access in Europe, explained the research question of this dissertation, elaborated and defended the theoretical paradigm in this dissertation. As I mentioned before, this philosophical dissertation aims to *explore* if a human right to internet access can be ‘more’ than a legal one; that is, if this right can be a fundamental human right or a *natural* right by itself. To rephrase, is a human right to internet access can be invoked only when the right to freedom of expression is invoked or apart from cases related to the conventional senses of freedom of expression, access to internet is a human right in general? It is, in my opinion, more natural to consider a human right to internet access as a standalone right (if possible) than a right that can be invoked only when the right to freedom of expression or the right to freedom of communication is invoked. This is because nowadays the internet, sometimes labelled as ‘cyberspace’, contains many social, political and economic activities the natures of which are

more than just communications or expressions, even though obviously communications and expressions have their own social, political and economic effects and consequences.

There are, then, two main tasks in this dissertation. First, given the naturalistic approach of this dissertation, we must answer how a natural human right to internet access can be grounded. Second, how (or why), according to the ground or justification as given in the first task, there can be a natural human right to internet access. It must be emphasized that it is not the goal of this dissertation to argue that there *is* a natural human right to internet access. Rather, this dissertation only seeks to answer (with strong reasons) why we *can* have a natural human right to internet access.

To complete the first task, a common problem concerning the universality of human rights, particularly the ‘timelessness’ of such universality in the Orthodox view of human rights needs to be solved. This is the subject of chapter II: section 2.1 first introduces and discusses this problem of universality, and section 2.2 introduces and discusses some extant solutions to this problem in current philosophical literature of human rights, showing why the problem is not solved with these solutions. In the rest of chapter II, I attempt to provide a convincing ground of natural human rights that would solve the problem concerning universality and allow a natural human right to internet access to be established. The key proposal here is the *Human Right Generation Conditional (Harm Version)* (or shortened as ‘the Harm Conditional’ in most of the later parts of the dissertation) and the expanded *General Human Right Generation Conditional*. The main proposed ground of natural human rights is this: given all relevant facts, if the antecedent of the Harm Conditional obtains, then by *modus ponens* a human right in concern can be justified. To complete the second task, then, it needs to be shown how, given all relevant facts about human beings and the internet, the antecedent of the Harm Conditional would obtain so

that a human right to internet access can be justified. Chapter III provides some of these relevant facts about contemporary human life and the internet, and an analysis along the line of the proposal in chapter II. This is the general argumentative structure of this dissertation. If the two tasks would have been convincingly completed, then the conclusion is that there *can* be a standalone natural human right to internet access.

Lastly, chapter IV considers some potential objections and further issues regarding the proposal (named as Theory Alpha) in the final section of chapter II. A main focus in this chapter is again on the issue of universality in section 4.2, which further explains how the common problem concerning universality of human rights in the Orthodox view can be solved by discussing the distinction of content-universality and logic-universality. I argue that logic-universality (the universality of the reasons why a claim or a right is a genuine human right) is the more important universality, and as long as logic-universality is maintained, content variation of human rights across time and space is permitted. Chapter V as the final chapter offers a summary and some more general comments of what I have and have not achieved in this dissertation.

II. A Naturalism of Human Rights

The discussion in the first chapter provides a basis for a theory of natural human rights which I will be presenting in this chapter. As I mentioned in the preview, I will first discuss a rather common and yet prominent objection against natural human rights in section 2.1. Here, as a reminder, I will quote again a seemingly prevailing definition of (natural) human rights:

(Human rights) are rights possessed by all human beings (at all times and in all places), simply in virtue of their humanity.⁴³

The ‘at all times and in all places’ part in this definition is further stretched by Beitz in the following way:

[Natural] rights are... regardless of the stage of development of a society and its productive forces, the details of its political structure, or the content of its religious traditions and political culture. This is one way in which natural rights might be said to be “universal.”⁴⁴

This thought, according to Freeman’s introduction on the history of human rights, can be at least traced back to Thomas Paine:

[The Rights of Man] owed nothing to society or the state. ... Pain’s conception of natural rights was uncompromisingly individualist and universalist: The Rights of Man were the rights of everyone, everywhere, at all times.⁴⁵

⁴³ Cf. footnote 12 on page 5.

⁴⁴ Beitz, p. 53.

⁴⁵ Freeman, p. 31.

We can easily see that both contemporary and historical philosophers hold a conceptual chain of these three conceptions: humanity, universality, rights being timeless and everywhere. The focus of timelessness is branded by Tasioulas as a ‘trans-historical interpretation’, and such timelessness is ‘trans-historical universality’ of human rights.⁴⁶

It is this common and traditional view about natural human rights that leads to the objection I will discuss in the coming first section of this chapter. I provide two formulations of this objection, to wit, respectively, the *Anachronism Problem* and the *Historical Contingency Argument*. The central point of the objection (namely the common theme of the two formulations) concerns the assumed ‘timeless’ feature of natural human rights. In its simplest form, the objection states that since *X* did not exist in the past, there could not be a human right to *X* in the past. But if there is no such human right in the past, then given the universality of human rights, there cannot be a human right to *X now*. Therefore, there is no human right to *X*. This objection, with the supposedly unproblematic conceptual chain as I mentioned at the beginning of this page, can further suggest that either (some) recognized human rights justified by a naturalistic theory cannot be universal, which ultimately undermines the naturalistic theory or even the very concept of *human* rights; or, some proclaimed human rights such as a right to education cannot be genuine human rights, for they do not meet the universality condition.

In this chapter, section 2.1 first analyses this objection on a deeper level. Section 2.2 presents and discusses some extant theories on this topic. Section 2.3 will introduce a new concept of ‘Lifestyle’ that would provide a basis for a (probably) new ground of natural human rights. In section 2.4, I provide a definition of ‘harm’ that is required for my proposal of

⁴⁶ Tasioulas, pp. 32–33.

grounding natural human rights. In the last section, I will propose a theory of grounding natural human rights that hopefully will help philosophy of human rights to solve the problems caused by the traditional view of universality and support a possible natural human right to internet access.

2.1 Anachronism and Historical Contingency

Let us begin with the *Anachronism Problem*, which resembles the following form:

Assuming X is the content of a human right.

A1. All human rights are universal. (Definition)

A2. What is universal is timeless. (Definition)

A3. But X was not available in a past time T . (Fact)

Hence, there is no human right to X , given the contradiction between A3 and A2.

There are at least two versions of this argument depending on the particular tokens of A3: the first version of the Anachronism Problem gives an A3 suggesting that the concept or expression that a human right is based on was not available at a past time. An example would be Raz, who denies a right to education as proclaimed in the Universal Declaration of Human Rights by suggesting that the terms of ‘elementary, technical, professional, and higher education’ would not make sense to people living in the Stone Age.⁴⁷ The very odd thing in this type of argument is the core statement that if a concept or a semantic usage of X (which can be a concept, a word or any expression) is not available or observed at a past time, then there is no human right to X . Such a statement seems to suggest that epistemic unavailability entails metaphysical unavailability. But this entailment is *hard* to obtain: the concept and language of ‘oxygen’ had not been available to human beings for millions of years, but it is not the case that oxygen did not

⁴⁷ Joseph Raz, ‘Human Rights in the Emerging World Order’, in *Philosophical Foundations of Human Rights*, ed. by Rowan Cruft, S. Matthew Liao, and Massimo Renzo (Oxford University Press, 2015), pp. 217–31 (pp. 224–25).

exist before the invention of the word ‘oxygen’. Once the existence of oxygen is well confirmed, it cannot be said that in the past there was no oxygen simply because the concept or language of ‘oxygen’ was not available to the people at that time or because our ancestors had no technology to obtain oxygen. To put it simply in philosophical jargons: (most) epistemological truths supervene on metaphysical truths, not the other way around. It is therefore hard to see how a human right can be proved a superstition by claiming that the concept of the content of that right is alien to most human societies in the past or at any time.

Still, some people may find it peculiar to say that our ancestors would violate a human right (which is but recognized by us in our era) in the past when they had *no idea* of whatever content of that right. But suppose that you know the objective truth that it is wrong to eat the apple on the tree in your garden. You have told your two naïve children — Adam and Eve — not to eat that apple without explaining to them that objective moral truth at a time T_1 . Now that your innocent children have eaten that apple at a later time T_2 , it must appear to you that they have done something wrong even though you also clearly know that they have no idea of whatever about that moral truth. I think this imaginary scenario makes perfect sense, and when respectively, that apple is replaced with some human right, eating the apple with violation of that human right, and the naïve children with our ancestors, we are justified to say that our ancestor violated some human right (assuming the justification for human rights is adequately strong) even though they did not know about that right.

I suspect, though, that some people would maintain that it is peculiar because any philosophy of human rights is yet to be proved to be objective truth, and this is the key difference between the two cases compared in the last paragraph. However, it should be acknowledged that the presumably objective moral truth, ‘eating that apple in the garden is wrong’ is only *claimed*

by me in the imaginary scenario. Only when this claimed truth is first accepted by the readers would the ending of the scenario become convincing. Hence, the suggested difference does not exist because, as the names of signatories in Universal Declaration of Human Rights shows, we do have some consensus on certain human right issues, and human rights in the Declaration were also ‘claimed’ by its authors. Of course, it is completely legitimate to highlight the fact that we do not yet have an objectively true philosophy of human right. But at any rate, this is not the key point I meant to show. What is crucial is this: epistemic unavailability does *not* entail metaphysical unavailability — some concepts being unavailable to you *does not exempt* you from being affected by *what these concepts are about* (if they are really about *something*), regardless of what time it is. Therefore, our ancestors’ lack of moral knowledge cannot justify any of their human right violations in the history according to our (presumably) advanced moral knowledge.

So much for the discussion of the first version of the Anachronism Problem. We now turn to the second version of the Anachronism Problem, which, contrary to the first version by focusing on the unavailability of concepts or expressions in the past, argues against a particular human right by referring to the fact that the content or enjoyment of that human right was not available at a past time. A specific example of this type we will be focusing on is the *Historical Contingency Argument*, which is my reformulation of Tomalty’s argument against a human right to internet access.⁴⁸

Let us first be familiar with Tomalty’s elaboration of the distinction between natural human rights and legal human rights: natural rights are moral rights held *universally* by *human beings*,

⁴⁸ Tomalty.

are grounded in some moral features of being humans. The existence of natural rights is objective, to be *discovered*, and not up to our will. Legal rights do not have these features: they are (or to be) *constructed* and *decided* by us. While apparently both types of rights are commonly grounded in the interests shared by all or the majority of human beings, the interests that grounds natural rights are fundamental to the key concept of ‘human beings.’ The difference may be summarized in two different ways of enquiry: we ask if there *is* a natural right, but we ask if there *should* be a legal right.⁴⁹ This basic distinction between natural right and legal right is used by Tomalty to dismiss the possibility of a natural human right to internet access.

Tomalty suggests that, according to ‘the dominant and most plausible view’, a natural right is grounded in ‘fundamental interests’ of human beings.⁵⁰ On such view, then, Tomalty claims that we have natural rights to life, against torture and against forced slavery because we have fundamental interest in our lives, not to be torture, and not to be enslaved.⁵¹ In contrast, our interest in the internet is not sufficiently fundamental, Tomalty so claims, because the internet and the related informational technologies are *historically contingent*. To quote Tomalty:

How could it be, given its historical contingency? Thousands of years ago, humans had interests in not being killed, tortured, or enslaved, and it’s reasonable to suppose that humans will have such interests thousands of years from now [...] But it’s a stretch to say that the ancient Greeks, for example, had an interest in having internet access, given that they couldn’t even conceive of this technology. And we can’t know whether humans in the future will have such an interest [...]⁵²

⁴⁹ Tomalty.

⁵⁰ Tomalty, p. 6.

⁵¹ Tomalty, p. 6.

⁵² Tomalty, p. 6.

If the quoted text here does not include any usage of the word ‘interest’, and simply goes along the line of ‘because the internet could not be enjoyed by the ancient Greeks, it cannot be enjoyed by all human beings at all time in all places, and therefore, it cannot serve as the content of a genuine natural human right,’ then Tomalty’s argument would be quite straightforward and common, given the naturalistic definition of human rights. However, Tomalty’s argument here is based on fundamental interest. Combined with Tomalty’s examples of what fundamental interests and relevant natural rights we have, the above quoted text seems to suggest that the items⁵³ which we (can) have fundamental interests *cannot* be historically contingent.

Tomalty’s interest-based argument against a natural right to internet access can therefore be reframed into the following general argument: let *X* be an item that may serve as what to be enjoyed of a natural human right, we have

Historical Contingency Argument

H1: Natural human rights are claims based on fundamental interests of human beings. (*Premise*)

H2: Fundamental interests cannot happen with historically contingent items. (*Premise*)

H3: We cannot claim natural human rights to historically contingent items. (From *H1 & H2*)

H4: *X* is historically contingent. (*Common Knowledge*)

Hence, we cannot have a natural human right to *X*. (From *H3 & H4*)

In summary, Tomalty seems to be committed to a theoretically significant claim about natural human rights: human beings cannot make a valid claim of natural human rights to a historically

⁵³ For brevity, I am and will be using the word ‘item’ to refer to things that we can have interests in, including concrete entities such as the internet, and conditions such as life or not to be tortured.

contingent item. In such a way, whatever that are genuine natural human rights can of course be enjoyed by all human beings at all time. How plausible is Tomalty's whole argument?

Either H1 or H2 in the Historical Contingency Argument can be false. Depending on one's particular view on the nature of human rights, H1 may be accepted or rejected to different extents. However, even if H1 is granted, is H2 be simply true? Consider that for some reasons (for example, heavy pollution on water sources), bottled water is the only clean and safe water supply for residents in some place, and they can only consume bottled water to survive. Being humans, they of course have fundamental interest in water, but in this special case, it is fair to say they also have fundamental interest in bottled water as this is the only possible form of realization of their fundamental interest in water. Though bottled water is a historically contingent invention, had ancient Greek have it and were in the same situation, they would have had the same interest in bottled water. If this argument works, then H2 can be rejected as well as the conclusion of the Historical Contingency Argument.

In summary, the two versions of the Anachronism Problem are not free of problems. But this situation does not make naturalism of human rights safe as we still need to make the universality of human rights as a concept plausible and coherent.

2.2 Extant solutions

Some theorists have proposed some solutions to the Anachronism Problem. Here, I will discuss Raz and Nickel with their focus on 'synchronical universality', Griffin's abstraction approach and Tasioulas' response.

Raz's solution to this Anachronism Problem of universality is to suggest that human rights possess *only* synchronic universality, which means (in a simple way) that all people alive *now*

have them.⁵⁴ However, he would not escape from the common dilemma of the conventional concept of universality, nor even the Anachronism Problem itself. This is because to suggest that a human right to education can be synchronically universal is to neglect the fact that some rather uncontacted tribes or societies that still exist today in the rain forests in Amazon or Indonesia resemble much more similarities with the ancient societies of ‘our’ majority of more-or-less Westernized modern societies⁵⁵ than our modern societies. To say these uncontacted societies have the same ‘synchronically universal’ right to education is to suggest that our ancestor societies also have the same right (due to the similarities between these societies). Raz would quite possibly want to avoid this. But to say these contemporary uncontacted tribes do not have the supposed ‘synchronically universal’ right, given their people are indeed all alive now, is to undermine the very concept of ‘synchronic universality’, and to render Raz’s proposal mainly Western, likely becoming a suspect of human rights imperialism.

This is roughly the same problem of Nickel’s sixth and final test in his 6-step justification of human rights, where he suggests that a legitimate human right must possess ‘[the] possibility of successful implementation in an ample majority of countries *today*.’⁵⁶ His test suggests a hint of ‘synchronic universality’, but in the meantime he would very likely regard the right to freedom of expression as a universal human right. The right to freedom of expression may be very likely not possible to be implemented in most countries in the medieval time or in some contemporary authoritarian regimes because of the political systems (such as a single political party ruling the

⁵⁴ Raz.

⁵⁵ This is based on the fact that most non-Western countries were partially or fully invaded and colonised by the West, and heavily influenced by the West even today on all aspects.

⁵⁶ James W. Nickel, *Making Sense of Human Rights*, 2nd edn (Blackwell Publishing, 2007), p. 79. My emphasis.

country in an absolute way) or the power relation between certain institutions (such as the Catholic Church in Western Europe in history) and the people. In my opinion, however, whether there is the human right to freedom of expression should be independent of whether it is possible to be implemented at any time; in fact, most or all of the so-called liberty rights should have such independence — and I consider this to be a general truth about human rights. Of course, the implementability or feasibility of a human right would affect the provision of this right. But limited provision of some human right should not render it a non-human right. If the human right to freedom of expression is impossible to be implemented because the implementation of such right (as claimed by some states) would destabilize the country and threat the power of the ruling party, the solution to this situation — it seems likely true — should never be denying freedom of expression as a human right. Otherwise, it is hard (at least) to explain how liberty rights emerged at the time when suppression on free speech was dominant in most parts of world in history. To keep this independence of rights from its implementability by removing the time condition, however, is very likely to bring back the anachronistic problem to Nickel's justificatory process. Further, Nickel's following discussion on fully justified human rights and nearly fully justified human rights appear to be peculiar to me: freedom of expression is not well implemented in many suppressive countries including China (the Mainland) due to political organisations there. Thus, this right is only fully justified in free, democratic countries and nearly fully justified in other countries today. This results in freedom of expression being *and* being not a human right at the same time. Nevertheless, I think it is a plausible intuition that the implementability and the actual implementation should be considered on the basis of human rights, rather than the other way around.

Griffin's approach on dealing the trans-historical universality is to suggest a distinction between higher-level, abstract rights and applied or derived rights. Abstract rights of the highest level are of the values that are attached to agency, namely autonomy, minimum provision, and liberty. Derived rights are those rights to be applied in specific societies that are formulated out of abstract rights 'in the language of its time and place and actual concerns [...]'⁵⁷ Griffin suggests that '[we] should claim only that universality is there at the higher levels.'⁵⁸ As Tasioulas commented, Griffin's approach would suffer from two problems: 1) many human rights as listed in international conventions would cease to be genuine human rights as they lack the trans-historical universality;⁵⁹ 2) (as I understand it) the more serious problem is that Griffin's abstract rights of autonomy, minimum provision and liberty may be simply a relabel of interests, rather than being genuine rights. As such, the overall view of Griffin would amount to a reductive view which Tasioulas deems as problematic.⁶⁰

As a response to the issue at hand, Tasioulas suggests that the trans-historical universality is not a necessary condition for human rights. Instead, we shall confine human rights to the relevant historical periods, and so, for example, the global human rights since the Universal Declaration of Human Rights should be constrained within the time frame of 'modernity', of which Tasioulas himself has described a few features.⁶¹ But this approach is similar to the 'synchronical

⁵⁷ James Griffin, *On Human Rights* (Oxford University Press, 2008), p. 50.

⁵⁸ Griffin, *On Human Rights*, p. 50.

⁵⁹ But as we will see very soon, Tasioulas himself considers trans-historical universality not an essential part of human right. If we accept this, it is hard to see how Tasioulas' first objection against Griffin will remain effective.

⁶⁰ Tasioulas, p. 33. For Tasioulas' discussion on the reductive view, see his same article, section II.

⁶¹ Tasioulas, pp. 35–36.

universality' approach I have discussed before, and so it may suffer from the same problems. Particularly, the ostensive definition of 'modernity' as provided by Tasioulas is primarily Western. For example, part of the characterization of 'modernity' is the 'pervasive influence of individualism and secularism in shaping forms of life [...]'⁶² The contemporary human rights culture understood with such concept of modernity may either exclude peoples and communities that do not follow this direction or imposes a Western conception of human rights on non-Western societies or countries. And therefore, simply abandoning trans-historical universality may not really help solving the Anachronism Problem.

2.3 'Lifestyle'

As mentioned in the preview of this dissertation, henceforth until the end of this chapter, I will propose a ground of natural human rights that would solve the Anachronism Problem and allow a human right to internet access to be justified. Recall my brief discussion of Tomalty's argument against a natural human right to internet access. There I suggested that if in a scenario there is only one way to gather and consume clean water for survival, then even if this only way is historically contingent, people will still have fundamental interest in it, in which case a right to this particular way to water can be justified. To construct a more general and robust argument out of this discussion, a concept is first required to pick out all other similar 'particular ways to something' in contexts. This concept has been suggested in the heading of this section:

⁶² Tasioulas, p. 36.

‘Lifestyle’.⁶³ My choice of word is of course affected by how we use the word ‘lifestyle’ in our daily life. In this thesis, however, this word is defined as the following:

Lifestyle ≡ A general and natural pattern or form of life without being a direct product of some particular individuals’ will.⁶⁴

The definition is to maintain that it is the *natural* pattern of life that is the subject we are going to discuss. What I meant here by ‘natural’ is exactly the same as what Tomalty has used to describe natural rights, namely being ‘*beyond our ability to manipulate,*’ being ‘*not up to us to decide,*’ and being *to be ‘discovered’ by people.*⁶⁵ As such, this technical term is meant to pick out those general ways of life that are, on a large scale, not chosen by everyone, but are the daily ways that people live in. Hence, one of the most prevailing Lifestyle is our daily need, collection and consumption of subsistence, because this is the way how human beings naturally live. Another example of Lifestyle is our constant need and interactions with fellow human beings, for relationships with others, whether for instrumental or emotional purposes, are crucial for our survival and wellbeing. Likewise, many other biological, mental and psychological features are relevant, or are themselves Lifestyles.

Notice, however, that the above explanation has no intention to limit the meaning of ‘Lifestyle’ with an inappropriately narrow sense of ‘natural’ or ‘nature’ as in the common contrasts between ‘natural’ and ‘social’ and between ‘nature’ and ‘(human) society’. Such

⁶³ To distinguish the technical term ‘Lifestyle’ in my thesis from our daily use of the word ‘lifestyle’, the capitalised form ‘Lifestyle’ will always be used.

⁶⁴ One should note that the word ‘organisation’ here does not necessarily suggest anything related to human behaviours or mental capacities, for many physical and chemical phenomena also shows certain orders that fit the meaning of ‘organisation’.

⁶⁵ Cf. pages 21-22.

common contrasts or distinctions often ignore the fact that many social entities, events, movements and so on are also natural in the same sense that they are not up to us to decide and are beyond our abilities to manipulate. For example, when I was born in the early 1990s, English had already been the international common tongue for decades. This is not up to the will or preference of me as well as many other people. Though many people have wished or would wish another language (for example, their native language) to be the current international common tongue, such wish is hard or impossible to fulfil (at least in the close future). In many cases nowadays, people would have a natural and genuine need and interest to learn and use English without coercions from others, and it could be harmful sometimes for them not to do so. In this way, while English being the international common tongue is a social fact or the result of social construction, people's engagement with it is similar to those with subsistence and human relationships. Therefore, social facts like 'using English as the global common tongue' can be categorized as a Lifestyle. Some other examples include the modern transportation, the state, the capitalist economy.

I specify that a Lifestyle is not a direct product of some particular individuals' will in order to exclude those individually personal lifestyles such as heavy drinking or smoking. But it neither means that the forming of Lifestyle is not influenced or affects by some people's will, intentions or desires, nor does it mean that a Lifestyle cannot emerge from conventions. To clarify this point, let us consider smoking. If one chooses to smoke constantly, then this is a lifestyle one chooses to live in. One's smoking is not a Lifestyle. However, if I live in a city where it is a common pattern that people smoke in general public space rather than designated areas, then 'people smoke in general public space' is a Lifestyle in this city, for I can easily encounter smokers smoking on the streets like I do with the prevailing usage of English. If a law

is passed in the city setting designated smoking areas, and it is a common pattern that people follow the law to smoke in these areas, then ‘people smoke in designated areas’ is a different Lifestyle in this city.

To further illustrate this point, let us take a look on the dominant tap water system in modern cities. At the dawn of humanity (that is, the ‘most natural’ era), though, people did not require using tap water system to have adequate water supply. This was because at that time most water sources in or near human habitats were most likely clean, and everyone could have more or less direct access to these sources. However, the history of epidemics has proved that unmanaged water supply could easily turn into a disaster for human health. Besides, ever since industrialization and urbanization, along with the boost of population especially in cities, it should not be a controversy that the primitive way of water supply has been proved to be unreliable and inefficient. I personally could not imagine how modern city life can be maintained above a minimum healthy and preferable level without a tap water system. Nevertheless, tap water system has been the dominant and integrated Lifestyle in many countries and regions for quite a long time, and most drinkable water resources are controlled and managed by government agencies. It is likely very hard or nearly impossible for a modern city inhabitant to find cheap and easily usable water source alternative to tap water. Therefore, for most people, using tap water or not are not up to their will or preference, especially when they are living in cities. Moreover, given the convenience of tap water, it is unlikely that modern citizens would naturally prefer not to use tap water. For these reasons, the tap water system qualifies as a Lifestyle in contexts where there is a tap water system.

Now, suppose a person has no access to tap water in a city run on the basis of tap water system. For example, he bought an apartment and there is no water pipe or tap in the structure.

His life would not be completely difficult, if there are alternative ways to fetch enough water for daily life. For example, if there are public fountains (or drinking taps) and public bath, then he could still manage to maintain a healthy and decent life. But what if that is not the case? What if there is no alternative way for him to conveniently gather clean water for his survival? His life would be rather difficult even if he could manage to fetch enough bottled water for daily requirement. It is quite possible that in this city, having no access to tap water has been imposing unavoidable harm to him, the least worst of which would be an unreasonable financial and time loss. Therefore, although tap water system is historically contingent, that person will have fundamental interest in tap water, which is avoiding unavoidable harm from the lack of (convenient) access to water in this case. Though, perhaps in some cases, such as that he has committed serious crime, having no access to tap water is justified as a punishment issued by the court. But if that is not the case, if that person is a decent one, then we shall ask: is there any fact in nature that support his being denied access to tap water in this city? I think not. Because he 1) is a human as such that water is required for his survival 2) living in a city organized on the basis of tap water system where he would and should naturally have access to tap water 3) without valid justification to deny his access to tap water. Excluding that person in an unjustified way from this Lifestyle of tap water int this city without providing alternative ways for him to conveniently fetch clean water, whether it is intentional or not, will lead to unavoidable harm which amounts to a tort against that person. Ultimately, such an unfavourable case is against his humanity, because it seems rather clear that no one should suffer from unavoidable harm inflicted by social arrangements without proper justification. There are strong reasons then to support that the access to tap water should be guaranteed as a right of him in this city. In another

word, *if* a Lifestyle such that the exclusion of a person from it would result in unavoidable harm to that person, *then* that person has a natural right to be included in that Lifestyle.

If the above discussion is reasonable, well justified and acceptable, then it appears that we may have a new ground of natural human rights based on harm. It is my intuition and observation that the concept of ‘harm’ itself seems very likely to be universal and neutral, as I would boldly believe that all cultures on earth hold that harm is bad and should be avoided. I will define ‘harm’ in the next section.

2.4 Harm

It is crucial that if we want to build any theorem of human rights around the concept of ‘harm’, we must first clarify and define this word. As Feinberg correctly points out:

The word “harm” is both vague and ambiguous, so if we are to use the harm principle to good effect, we must specify more clearly how harm (harmed condition) is to be understood.⁶⁶

In this section, I will first discuss Gert’s conceptualization of ‘harm’, particularly his thought on pain as harm. I shall show that Gert’s essentially extensional and ostensive definition of ‘harm’, such as ‘pain as harm’, is problematic. We therefore should not use the same methodology. I then turn to Feinberg’s conception of ‘harm’ which I will adopt with my own modification, and present what I consider a proper definition of ‘harm’ for grounding natural human rights in the last section of this chapter.

Let us start then with Gert’s *Common Morality*, in which he claims that

⁶⁶ Joel Feinberg, *Harm to Others*, The Moral Limits of the Criminal Law, 4 vols (Oxford University Press, 1987), I, pp. 31–32.

The point of morality is to lessen the suffering of those harms that all rational persons want to avoid: death, pain, disability, loss of freedom, and loss of pleasure.⁶⁷

I will use ‘pain’ as the example to show that Gert’s method of defining ‘harm’ has great flaws, even though it seems that pain can be quite easily and intuitively thought of as harm. People — for example, Griffin in his book *On Human Rights*⁶⁸ — also tend to talk primarily about pain rather than harm when concerning human values or human rights.

While it is correct for Gert to specify ‘pain’ to include both physical and mental pain — also, ‘[u]sing “pain” to refer to all unpleasant feelings is fairly standard and should cause no misunderstandings.’⁶⁹ — let us consider his opening sentences in his explanation of the rule ‘Do not cause pain’:

Unless they have some reason, every rational person wants any painful sensation or feeling to stop; [...] Physical pain is a painful sensation that, *unless they have some reason*, every rational person wants to end immediately if not sooner.⁷⁰

While I fully agree with the truism of these two sentences, it should be noted that Gert uses the ‘unless’ clause twice, even though I agree that the clause is correct and needed. It must be pointed out that the very clause of ‘[unless] they have some reason’ suggests that ‘some reason’ would make any painful sensation, or pain *simpliciter*, not harm: with these reasons, rational people do not necessarily want to end pain immediately or sooner. Indeed, I suggest that pain is neither efficient nor necessary for harm: in some case, pain does not cause harm; in some others,

⁶⁷ Bernard Gert, *Common Morality: Deciding What to Do* (Oxford University Press, 2004), p. 7.

⁶⁸ See Griffin, *On Human Rights*, p. 123. There Griffin presents a similar thought like Gert’s interpretation of the ‘do not cause pain’ rule.

⁶⁹ Gert, p. 31.

⁷⁰ Gert, p. 31. My emphasis.

there is harm when there is no pain. The pain I am having now (for example, a sore butt after long-time sitting) when I am ‘writing’ (typing) this thesis does little harm to me (although the literal ‘pain in the arse’ may turn out to be some chronic pain in the future); in fact, it is probably for this painstaking process that the completion of this dissertation and the degree that would be accordingly awarded are deemed to be valuable as well as a great achievement that will bring me enormous happiness and satisfaction. It likely goes the same with many other achievements, satisfactions and pleasures in human life. In contrast, when smokers smoke, they may or may not feel any pain. In fact, smoking itself is most likely quite pleasing and relaxing for smokers (and that is probably why they smoke), even though scientific researches have proved that there are inevitably negative effects — which can be rightly considered as harm — caused by the smoke. Therefore, although one can rightly claim that ‘do not cause pain’ is a moral rule that all should abide by, it is incorrect to say that the concept ‘pain’ is tantamount to ‘harm’. It should be clear at this point that Gert’s methodology of defining ‘harm’ extensionally — by consider some other concepts or categories (such as pain) to be ‘harm’ — can easily lead to incorrect definition which is neither properly inclusive nor properly exclusive. We should therefore seek a wider and more accurate definition of harm by considering the intension of ‘harm’.

For the proper intension of ‘harm’, I would first suggest that, ontologically, pain and harm are two distinctive entities. If we follow a physical point of view of human minds, then we may consider that pain is essentially a physical (or neural) activity that happens in our body, or a physical property of some other activities. Pain are identified as the firing of some particular fibres in our neural system in modern neuroscience.⁷¹ Quite often, pain is *something* that we *feel*.

⁷¹ Roland Puccetti, ‘The Great C-Fiber Myth: A Critical Note’, *Philosophy of Science*, 44.2 (1977), 303–5.

Hence, ‘pain’ can be considered essentially a physical concept. Whether pain is good or bad largely depends on our evaluation, even though it seems that human beings from different cultures may agree on most of the evaluations of pain. For example, fasting in Christian and Islamic traditions is considered good even with the pain of hunger, but the same pain of starving for a whole day is generally considered bad. It is therefore fair to say that for pain, or something that is counted as pain, its physical property comes first. What values we attach to the pain is not straightforward in some cases. Further, some pains, such as the pain you feel from your skin during a vaccine injection, are perhaps simply amoral, as you may think that it is neither bad nor good *by itself*, even though it would be better if it is not there. On the contrary, harm does not seem to be ‘something’ that we can directly observe in some perceptual way like we do in medical science, such as pathology. I suggest that we do not observe harm in the first place; instead, we *recognize* harm. It is only after certain thing has been recognized as harm that we can observe harm or harmful events and actions in the sense that we observe these events and actions knowing — with the input of established relevance or correlation between those events and their results, or those actions and their effects — that they will, to a certain degree, cause harm. It should be clear that ‘harm’ is essentially a moral concept with certain physical elements (for example, some pain is recognized as harm), and it seems that harm is necessarily morally negative, unlike some particular pains to which we may attach positive value.

That being said, one may further suggest that if a physical or mental degradation does not affect a person’s *good* life at all; or perhaps, in a surprisingly fortunate way, that degradation actually brings that person a very *good* life, and the person agrees so, then we lose the ground to classify that degradation as harm. If this is correct reasoning, it further implies that what we

recognize as harm must have something do to do with what we recognize as a good life. But what is a good life then? The myth of a definitive definition of ‘harm’ has not been solved yet.⁷²

To answer this question, we may first turn to Liao’s Fundamental Conditions Approach,⁷³ recognize ‘[...] various goods, capacities, and options that human beings *qua* human beings need, whatever else they (*qua* individuals) might need, in order to *pursue* the basic activities’,⁷⁴ and specify that harm would be the degradation or deprivation of those fundamental conditions, such as certain capacities, goods or options. But fundamental conditions, or at least many of them, are primarily physical conditions bearing no moral property or value. It is the human needs make these physical conditions moral because we attach values to them. However, we can easily come up with the word ‘interest’ here and stipulate a connection between harm and human interests, if one may think that the word ‘need’, or ‘desire’ can be too subjective and arbitrary.

This is the route that Joel Feinberg has taken in his great four-volume work *The Moral Limits of the Criminal Law*, particularly volume I, *Harm to Others*. By reflecting on several issues related to criminalisation and liberty, Feinberg proposes:

The Harm Principle: It is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from

⁷² One may question that it might be useful to distinguish ‘evaluative harm’ from ‘non-evaluative’ harm. However, my intuition disagrees. The further explanation on the crucial difference between pain and harm I have presented so far (that pain is essentially physical and can be amoral while harm is essentially moral) is exactly meant to articulate that harm is essentially evaluative whereas pain can be non-evaluative.

⁷³ S. Matthew Liao, ‘Human Rights as Fundamental Conditions for a Good Life’, in *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), pp. 79–100.

⁷⁴ Liao, p. 82. Liao’s emphasis.

acting) *and* there is probably no other means that is equally effective at no greater cost to other values.⁷⁵

However, the concept ‘harm’ is yet to be clearly analysed and defined. Feinberg does this job brilliantly in chapter 1 of *Harms to Others*. Feinberg further defines that

To say that *A* has harmed *B* [...] is to say much the same thing as that *A* has wronged *B*, or treated him unjustly. One person *wrongs* another when his indefensible (unjustifiable and inexcusable) conduct violates the other’s right, and in all but certain very special cases such conduct will also invade the other’s interest and thus be harmful in the sense already explained.⁷⁶

Feinberg later on goes to suggest that

The sense of “harm” as that term is used in the harm principle must represent the overlap of senses two and three: only setbacks of interests that are wrongs, and wrongs that are setbacks to interest, are to count as harms in the appropriate sense.⁷⁷

For Feinberg, the appropriate definition of ‘harm’ is the following:

A harms *B* when:

1. *A* acts (perhaps in a sense of “broad” enough to include acts of omission, [...])
2. in a manner which is defective or faulty in respect to the risks it creates to *B*, that is, with the intention of producing the consequences for *B* that follow, or similarly adverse ones, or with negligence or recklessness in respect to those consequences; and
3. *A*’s acting in that manner is morally indefensible, that is, neither excusable nor justifiable; and⁷⁸

⁷⁵ Feinberg, I, p. 26.

⁷⁶ Feinberg, I, p. 34.

⁷⁷ Feinberg, I, p. 36.

⁷⁸ Feinberg himself does not explain what can counted as ‘indefensible’, as he considers it unnecessary given the massive works on this topic that are already existent. As this topic is not the focus in this dissertation, and the concept itself does not seem requiring my explanation to support other parts of this dissertation, I will simply leave

4. *A*'s action is the cause of a setback to *B*'s interests, which is also
5. a violation of *B*'s right.

In short, *A* wrongs *B* (defined by conditions 1, 2, 3, and 5) and harms his interests (condition 4).⁷⁹

Feinberg has clarified that the right he is referring to here in condition 5 cannot be legal rights, for otherwise there will be a 'vicious circle' of defining harm by criminal laws while at the same time criminal laws are required to be justified by defining harm. Feinberg therefore turns to *moral rights merely*, which, according to him, are claims 'backed by valid reasons and addressed to the conscience of the claimee or to public opinion,'⁸⁰ and 'directed against one's fellow citizens prior to and independent of any claim of enforcement against the state.'⁸¹

Feinberg's definition of 'harm' is without doubt a very useful one for our project in this thesis. However, I reckon that this formulation can be problematic for *our task* here to ground human rights by using the concept of 'harm'. Let us focus on condition 5 and particularly the concept of 'right' in it for now. As I have mentioned, Feinberg has made clarification about what he means by 'right' in condition 5, and thus there will be no more vicious circle for him. However, the 'vicious circle' would persist in our task of grounding natural human rights by using the concept of 'harm', because by keeping condition 5, natural human rights would ultimately be justified by some other rights when we are trying ground human rights with the

it here. Readers who are interested in this topic are welcome to refer to Feinberg, I, p. 108. and his footnote 5 in chapter 3.

⁷⁹ Feinberg, I, pp. 105–6.

⁸⁰ Feinberg, I, p. 110.

⁸¹ Feinberg, I, p. 111.

concept of ‘harm’.⁸² Further, the grounds for valid claims as *moral rights merely* against others turn out to be, according to Feinberg, *welfare interests* and *ulterior interests* that are directly invadable in an indefensible way.^{83, 84} Feinberg’s condition 5 — now grounded in welfare interests and a limited group of ulterior interests — is pretty much equivalent to setbacks of these interests, namely, condition 4.⁸⁵ Condition 5 is therefore redundant, if the narrow sense of ‘harm’ is already ‘setback of an interest’. A benevolent interpretation of Feinberg would be that the distinction between ‘harm as setback of interests’ and ‘wrong’ allows the possibilities of non-harmful wrongs and non-wrongful harm — such as setbacks of interests in legitimate competitions, which are fairly common — and that is why an appropriate sense of harm must be the overlap of the narrow sense of ‘harm’ and wrongs.⁸⁶ Be that as it may, condition 5 still seems redundant, given the conception of ‘morally indefensible’ conducts in condition 3 in the five-condition formulation. It can be argued that a wrong does not have to be a violation of one’s right; an act or behaviour can be wrong for being simply morally indefensible. If a husband is an extreme loyalist to monogamy, then no matter how much an extramarital love or sexual relationship may please him, any intimate interaction with someone outside of the marriage

⁸² In another word, using Feinberg’s five-condition formulation of harm to ground human rights would amount to using rights to define rights.

⁸³ Feinberg, I, p. 112.

⁸⁴ By Feinberg’s definitions, *ulterior interests* are ‘a person’s more ultimate goals and aspirations,’ such as the creation of a great work, acquiring great skills, getting a job in academia and so on. *Welfare interests*, in contrast, are those basic conditions shared by all human beings that are means to a person’s ultimate goals, including health, adequate intelligence, minimal financial capability and so on. For Feinberg’s discussion on these two types of interests and the concept of ‘interest’ itself, see Feinberg, I, chap. 1 ‘Harms as Setbacks to Interest’.

⁸⁵ This is my interpretation. However, Feinberg does suggest that ‘[legal] wrongs then will be invasions of interests which violate established priority rankings.’ See Feinberg, I, p. 35. Also, ‘[...] such a violation sets back an interest, and to that extent therefore harms the interest’s owner, [...]’ (Feinberg, I, p. 107.)

⁸⁶ Feinberg, I, p. 36.

would be morally indefensible (at least for the mere hypocrisy) and considered a wrong conduct for him (not only in the moral sense, but also in the logically self-contradictory sense), even though the extramarital intimacy may not violate any party's rights in that marriage (for example, in the case that the couple nevertheless have a very harmonious relationship on all aspects). If my reasoning here is correct, then a simpler concept of 'wrong' as 'morally indefensible action against someone' can be accepted, which allows us to remove 'violation of someone's rights' as a condition for the definition of 'harm', resulting in a simpler, circulation-free formulation for our task of grounding human rights.

I shall therefore conclude that we can define 'harm' as *morally indefensible actions against someone that will set back that person's interests or increase the risks of such setbacks*. It is obvious that the harm in concern would only happen during one's lifetime.⁸⁷ This definition does not involve the concept of 'right', and therefore, can be used in grounding human rights without a conceptual circulation of defining 'human right' with 'right'.⁸⁸

Before ending this section, it must be noted that so far, we have only determined harm conceptually. As I have emphasized, a philosophy of human rights that is not operational or does not offer a clear guidance for operations in reality does not suffice. The definition of 'harm' that I have just spelled out is not an operational definition. To determine harm in the practice of human rights or the related policy making, we would need to determine, as we can see in our

⁸⁷ Can harm be done to a person after his or her death? I think not, for there will be no 'effective' interest of that person. But I will leave this question to my readers.

⁸⁸ It should be emphasized again that this is not a problem for Feinberg, but a problem for our first task in this dissertation if we are to keep the condition 5 in Feinberg's five-condition definition of harm. At any rate, it is not intuitive for me that we must or should define 'morally indefensible' in terms of violation of some rights. It must also be noted that it is neither my intention nor within the scope of this thesis to give a definition of harm that is free of moral element.

definition above, what those morally indefensible actions, setbacks and interests are. These are complicated questions not possible to be answered here. I, for one, do believe that there is already evidence suggesting that the operations of determining these factors for grounding, justifying or generating human rights are achievable — or at least there are many hopes. For example, the tort law tradition in common law has massive examples of how to determine indefensible actions and setbacks of interests in a relatively consistent way.

In the next and ending section of this chapter, I will propose a theory to ground natural human rights based on what I have discussed so far in this chapter.

2.5 A Theory of Natural Human Rights

Given the discussion in section 2.1 and section 2.2 about the Anachronism Problem, it should be clear that we need to ground human rights in a way that would solve the Anachronism Problem, particularly addressing issues of trans-historical universality properly. The discussion of the concept ‘Lifestyle’ and the related argument (of the modern Lifestyle of tap water in cities) should have shown that a particular Lifestyle can inflict harm that is unavoidable (or not convenient to avoid) to people that are excluded from that Lifestyle. The concept ‘harm’ is defined as morally indefensible actions against someone that will set back that person’s interests or increase the risks of such setbacks. We need a theory that recognizes, justifies or generates human rights in a consistent, coherent and logical way by considering all relevant facts of human beings and their societies rather than using arbitrary grounds or *ad hoc* political ideology. Otherwise, the generated human rights would be arbitrary and non-universal as well, causing all sorts of problems in theory and practice, such as the problem of compossibility⁸⁹ and lacking the

⁸⁹ Freeman, p. 6.

power and attractiveness that the human right discourse is supposed to have. Given all the discussion we have had so far, we can use the following conditional to ground natural human rights:

If a Lifestyle L providing X in a context W is such that when some person P is excluded from L , there is no alternative way for P to conveniently obtain X , resulting in either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to P , **then** P has a human right to X in W .

This conditional summarizes the reasons why a person has a human right to access to tap water in the imaginative case considering the lack of access to tap water in section 2.3. In addition to this, to use this conditional in some other cases, it is probably not so natural for us to talk about exclusions from certain Lifestyles. For example, in the Lifestyle of slavery that existed in ancient Greece or perhaps currently some parts of the world, it seems to me more natural to describe slaves as being included within a Lifestyle of slavery, even though we can surely say that they are excluded from a Lifestyle of non-slavery (i.e. freedom or autonomy). Considering this, the conditional I just proposed can have another version as shown below:

If a Lifestyle L providing X in a context W is such that when some person P is included within L , there is no alternative way for P to conveniently obtain non- X , resulting in either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to P , **then** P has a human right to non- X in W .

The ‘non- X ’ in this case of inclusion means the opposite of X . For example, if X is slavery, then non- X is non-slavery, or what we normally say, freedom or autonomy.

These two conditionals can then be combined into the following single conditional:

Human Right Generation Conditional (Harm Version): **If** a Lifestyle L providing X in a context W is such that when a person P is excluded from or included within L , there is no alternative way for P to conveniently obtain X (in the case of exclusion) or non- X (in the case of inclusion), resulting in

either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to *P*, **then** *P* has a human right to *X* (in the case of exclusion from *L*) or a human right to non-*X* (in the case of inclusion within *L*) in *W*.

Let us look at an example about how this Harm Conditional⁹⁰ works. First of all, while I use the variant ‘a person *P*’ in the above conditionals, this is for simplicity, and of course the conditionals should apply to more than one person. Now, take the example of a Lifestyle of slavery. In a context, say, Ancient Greece, a Lifestyle of slavery was coexistent with an opposite Lifestyle of non-slavery that only included those non-slaves, such as aristocrats. Under the Lifestyle of slavery, without doubts slaves would be suffering from unavoidable harm such as non-freedom over their life choices. With the variants in the Harm Conditional filled with relevant values, we have

Argument for a human right against slavery in Ancient Greece

Premise 1: **If** the Lifestyle of *slavery* providing *slavery* in *Ancient Greece* was such that when people were included within *slavery* (meaning that they become slaves), there was no alternative way for *slaves* to conveniently obtain non-*slavery* (namely, freedom or autonomy), resulting in either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to *slaves*, **then** *slaves* have a human right to non-*slavery* in *Ancient Greece*.

Premise 2: It was indeed the case that slaves in Ancient Greece had no alternative way to conveniently obtain freedom or autonomy, and they suffered from either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm. (In another word, *the antecedent of Premise 1 obtains*.)

Hence, by *modus ponens*, *slaves* have a human right to non-*slavery* (namely, freedom or autonomy) in *Ancient Greece*.

Conclusion: Slaves in Ancient Greece have a human right against slavery.

⁹⁰ For brevity, in the rest of this dissertation I will always refer to this Human Right Generation Conditional (Harm Version) with the term ‘Harm Conditional’.

If we replace the value of the variant of context *W* (Ancient Greece) in the above argument to contemporary world or the general history of human beings, then the above argument can be easily turned into a general argument for a human right against slavery. In short, when applying the Harm Conditional, we need to first recognize the values of the variants in the conditional. To rephrase, we must first ask and give answers to the following few questions:

- 1) What is the Lifestyle in concern in what context?
- 2) What does this Lifestyle provide?
- 3) What is the context in which there is this Lifestyle?
- 4) Who are being affected by this Lifestyle?
- 5) Are they excluded from or included within this Lifestyle?
- 6) Is there any alternative way for these people, aside from the Lifestyle in concern, to conveniently obtain what the Lifestyle provides (in the case of exclusion) or the 'opposite' of the provided (in the case of inclusion)?
- 7) Is there either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to these people as a or the result of the answer to question 6)? What is the harm?

When we have the answers to these questions, we can then easily fill in the variants in the antecedent of the Harm Conditional. The next step is to check if, with the variants filled with values, the antecedent of the Harm Conditional obtains or not. If the antecedent obtains, then the third step is using *modus ponens* to arrive at our conclusion that there is a human right to such or against such. This is exactly the process used in the above example of an argument for a human right against slavery in Ancient Greece.

I shall say a few more things to help with understanding the Harm Conditional.

First, the phrases ‘excluded from’ and ‘included within’ in relation to a Lifestyle is meant to be neutral in application. For example, if an authoritarian and repressive regime in the current era adopts a very aggressive state censorship, their citizens can be said to be excluded from a Lifestyle of free expression, even though in other literature or media, expressions such as ‘be forbidden from’ or ‘be deprived of’ are more commonly used.

Second, given the above conditional, I define a ‘*basic Lifestyle*’ as a Lifestyle such that the inclusion within or exclusion from which would result in either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to the people being affected by such inclusion or exclusion.

Third, while I require ‘unavoidable harm’ here in the Harm Conditional, it does not suggest that the harm in play is indeed necessarily unavoidable. If this were what I suggest, then it would be meaningless and impossible to ground human rights with this conditional, which is but meant to establish human rights to protect people from harm. The conditional speaks of a hypothetical scenario, namely that *if* lacking *X* or non-*X* leads to unavoidable harm, *then* there is a human right to *X* or non-*X* so that harm will be avoided by implementing the human right. A harm can be unavoidable given the status of a Lifestyle and the relation between it and people; the harm is avoidable, likewise, given a different status or relation. To wit, having a basic Lifestyle of slavery would result in unavoidable harm to many people, but this harm can be avoided by adopting a basic Lifestyle of non-slavery.⁹¹

⁹¹ My special thanks to Siméon De Bro (St Andrews/Stirling Philosophy Graduate Programme, University of St Andrews) for asking to clarify this point.

Fourth, a human right to ‘non- X ’ means a human right to the opposite of X . In the above case of Lifestyle of slavery, slavery is the value of the variant X and thus non- X is non-slavery. But in practice we would likely use ‘freedom’ or ‘autonomy’ instead of ‘non-slavery’. Likewise, a Lifestyle of aggressive state censorship provides censorship (the value of X), and the relevant non- X is non-censorship, which can mean freedom of expression. The usage of ‘non- X ’ is for the simplicity of the formulation of the conditional.

Fifth, the Harm Conditional recognizes, justifies or generates human rights *in a context*. This does not mean that the conditional is meant to justify a completely different set of human rights than those that has been recognized in, for example, the Universal Declaration of Human Rights — though it can surely do. What the conditional is meant to convey is that human rights are — or, should be — indexed to contexts. Some may immediately consider that it would be ridiculous to do so, for human rights would then not only be different across time, but also different across locations at a same time, which means human rights are not universal, a salient contradiction to our conventional perception and conception of human rights.⁹² Further, there will be an unfavourable inflation of the amount of human rights given the amounts of contexts. I think these two objections are not well sustained. I address the problem regarding universality in detail in chapter IV section 4.2. What I can quickly respond here is that, indeed, we should index human rights to contexts. This would not affect the universality of human rights as long as they are all justified, recognized or generated through the Harm Conditional *consistently*. Regarding the problem of inflation of human rights: of course, if there are different basic Lifestyles in different contexts, then according to the Harm Conditional, there are varying human rights *in those*

⁹² My special thanks to Matthew Green (St Andrews/Stirling Philosophy Graduate Programme, University of St Andrews) and Oliver Spinney (University of Manchester) for raising questions related to this point in a discussion.

contexts and the absolute amount of human rights in total may indeed surge. But if we accept the Harm Conditional, then such inflation is justified, for it is all down to the increased number of basic Lifestyles in those contexts as long as these varying human rights are recognized, justified or generated by the Harm Conditional consistently. For example (as we shall see in the following chapter), if there is a basic Lifestyle of internet usage in different contexts, then there can be and should be a human right to internet access in all these contexts. However, given that there will likely be only a limited number of basic Lifestyles in any given context (given the standard of being ‘basic’ as I mentioned before), it may not be true that there will be an inflation of human rights within a context (the number of human rights may well decrease given the ‘basicness’ requirement). Further, if all contexts overlap, or if there is a persistent basic Lifestyle satisfying the Harm Conditional across all contexts globally, then we will have a set of globally uniform human rights. Importantly, we should avoid numbering human rights in an absolute way: if we accept the Harm Conditional, then any human right that is not indexed to a context is baseless and not justified. A human right that is held by every human being is indexed to *one* grand context under the same basic Lifestyle. Our common way of addressing human rights without mentioning any particular context should be thought of as omission for parsimony. In short, the inflation problem of human rights is not a genuine worry for my above proposal.

Lastly, to avoid imposing stringent burden on people who are under great risks of their interests being thwarted, the conditions of conveniently obtaining *X* or non-*X*, convenient avoidance of harm and fair degree of risks of such harm are added to the Harm Conditional. This is because risks of harm are always a type of interest that we consider before making a decision or taking an action. This can not only be proved by our personal experiences, but also supported by the industry of commercial insurance and the establishment of social insurance. Without the

addition of ‘convenience’ or ‘risks’, people who are vulnerable to possibly unavoidable harm cannot be protected by human rights. This is because even in some grim situations one can argue that people *always* have a way to escape harm. For example, people can always argue that those who are under aggressive state oppression, such as the Jews living in Nazi Germany can always migrate or flee to free countries like the US or the UK. Such unkind or even cruel comment ignores the fact that immigration rules are often very strict, and only people who meet certain conditions (such as being affluent to a certain extent or have certain personal connections with a citizen in a free country) have real chances to flee from state oppression. But these people with resources and connections are likely also the same people that do not suffer as much harm or risks compared to those that have no adequate resources or connections. If we recognize human rights only by looking at what the already rich and powerful people would not suffer from, then we are not respecting the human statuses of the poor and weak, and so the Harm Conditional would not be equal and fair, resulting in a lack of universality. With the additions of ‘convenience’ and ‘risks’, we are allowed to say, for example, that Jewish people in Nazi Germany were suffering from severe human right violations or risks of such even though they still had one difficult way to avoid the harm, which was escaping from Nazi Germany. It is worth noting that what I mean by ‘convenient’ is not the same as ‘easy’, and ‘a fair degree’ does not mean ‘affecting 0.1% of the population once in their lifetime.’ Of course, it would be difficult for us to measure convenience of obtention and avoidance, and the risks of unavoidable harm consistently across all contexts. However, the addition of these conditions, as I have argued, is justified.

Some⁹³ has suggested that the Harm Conditional I have proposed can be expanded to an even more general ground of human rights by replacing ‘harm’ with a variant, and hence we have:

Human Right Generation Conditional (General Version): If a Lifestyle *L* providing *X* in a context *W* is such that when a person *P* is excluded from or included within *L*, there is no alternative way for *P* to conveniently obtain *X* (in the case of exclusion) or non-*X* (in the case of inclusion), resulting in either unavoidable **Condition C**, or *C* that cannot be conveniently avoided, or a fair degree of risks of such condition to *P*, then *P* has a human right to *X* (in the case of exclusion from *L*) or a human right to non-*X* (in the case of inclusion within *L*) in *W*.⁹⁴

If the Harm Conditional as I proposed earlier is not accepted or does not cover all cases that we intuitively think that there are human rights issues being involved, then theorists can insert the conditions that they find convincing into *C* and have different conditionals to ground some human rights. And accordingly, a *basic* Lifestyle under this General Conditional would be a Lifestyle such that the inclusion within or exclusion from which would result in either unavoidable Condition *C*, or *C* that cannot be conveniently avoided, or a fair degree of risks of such condition to the people being affected by such inclusion or exclusion. For example, imagine a perfectly good authoritarian regime in which all citizens living there do not suffer from any harm or risks of harm under the basic Lifestyle of authoritarianism *as long as* they wholeheartedly follow what the authorities’ say. The Harm Conditional seems weak here regarding any possible human rights issues. But of course, being as human beings, we do feel that we must be able to choose our own life paths even though our decisions may lead to

⁹³ My special thanks to Marco Grossi (St Andrews/Stirling Philosophy Graduate Programme, University of St Andrews; University of Oxford from October 2018) for this suggestion.

⁹⁴ For brevity, this conditional would be referred to in the rest of dissertation as the General Conditional.

whatever regrettable results. We might well regard that autonomy is part of the essence of our humanity. The citizens in such a ‘perfectly good’ authoritarian regime are perhaps no more than happy animals in a farm, and the regime is not in fact perfectly good as the lack of *genuine* choices of life is the biggest flaw.⁹⁵ In such case, theorists may specify a Condition *C* around the concept of autonomy and establish a different grounding conditional for human rights. This shows that my proposal in this dissertation has the capacity to be compatible with other plausible theories of human rights, and it also permits pluralism. This would only make the overall thesis more open, flexible and stronger. However, such benefits come with costs: the General Conditional now requires a Condition *C* to be determined and justify human rights in a way that all possible Condition *C*s (including harm) do not conflict with each other. It should be noted, though, that this move may not be necessary because other Condition *C*s may be types of harm or subordinate to the Harm Conditional.

While philosophers may help analysing and clarifying concepts and conceptual connections that are required for a universal human right system, the overall construction of this system will need scholars and experts of other disciplines, such as social sciences and legal science, to fulfil the details for operations and practices in our complex reality. The construction of a fully operational framework will undoubtedly exceed the scope of this dissertation. I will leave this task to others, and I hope my work here contributes to the success of it.

⁹⁵ Of course, some may argue that in this imagined regime there is still an unavoidable setback of interest. I would surely agree that this is not a perfect example to counter against the Harm Conditional. The example works when for some people, trading autonomy with securing all other interests is not an overall harm.

In summary, if we accept the Human Right Generation Conditionals,⁹⁶ then I propose that we can ground human rights in this way: To recognize, justify or generate a human right, we first determine the values of all the variants in the Human Right Generation Conditionals in a given context. Second, we see if the antecedent of the conditional obtains or not in that context. Third, if the antecedent obtains, then by *modus ponens*, we have that human right to *X* or non-*X* in that context.

⁹⁶ For brevity, the term ‘Human Right Generation Conditionals’ (in plural form) refers to both the Harm Version and the General Version of the Human Right Generation Conditional.

III. The Reality and Possibility

At the end of Chapter II, we established a framework of human rights. Let us call it *Theory Alpha*.⁹⁷ It is not my intention to consider Theory Alpha being free of problems, though I do believe it conveys some truth. In any case, Theory Alpha is perhaps only one of all the possible plausible theories of human rights. In this chapter, I will focus on how we may have a human right to internet access under Theory Alpha. As the readers may have seen in the previous discussions, the general application of Theory Alpha would require identifying all the elements in the Human Right Generation Conditionals, though it should be noted that, not all elements in the Conditionals are required to be identified on the same level of detail. For example, when identifying the person(s) *P*, we do not need to know every detail of *P* except that *P* must be existential and factual rather than imaginary (though arguably in some cases we would use hypothetical *P* which can be observed in reality). For some other elements such as the Lifestyle *L*, the item *X* or non-*X* and the harm (or Condition *Cs*), we may need to identify them as detailed as possible so that we are sure that it is *really* because of the exclusion from or inclusion within *L* causing the exact *X* or non-*X* unavailable to *P* and *H* (or *Cs*) to *P*, avoiding any relevance fallacy.

Now, I will turn to the reasons why we *can* claim a human right to internet access. Again, it must be emphasized that this dissertation does *not* argue that there *is* a human right to internet access. Also, in the following I would only provide some examples of facts that I consider the readers can easily relate to personally, as this is a dissertation of philosophy rather than one of

⁹⁷ This name gets its inspiration from first Derek Parfit's *Reasons and Persons* (Oxford: Oxford University Press, 1986), in which he thinks about a *Theory X* for ethics, and second, in computer programming, 'alpha' often refers to the first test stage of a programme.

sociology or a social investigation report, though ideally it would be better to consolidate more reports on internet usage from social science in this chapter.⁹⁸

3.1 Why a Human Right to Internet Access

We may first think of the issue of internet access on a small scale. I believe nowadays the internet is an integrated part in the running of many universities. For example, here at University of St Andrews, students' coursework is required to be submitted on an online platform within the University, which is called MMS (as of late 2018). Teaching staff are also required to give grades and feedbacks on students' coursework on this platform. It seems that on the administrative level of academic issues, pen and paper are no longer the mostly used method. At least, during most of my time here as a postgraduate student in philosophy, coursework must be submitted online *only*; a handwritten essay on paper would not be accepted on a normal occasion. Further, communications across students and staff, or between departments, are mostly done via emails, and students need a computer and internet access to check library catalogue. Some students also regularly meet their supervisors via Skype rather than travelling to a certain place and meet each other in person. Being away from home, I also keep in touch with my family and friends via the internet by using messaging apps on a smartphone or Facebook to avoid disconnection and depression. Now, surely all these activities can be done via more old-fashioned telephone calls or written letters, but as internet connection is relatively cheap and most convenient for many people, using the old-fashioned ways is no longer cost-effective. For

⁹⁸ For an informative report on the recent development of the internet in China, see David Schulze and Nadine Godehardt, *China 4.0. Party and Society Debate the Digital Transformation*, SWP Comments (Berlin: Stiftung Wissenschaft und Politik -SWP- Deutsches Institut für Internationale Politik und Sicherheit, 2017). For a research on the effects of the internet on society and economy, see Manuel Castells, *The Rise of the Network Society, The Information Age: Economy, Society and Culture*, 2nd edn, 3 vols (Chichester: Wiley, 2010), I.

example, international phone call is still much more expensive and less flexible than sending voice messages on mobile messaging apps. It should not be a controversy that using the internet is a dominant and integrated Lifestyle in modern university operation and management and part of the student life, at least at University of St Andrews.

Now, consider some students are admitted into University of St Andrews with this Lifestyle of internet and computer usage. Their tuition and accommodation fees are fully covered by scholarship, after which their finance only allows them to maintain a minimally decent life. They therefore could not afford their own personal computer, nor a private access to internet, though they could afford some pens and paper. To make sure they could complete their courses properly, the University administration should either secure funds for them to purchase a PC and a private internet connection or provide public computers and internet access for all enrolled students. If the University cannot implement either of these approaches, then the Lifestyle of internet and computer usage should not be made dominant and integrated, and the University should allow students to submit any coursework in the form of a handwritten paper. But if the University decides to maintain the Lifestyle of internet and computer as we can observe at the moment and do not offer alternative ways for the students to submit their coursework, then such an arrangement would inflict unavoidable harm such as forced failure of course on these destitute students. Given that some affluent students can still complete coursework with their own PCs and internet connections, the unfavourable arrangement will amount to a discrimination against the destitute students and ultimately against their student status and human status,⁹⁹ for no

⁹⁹ The unfavourable arrangement will ultimately be against the destitute students' human status because the arrangement will amount to deeming those students not deserving equal student status as the affluent students simply because they are financially incapable.

enrolled student should have higher status and more privilege than others.¹⁰⁰ Moreover, even the affluent students may face the embarrassing situation when their PCs fail to perform properly right before the deadlines. Hence, as long as the Lifestyle of internet and computer usage remains as dominant and integrated in the University, and the exclusion from it will result in unavoidable harm to students, then students have a natural human right to internet and PC access in the context of the University.

The above discussion is an example showing how some people can claim a natural human right to internet and PC access in a very small context of university, even though both the internet and PC are historically contingent. To see whether there is a natural human right to internet access in other contexts or a wider context, we can use the same analysis to see if there is a basic Lifestyle of internet in those contexts. If there is, then people under such Lifestyle have a natural human right to internet access; if not, then they may not have such human right.

It must be emphasized that in this dissertation I *do not* argue that there *is* a natural human right to internet access. However, given Theory Alpha and the current development and usage of the internet and its growing dominance, I strongly support that we *should* consider a human right to internet access. To see why this is so, I will now present some real-life scenarios of using the internet, in spite of the case of universities that I have discussed above:

Example 1: ScotRail publishes live journey updates and route disruption information *only* online (during the time when this dissertation is being written). Therefore, if travellers have no internet access to check the relevant information, they have to go to the railway stations in person to see if their trains still operate during severe weather conditions.

Example 2: The usage of mobile messaging apps provides a cheap and fast way of contact, especially for people residing internationally. It is also

¹⁰⁰ This can not only be backed by natural reasoning, laws but also the University policies.

particularly useful during disastrous and emergent events when the situation of affected people needs to be known by many other people. For example, Facebook has provided a function to allow users to mark themselves 'safe' and publish the status on their timelines in a place where there is such a life-threatening event. News apps provided by news agencies such as BBC, the Guardian and so on allow these emergencies to be known by users almost immediately after the events are known. Weather services are also able to use the internet and smartphone apps to warn people about upcoming severe weather conditions.

Example 3: E-commerce has not only contributed quite a lot to the general economy of many countries, but also improved many people's financial conditions, thanks to the low cost of the internet and computer technology. For example, Chinese e-commerce giant Alibaba has two dominant platforms Taobao.com and Tmall.com, which allow sellers to do business at a much lower cost compared to traditional street shopping business. This is because e-commerce sellers do not need to rent or own expensive commercial properties but use only their own houses or low-cost warehouses. Further, e-commerce also boosts second-hand markets, for it is very easy and almost free of cost for anyone to post their unwanted or unneeded items online (such as on eBay.com) to get in touch with potential buyers from places that are hundreds of kilometres away and have the items sold. This is likely not possible without utilising the internet for e-commerce. E-commerce not only helps sellers, but also benefits consumers quite a lot for the overall prices online are generally lower than those offered by traditional vendors.

Example 4: The internet has made distance education more flexible, usable and effective. With the surge of MOOCs (massive online open courses), people from different parts of the world are able to learn useful knowledge or skills to empower themselves for their careers or general life. Even when they are not able to go to a university or a university they want in another country for various reasons, the internet and MOOCs still allow them to get good quality higher education at home. Online digitalized texts, pictures and other material along with search engines, publisher websites and online databases have also made researches and the flow of knowledge quicker, more efficient and international.

Example 5: As I mentioned before, I keep in touch nowadays with my family and friends mostly via online social networks such as Facebook and mobile messaging apps such as WhatsApp. As far as I know, it is rather safe to assume that this is quite common for many people around the world at the moment, for even the generation of my mother (who was born in the 1960s) now uses messaging apps to keep contact with their families and friends. Video calls on handheld devices such as smartphone are more stable and easily achievable via current 4G cellular network and Wi-Fi internet

connections, which provide much more positive effects to build or maintain social connections than traditional texting or voice call.

Example 6: Nowadays online trending topics can often trigger widespread public discussions, influencing public opinions or social cultures in various way. For example, the ‘#MeToo’ movement has its start on Twitter and quickly become an influential social movement across the world for raising attention to and encourage actions against sexual harassment. Moreover, the internet, with related encryption technology, has been used in many countries and regions for social and political movements. For example, the new media as well as ‘cyberactivism’ have played a critical role in the Arab Spring and other social campaigns, not only boosted civic activism but also easily encourage global solidarity.¹⁰¹ Before the Hong Kong’s 2014 Umbrella Movement, an online voting platform developed by the University of Hong Kong and Hong Kong Polytechnic University was adopted as part of an unofficial referendum.¹⁰²

My reporting here on the dominance of the internet is arguably not as robust as a social investigation can possibly be, but I believe many readers would have experienced or know something in common. The point is to show that the internet is having huge influences in many aspects in our life, and it can be easily observed that there is a tendency in which the internet will be integrating with our daily life on a more and more basic level. For example, China has seen a surge of mobile payment (which relies on mobile internet connection) and is currently having the highest market share in the world.¹⁰³ And reporting from my personal experience (and likely many other Chinese), nowadays we can use mobile payment apps to make purchases in almost

¹⁰¹ Habibur Haque Khondker, ‘Role of the New Media in the Arab Spring’, *Globalizations*, 8.5 (2011), 675–79 <<https://doi.org/10.1080/14747731.2011.621287>>.

¹⁰² For a glance on the movement, see Johannes Chan, ‘Hong Kong’s Umbrella Movement’, *The Round Table*, 103.6 (2014), 571–80 <<https://doi.org/10.1080/00358533.2014.985465>>. For reports on the online voting platform, see ‘Voting to Vote’, *The Economist*, 21 June 2014 <<https://www.economist.com/blogs/analects/2014/06/hong-kongs-referendum>> [accessed 6 March 2018]; Deutsche Welle, ‘Hong Kong Unofficial Referendum Extended after Online Voting Problem’, *DW.COM*, 2014 <<http://www.dw.com/en/hong-kong-unofficial-referendum-extended-after-online-voting-problem/a-17728551>> [accessed 6 March 2018].

¹⁰³ Deborah Weinswig, *Deep Dive: Mobile Payments in China* (The Fung Group, 19 November 2016) <<https://www.funnglobalretailtech.com/research/deep-dive-mobile-payments-china/>> [accessed 6 March 2018].

anywhere with (or sometimes even without) a card machine, including hospitals. Mobile payment in China also allows users to pay for house bills, parking fees and tickets, donations to charity, and so on. Authorities in China are also moving some administration online to allow citizens to make certain applications from their computers or mobile phones. All of these are dependent on the internet.

Now, according to the analysis of Theory Alpha, all these above examples will not suffice to make the antecedent of the Harm Conditional true, because even when the benefits of the internet as described above are not available to people, it is very likely that people have many other alternative ways to get similar benefits that are more or less their fundamental interests, or are necessary for their daily life. For example, people can still write letters, make phone calls or meet in person for social connections, and traditional street shops are still quite common almost everywhere. The exclusion from internet access, in many cases, does not cause unavoidable harm or a fair degree of risks of such harm. Therefore, no human right to internet access can be claimed *yet*. However, if the tendency persists, it is very likely that the Lifestyle of internet will one day become basic in relation to some or even every aspects of daily life. At that time, people who have no internet access, when the majority of the society do, will likely, or indeed suffer from great economic, social, cultural and political disadvantages, which can lead to ultimately unavoidable harm. This is not the case yet, but when it is, people have a human right to internet access according to Theory Alpha.

3.2 What It May Be

In this section, I consider what the content of a human right to internet access may possibly be. What we may have successfully established is a philosophical ground for this right, but readers and policy makers may want to know, in practice, what this right should be like.

It should be first noted that there seems to be a common misunderstanding that recognized human rights always confer the free ('free of cost') enjoyment of the content of those human rights, especially socio-economic rights. A human right to subsistence, for some people, means that people can get free food or water. Likewise, a human right to internet access could mean people get internet access for free. But this may seem to be impossible when in the UK people pay roughly £20-30 per month for broadband connection. A human right to internet access, on this 'free of cost' interpretation, will create a great financial burden on the treasury.

But this 'free of cost' interpretation of some human rights is wrong in theory and in practice given my following discussion. In the following few paragraphs I will describe what a human right to internet access can be by spelling out the possible and likely correlative duties in a three-fold duty framework that Shue suggests: duties correlated to human rights are

- I. To avoid depriving.
- II. To protect from deprivation
 1. By enforcing duty (I) and
 2. By designing institutions that avoid the creation of strong incentives to violate duty (I).
- III. To aid the deprived
 1. Who are one's special responsibility,
 2. Who are victims of social failures in the performance of duties (I), (II-1), (II-2) and who are victims of natural disasters.¹⁰⁴

If we accept this three-fold duty framework, then for any human right, the first correlative duty is to avoid depriving the enjoyment of that human right. A human right subsistence will then imply

¹⁰⁴ Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edn (United States of America: Princeton University Press, 1996), p. 60.

first the duty to avoid depriving other people's enjoyment of subsistence. Given this first duty of any human right, the 'free of cost' interpretation of human rights is not always true.¹⁰⁵

Let us first begin with the duties to avoid depriving and to protect from deprivation correlated to a possible human right to internet access. At any rate, a human right to internet access shall always mean that no one can prohibit someone to use the internet or disturb the internet connection effectively (such as limiting a user's connection speed at a very slow or unusable level) by any means without legitimate justification. That would further mean that laws or regulations must be passed to protect internet facilities and internet connections, and certain punishments are justified to be used against those who damage these facilities or indefensibly disturb anyone's internet connection. If internet facilities malfunction, public agency or ISPs (internet service providers) must repair or fix the problems as soon as possible. No government or institution can cut out national or regional internet access for any reason in general, unless it is a truly justified state of emergency for the sake of genuinely public interest, or the court grant permissions to do so based on the best judgement for the purposes of justice. Such duties would also mean that hosts must provide internet access to guests that have no effective communication method unless there will be substantial setbacks to other interests of the host or the guests. Parents who want to control their children's internet usage may not be happy to hear my argument, but I will suggest that in an internet-dominant era, education about internet usage is as important as sexual education (and others), and therefore a better way is to teach children how to use the internet properly rather than forbid them to use it.

¹⁰⁵ For detailed discussion on this point, see Shue, chap. 2.

Let us now turn to the duty to aid the deprived. As I will argue in section 4.4, states can be legitimately assigned as duty-bearers for correlative human rights, and that we can make valid claims to the state's performance in a basic Lifestyle of state as Frosini suggests¹⁰⁶ — that is, the state bears duties correlative to human rights when the state is a dominant power in the citizens' life. Surely the internet is not free, but most citizens pay taxes. In theory, if many countries can provide free or heavily subsidized public education, and have heavily armed military with pioneering weapons that will not be used for their design purposes for decades — both of which are very expensive — then why would governments be unable to offer free internet access to their citizens? In practice, some regional governments have been providing free public Wi-Fi hotspots in certain areas not only to local citizens, but also tourists.¹⁰⁷ Therefore, if according to Theory Alpha we do have a human right to internet access, then the state has a duty to secure free or affordable internet access to the society as part of the content of that human right, by, for example, directly providing of free public Wi-Fi, constructing internet facilities or subsidising internet service providers. A correlated duty for the citizens in this case would be that they must pay taxes. But this, in a country like the UK where every commercial item (including a burger in a restaurant) is charged for a 20% VAT, most people likely do pay taxes all the time. The internet service that is inspired by this human right does not have to be the most advanced or

¹⁰⁶ See the end of section 4.4. As a matter of fact, the UK government has been attempting to ensure every UK resident has a legal right to at least 10Mbps broadband access by 2020 as part of the government's Universal Service Obligation. See: 'UK Wants All Residents to Have Access to Broadband by 2020', *Engadget* <<https://www.engadget.com/2015/11/08/uk-broadband-access-2020-pledge/>> [accessed 19 September 2018]; 'The UK Decides 10 Mbps Broadband Should Be a Legal Right', *Engadget* <<https://www.engadget.com/2017/12/20/uk-government-10mbps-broadband-uso/>> [accessed 19 September 2018].). For a possible realization offered by BT of this goal, see 'BT Offers Broadband to Every Rural Home in the UK, for a Price', *Engadget* <<https://www.engadget.com/2017/07/30/bt-rural-broadband-proposal/>> [accessed 19 September 2018].

¹⁰⁷ From what I know and have experienced, this is the case in Milan (Italy), Shenzhen (Mainland China) and Taipei (Taiwan). Notice that these three cities are very rich, if not the richest in the respective country or region.

lightning fast; it can be, and will most likely be basic, for example, having only 5~10Mbps bandwidth. The cost for such basic access would not be expensive in our current age, and as network technology advances, the cost will only decrease. People who can pay for much faster internet will still be able to pay for and use what they prefer. But of course, it is perhaps exactly because countries have spent so much money on national defence that they cannot subsidize other important socio-economic areas, and there is perhaps no good reason to cut down national defence spends. Still, states would be able to lower the cost of internet access by other means. If citizens agree, the state can always raise taxes to provide more and better services for everyone. Laws, regulations and policies can be passed and implemented by the state to prevent or forbid capitalist monopoly of internet service in the country or regions; governments can make agreements with ISPs to help lowering the costs for building internet communication facilities and in return they need to keep the prices on a reasonable level; prices for internet service can be capped in a good way (such as nationalized internet services that are not after profits) which would allow most people to use it but in the meantime ISPs can still make reasonable profits. The bottom line of this duty of aiding the deprived for the state would be securing the availability of internet access by either creating or increasing the related resources.¹⁰⁸

There are surely much more to be said about correlative duties about a human right to internet access, but given the word limit, I will not continue. A rule of thumb in specifying correlative duties according to Theory Alpha is that if *not* doing something will or will likely cause unavoidable harm to others, then we have duties to do those things.

¹⁰⁸ I understand that my suggestions here tangle with the problem of distributive justice, which I will not be able to discuss in this dissertation as it is not the topic.

There are two final concerns about Theory Alpha, particularly of Harm Conditional in terms of unavoidable harm. First, we may wonder for what proportion of the population we should recognize a human right. Should we recognize a human right to internet access if there are only 20 percent of the population will suffer from unavoidable harm by having no internet access? A quantitative threshold in regarding moral issues is always hard or perhaps impossible to determine in a completely unbiased way. At any rate, if by rigorous research we know that it *is* the Lifestyle that is causing unavoidable harm to people, then a human right should be recognized even when only one person is suffering from this unavoidable harm. There is, however, a (probably) methodological perplexity: we may be able to determine unavoidable harm only by observing the number of people that are suffering from harm caused by a certain Lifestyle, as the number of non-suffering people would suggest that there are relatively convenient ways to avoid the relevant harm. However, we should be careful that the number itself may not actually suggest any possibility to avoid the harm on an individual level. Some people's freedom from relevant harm may not be due to the fact that those harm are (conveniently) avoidable, but that these people are affected by different Lifestyles, or indeed different life styles. For example, in terms of the price for good-quality internet access, university members that have access to eduroam,¹⁰⁹ such as students at University of St Andrews, will be unlikely suffering from high prices of internet service as long as the university can provide the service without charging extra tuition fee (which, though, likely rises every year). But that does not mean other members in the society or a different context are not suffering unavoidable harm caused by high internet service prices. It is therefore not an easy task

¹⁰⁹ For details, visit <https://www.eduroam.org/>.

to determine unavoidable harm as well as basic Lifestyle and decide at what point we should recognize a human right. Still, these practical problems may be solved by social science rather than philosophy.

A second concern is that we may take people's subjective reports on the harm inflicted on them into account in order to determine unavoidable harm. At some point during the research, it could be the case that 50% of the sample population report that they suffer from unavoidable harm or risks of such harm, while the other half do not consider themselves being harmed under the similar or identical effects of a Lifestyle. This could still be the case even when researchers have helped people to identify and remove their biases or possible misunderstandings regarding the issue at hand. There will then be a disagreement about facts or perhaps fundamental ethical issues, rather than mere verbal disagreement.¹¹⁰ People may agree on the definition of harm, but still disagree on what can be counted as harm or morally indefensible; for example, if the 'volenti non fit injuria'¹¹¹ principle holds even in some extreme cases such as 'consented' slavery, or if the same principle applies to people who harm themselves under the condition of, say, depression. In any case, constant campaigning and advocating for certain issues would still be much needed even if Theory Alpha is accepted or if we have good or better theoretical frameworks to ground human rights. In some cases, when the state is the violator of human rights and there is no possible alternative way to have human rights recognized and respected in a peaceful discourse, I believe revolutions can be justified.¹¹²

¹¹⁰ David J. Chalmers, 'Verbal Disputes', *The Philosophical Review*, 120.4 (2011), 515–66.

¹¹¹ 'To a willing person, injury is not done.'

¹¹² This suggestion of justified revolutions is of course bold and perhaps too quick. Readers may spare me by accepting that the discussion in this chapter so far has been outlining rather than justifying possibilities. To say more

3.3 Summary

To summarize this section: given the reality of the utilisation and influences of the internet, it is possible that people can claim a human right to internet access according to Theory Alpha when the exclusion from the internet will inflict unavoidable harm or a fair degree of risks of such harm on people. Whether there *is* this human right or not will depend on whether using the internet is a basic Lifestyle such that the exclusion from which would result in either unavoidable harm, or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to the people being affected by the exclusion. Nevertheless, it seems clear to me that the current trend of social development will only make the internet more and more a basic Lifestyle, and thus the exclusion of people from the internet will more and more likely make the antecedent of the Harm Conditional obtain. At the time we can determine that this is indeed the case, then according to Theory Alpha, there is a standalone natural human right to internet access. And at that time, we should recognize and implement this human right.

about human rights and revolutions against indecent states would be a huge task and a digression from the subject of this dissertation.

IV. Complications

In this chapter I will discuss potential objections and further questions regarding Theory Alpha. The first thing I consider in section 4.1 is the idea that there is no need for a human right to get more particular than it should be (whatever that ‘should’ requires). I refute this idea by arguing that human rights (both natural and legal) do need to get more particular. Section 4.2 is the main section of this chapter in which I explain how Theory Alpha can address the issues of trans-historical universality and solve the Anachronism Problem by distinguishing what I call logic-universality from content-universality. The differences and compatibility between Theory Alpha and extant solutions are then discussed. I also analyse the general issue of relativism of human rights in section 4.3 and discuss Nickel and Griffin’s response to such relativism. Section 4.4 explains why human rights recognized or justified via Theory Alpha are claimable. In section 4.5 I deal with the more native technical problem within Theory Alpha, which is how basic Lifestyles can be determined so that we can apply the conditionals I have proposed. In the last section, I address the question which asks if no one owes anything to anyone else, how can certain human rights be claimed. This question is related to a possible human right to internet access, particularly if we would believe that this human right requires some party in a society to fulfil the duty of aiding the deprived.

4.1 ‘No need to get more particular’

It has been put to me that there can be a particular objection against my proposal of a possible human right to internet access. The critical line of this argument is that once we have a human right to something — say, a right not to be killed — then particular ways of violating this right do not lead to some particular new rights. For example, a murder using either a knife or a

gun would not change the fact that the murder is a violation of the right not to be killed. Apparently, the invention of firearm does not suffice to establish a human right not to be killed by gun when there is already a right not to be killed. Therefore, it is unclear why we should consider a human right to internet access if the relevant contents of this right have already been covered by some general human rights, such as the right to freedom of expression. In another word, changes or advancement of technology or instruments do not suffice to ground any human right more particular than those general human rights which have been adequate for their purposes. Given the common worries of inflation of human rights, this ‘no need to get more particular’ objection is, as I reckon, an effective form of Occam’s razor being used on human rights recognition and justification.

On the most charitable reading, this objection is not as much an objection against Theory Alpha, but rather an implication that can be deduced from the Human Rights Generation Conditionals, which, to justify (new) human rights, require the determination of basic Lifestyles the exclusion from or inclusion from which would resulting in in either unavoidable Condition Cs (such as harm), or Cs that cannot be conveniently avoided, or a fair degree of risks of such conditions to people. If some harm or Condition Cs are committed in a way that is not a result of the exclusion from or inclusion within a basic Lifestyle — for example, killing with a knife or a gun — then according to Theory Alpha, we do not have (new) human rights concerning these harm or Condition Cs, whether they are done by new or old technology.

It is therefore fair to say that we do not have a human right to internet access *now*, because even without the internet, we can still achieve many things as we do with the internet in our era. For example, we can listen to the radios for live updates of travel conditions, and we can write letters to keep in touch with our foreign friends or families living abroad. And these channels are

likely to be widely available a century later. Further, the internet is only a form of information and communication technology which enables us to do certain activities. What may appear to be the content of a more general, prevalent or even necessary human right is the freedom of communication, the utilisation of which is dominant and essential in the general conditions and organizations of life. Internet access is only a tool for achieving this general human right to information and communication, which, similar to a right not to be killed, seems perhaps trivially intuitive. Thus, some may argue that I should probably have argued for the human right to freedom of information and communication.

Readers should kindly note that it is solely for this reason that I have only proposed that we *can* claim a human right to internet access *given certain conditions*, namely if using the internet is a basic Lifestyle. I have not argued that we *have* the human right to internet access *now and forever*.

That being said, we should be very careful with any parsimonious reasoning. Parsimony does not always bring the best result for a theory, just as the cheapest car is not always the best car for a given purpose. We will still and must pay the price if the simple instrument we have at hand cannot solve the complicated problems that we face. And on a deeper reflection, the ‘no need to get more particular’ objection is indeed a tool too simple. When we use it, we must not forget all the ‘if’ clauses I have stated so far in this section.

It is true that the internet is only a technology for achieving freedom of communication (which can be well regarded as a natural human right), and indeed, in terms of killing, there is no difference between successful killing by a knife or a gun. It is, however, *not* true that we always have ‘no need to get more particular’ because not every issue can be addressed in a satisfactory way with only general or abstract human rights. This is because a general or abstract natural right

or human right may not tell us *enough* details such as what action can be counted as a human right violation in what circumstances. For example, is it true that if there is a human right not to be killed, it applies to all human beings on earth at any time in any place? If so, is it a human right violation for a state to kill enemy combat personnel in a legitimate war such as an anti-invasion battle? If it is morally permitted to kill enemies in an anti-invasion battle with swords or firearms, *is it equally morally permissible* to kill them with biological weapons, which can be thought as more technologically advanced and effective but have already been banned in the *Biological Weapons Convention*?¹¹³ Why most countries have a restrictive firearm regulation while it is much easier for people to purchase knives, which can be equally used to violate someone's human right not to be killed? And why we cannot bring as much liquid as we want on board to a commercial flight? Is it a human right violation, then, to commit suicide or perform euthanasia, even for the sake of ending great and unbearable pain? The 'no need to get more particular' argument does not tell us much about human right violations in these cases and would only leave many unanswered theoretical or practical questions. Whether or not we should 'get more particular' about human rights — or any academic issues — is determined, from a pragmatic perspective, by the complexity of the problems that we encounter, and how effective our tools can solve the problems.

It should be noted that international and regional human rights treaties do 'get more particular' about human rights. For example, article 10 paragraph 2 in ECHR outlines some particular 'formalities, conditions, restrictions or penalties' that the exercises of freedom of

¹¹³ United Nations Office for Disarmament Affairs, 'Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction' <<http://disarmament.un.org/treaties/t/bwc>> [accessed 30 August 2018].

expression are subject to,¹¹⁴ which contradicts what the objection suggests. But the objection may further suggest that particularity is required by legal human rights for practical reasons, but not by natural human rights. This is not the case, however, as if we admit that there is natural human right not to be killed, then some questions I have raised in the last paragraph still consider very particular cases, such as the case of combat personnel in a war, and the cases of suicide and euthanasia about this natural right.

It is clear then that we do need to get more particular or detailed about human rights sometimes, if not always, given all possibilities in reality. It should be noted that the legal overview I have provided in chapter I, particularly the case of *Ahmet Yıldırım v. Turkey* as resolved by the ECtHR (see footnote 9 in section 1.1) is a good example of why there is a need to get more particular about the human right to freedom of expression, and how we can get to more detail. And again, it is worth asking, it is worth asking, if a human right to internet access can be invoked only when, say, the right to freedom of expression is invoked; or if besides cases related to the conventional senses of freedom of expression, access to internet is also a human right in general.

On a more general and theoretical level, I reckon that there are at least two directions to get such details:

1. As shown in the discussion of a right not to be killed, we can first specify some general or abstract human rights, describe what they are, and then specify under what conditions what kind of actions would be considered as human right violations;
2. We can, as in Theory Alpha, first specify some general conditions that are fundamentally important for human life (such as avoiding harm), describe what circumstances would remove or negatively

¹¹⁴ Council of Europe.

affect these conditions, and then specify what human rights we have given these conditions and circumstances.

I have discussed a right not to be killed in the first direction in this section. I have proposed a human right to internet access so far in this dissertation in the second direction. It is unclear why only the first direction should be favoured, especially when the rights and conditions in the two directions can be easily converted into each other: the general human rights in the first direction can be converted to the fundamental conditions in the second direction while the specific conditions in the first direction can be converted to the specific human rights in the second direction, and *vice versa*.

My proposal of a human right to internet access is exactly a specific human right in the second direction, which details the conditions in the first direction that can amount to a violation of human rights. Chapter III in this dissertation is solely written to detail specific conditions in the first direction and to differ my argument for a possible human right to internet access from the superficial argument of a right not to be killed and killing by a knife or a gun.

4.2 On universality under Theory Alpha

It must be emphasized that human rights that are recognized, justified or generated by Theory Alpha are universal. As this thesis has been largely motivated by theoretical issues related to trans-historical universality in the naturalistic approach of human rights, it is fair and important to ask how Theory Alpha can successfully address the issues. In another word, how does Theory Alpha preserve universality of human rights while accommodating variations of human rights across time and space? In this section, I would first address this concern by distinguishing two types of universality of human rights. Secondly, I would discuss a potential objection against Theory Alpha concerning the possible diminishing of universal human rights.

To address the issues related to trans-historical universality, two types of universality can be distinguished: the first type is the conventional universality as we have seen in the issues of trans-historical universality, namely *content*-universality,¹¹⁵ which means a single right of which the content or implementation being stable and constant ‘anywhere at any time’. For example, the ruling in *Ahmet Yıldırım v. Turkey* by ECtHR may be said to show that banning access to certain websites by governments is a violation of Article 10 paragraph 1 of ECHR. This interpretation of the content of Article 10 by ECtHR shall be the same for any other countries under the jurisdiction of the Court as part of the content of the right to freedom of expression, and this ‘sameness’ is the (part of the) content-universality of freedom of expression within the context of Council of Europe.¹¹⁶ But this interpretation of freedom of expression, of course, may not be applied or accepted in other countries in the world (for example, China). The problems about human rights over universality seem then to be caused by content-universality, and the general pursuit of it.

It may indeed suggest that we shall thus abandon the idea that human rights are universal — but only in the conventional sense, namely, we may abandon content-universality; the more important universality of human rights can be preserved in the second type of universality, which I will refer to as *logic*-universality. The term ‘logic’ here refers the reasons or logic *behind* a human right; namely, the reasons why a claim or a right is a genuine human right. If *R* is the reasons why freedom of expression is a genuine human right, and *R* is universal in the sense that it ought to be accepted, supported, or agreed upon by all or most human beings across time and

¹¹⁵ Here, ‘content’ is a noun. My special thanks to Prof Rowan Cruft (University of Stirling, St Andrews and Stirling Graduate Programme in Philosophy) for coining this term (‘content-universality’) during his supervision.

¹¹⁶ ECtHR is an institution of Council of Europe.

space. Such universality of R is logic-universality. In a way, what I mean by logic-universality of human rights is similar to physic laws in the nature. For example, Newton's laws of motion are one way to describe most motions that most of us encounter on a daily basis. The motion of an automobile on the land of the European continent is very different from that of a walking member in an uncontacted tribe. But no matter how these motions are different from each other, and however prevailing they are as a phenomenon in each place, the physic laws behind these motions are the same. One cannot simply claim that because the uncontacted tribe has no automobile and so Newton's laws of motion only applies to cars in European societies but do not apply to the uncontacted tribe members. Similarly, if two sets of human rights A and B are grounded in universal reasons R , and only A is applicable in society X while B is only applicable in society Y , then although the contents of human rights in the respective societies are different, A and B are nonetheless universal human rights given the common universal reasons R . Therefore, given the universal reasons behind the right of freedom of expression, this right in an uncontacted tribe shall be regarded as the same universal human right of freedom of expression in Europe, even though 'banning access to certain websites is a violation of this right' makes no sense in the context of the uncontacted tribe due to the lack of the internet, and would not be part of the content of this right in this context. Theory Alpha, with its Human Right Generation Conditionals, is an attempt to capture these universal reasons behind human rights.

Further, when there are basic Lifestyles being persistent in every possible context, and the exclusion from or the inclusion within these Lifestyles will inflict unavoidable harm to human beings in every possible context, it is a *logical conclusion* under Theory Alpha that human beings have a single set of human rights to eliminate such harm as long as the unavoidable harm suffice to ground this entailment across all contexts. To rephrase, it is possible that there is a set

of human rights bearing both logic-universality and content-universality across time and space. In the logical space of contexts, the metaphysical properties of particular time and location of a human right is, in effect, eliminated, and we are thus able to attach the timeless and locationless features of the conventional concept of universality to human rights under Theory Alpha. Any actual human right generated and recognized under Theory Alpha is then only an instance following consistent reasoning, reserving the same logic-universality at its core, even though due to the variations of basic Lifestyles in different contexts or locations, there will be contemporarily varying human rights in these contexts or locations.¹¹⁷ But this variation, as I discussed in section 2.5, is a justified result of Theory Alpha as long as the Human Right Generation Conditionals are applied consistently. Universality of human rights can thus be preserved under Theory Alpha with logic-universality and under certain conditions, the conventional content-universality as well.

I suspect there will be two immediate questions about the above discussion. First, how is universal reason possible? And second, how does Theory Alpha differ from extant theories such as Griffin's solution? To answer the first question, I can only say that it is in my belief that universal reasons are possible. It is more possible when we consider the prevalence of scientific reasoning and wide acceptance of social science methodologies. But perhaps Finnis has summarized it best as he discusses interpretation of legal norms: '[...] that judgment of mine entails that anyone considering the legal question ought (in my judgment) to reach the same judgment, and under ideal epistemic conditions *would* reach it.'¹¹⁸ The universal reasons behind

¹¹⁷ We may interpret this imprecisely via Plato's concept of Form. The Form of a chair is universal. While all actual chairs have different properties, their being chairs is nevertheless universal.

¹¹⁸ Finnis, II, p. 101. Finnis' original emphasis.

human rights that the term ‘logic-universality’ refers to are such that people across time and space ought to accept and under ‘ideal epistemic conditions’ would accept.

To answer the second question of how Theory Alpha differs from extant solutions to the issues of trans-historical universality, it must be emphasized that Theory Alpha, particularly its Human Right Generation Conditionals, is mainly about the reasons why some claims are human rights. As such, my approach first differs from Tasioulas’ abandoning universality as a condition of human rights by distinguishing two types of universality and contending that content-universality is not required but logic-universality shall be maintained.

My proposal also differs from Griffin’s abstraction solution¹¹⁹ with some compatibility and perhaps similarity. There is difference because Theory Alpha is not primarily focusing on the distinction between abstract human rights and concrete human rights. Theory Alpha focuses more on the universal reasons why human rights are being human rights, as the Human Right Generation Conditionals try to spell out. It is acceptable in Theory Alpha that in two different societies two different set of abstract and concrete human rights are implemented when there are universal reasons behind these human rights, and these different human rights would be universal with these universal reasons at their core. Whereas for Griffin, ‘[we] should claim only that universality is there at the higher levels.’¹²⁰ In addition, the Human Right Generation Conditionals, compared to Griffin approach when deriving concrete human rights, have the advantage of providing a unified operational application, as they ask users to identify and

¹¹⁹ Griffin, *On Human Rights*, p. 50; Tasioulas, pp. 32–33.

¹²⁰ Griffin, *On Human Rights*, p. 50.

consider factors (recall the seven questions I listed on page 45 in section 2.5) in context for the justification of human rights with the preservation of logic-universality.

Nevertheless, my proposal in this thesis would also be compatible with Griffin's abstraction approach. The first aspect of this compatibility is that Theory Alpha largely agrees with what Griffin suggests about the formulation of local, concrete human rights, that they should 'be formulated in the language of its time and place and actual concerns.'¹²¹ However, the content variation of human rights that is allowed in Theory Alpha is perhaps more diverse than the local language that Griffin refers to. This is the first aspect of the compatibility between Theory Alpha and Griffin's abstraction approach.

Further, given the suggestion I have made close to the end of section 4.1: there are at least two directions in getting details of human rights, the first of which is having some abstract human rights first and specify under what concrete conditions they apply, and the second of which is having some conditions first and specify what concrete human rights apply. As I have explained at the end of section 4.1, the elements in these two directions are mutually convertible, and Theory Alpha follows the second direction. Griffin's abstraction approach, in my opinion, follows the first direction. Thus, for example, the Harm Conditional of Theory Alpha can be converted into an abstract human right against unavoidable harm, harm that cannot be conveniently avoided and a fair degree of risks of such harm; a human right to internet access can be derived from this abstract human right, and as Griffin suggests, 'in

¹²¹ Griffin, *On Human Rights*, p. 50.

the language of its time and place and actual concerns.’¹²² This is another aspect of the compatibility between Theory Alpha and Griffin’s abstraction approach.

The abstract ‘human right against unavoidable harm, harm that cannot be conveniently avoided and a fair degree of risks of such harm’ as formulated in the last paragraph is of course different from the three abstract human rights of the highest level that Griffin proposes, namely the rights to autonomy, minimum provision, and liberty.¹²³ The rationale behind these three abstract human rights is also different from that in Theory Alpha, as Griffin argues for these rights on the basis of the concept of ‘personhood’. He suggests that

Human rights can then be seen as protections of one’s human standing, one’s personhood.¹²⁴

[Human rights] are rights not to anything that promotes human *good* or *flourishing*, but merely to what is needed for human *status*.¹²⁵

Griffin’s argument from personhood is clearly different from the argument for the Harm Conditional in Theory Alpha from the perspective of avoiding harm, which, as defined in section 2.4, is strongly connected to human interests. But this does not suggest that, on this aspect, Theory Alpha is in conflict with Griffin’s proposal. This is because Theory Alpha also includes the General Conditional as I presented in the later part of section 2.5. Using the General Conditional, the three abstract human rights proposed by Griffin can be easily argued for with

¹²² Griffin, *On Human Rights*, p. 50.

¹²³ Griffin, *On Human Rights*, p. 50.

¹²⁴ James Griffin, ‘First Steps in an Account of Human Rights’, 2001, 306–27 (p. 311).

¹²⁵ Griffin, ‘First Steps in an Account of Human Rights’, p. 312; Griffin, *On Human Rights*, p. 34. Griffin’s emphasis.

Theory Alpha. For example, an abstract human right to autonomy can be argued for in the following way:

A human right to autonomy: If a Lifestyle providing *autonomy* in a context is such that when people are excluded from this Lifestyle, there is no alternative way for those people to conveniently obtain *autonomy*, resulting in either unavoidable *loss of or damage to personhood*, or *such loss of or damage to personhood* that cannot be conveniently avoided, or a fair degree of risks of such condition to those people, then those people have a human right to *autonomy* in this context.

The abstract human rights to minimum provision and liberty can be argued for in the same way.

One key question here, though, is whether the promotion of personhood would be in any way in conflict with the promotion of avoiding harm. As far as I am concerned, there should be no conflict between the two. Besides, autonomy, minimum provision, and liberty can be seen and (I would suggest) commonly seen as of significant human interests, and so with the definition of ‘harm’ in section 2.4 (‘morally indefensible actions against someone that will set back that person’s interests or increase the risks of such setbacks’), Griffin’s three abstract human rights can already be argued for with the Harm Conditional of Theory Alpha. This shows a third aspect of the compatibility between Theory Alpha and Griffin’s abstraction approach.

It should be emphasized here that the above discussion on the compatibility between Theory Alpha and Griffin’s abstraction approach is meant to show the compatibility between the two approaches, rather than suggesting that Theory Alpha necessarily conforms with Griffin’s theory.

If one recalls my earlier comments on Raz’s ‘synchronic universality’, one may also wonder how Theory Alpha differs from this approach or does not suffer from my criticism of synchronic universality. With the above distinction of two types of universality, Raz’s ‘synchronic universality’ can be re-interpreted as ‘synchronic content-universality’. The issues of synchronic

universality as discussed in my earlier comments come from 1) the synchronicity and 2) content-universality being conditions of genuine human rights. But Theory Alpha does not require these two conditions for genuine human rights and should thus avoid the issues of synchronic universality that I raised. However, it should be pointed out here that 1) in my opinion, Raz is correct to suggest that ‘factors other than being human determine which human rights one has,’¹²⁶ and 2) whether there is logic-universality behind different human rights held by different people in different time and space is a constant question for whoever accepting Theory Alpha.

There is another potential objection to Theory Alpha regarding universality. One may find Theory Alpha, especially the Harm Conditional provides the opportunity to discount some claims that have been long and conventionally regarded as essential and universal human rights, such as freedom of expression or freedom of association in the West. The reasoning goes as follow: imagine an authoritarian regime where there is no political freedom. While authoritarianism is the basic Lifestyle in this country, it is nevertheless the fact that no unavoidable harm is done to its people under such Lifestyle. There are always some established ways that are available to everyone to avoid some harms that might be done to the people by the system. And we can stipulate that this authoritarianism is proved to be harmless to its people by the best social scientists and journalists in the world without any hindrance from state censorship — in fact, there is no need for censorship in any area because the authoritarian regime is so perfect that people live there genuinely happily. Therefore, according to the Harm Conditional, any form of political freedom cannot be claimed as human rights in this regime, for there is no foundation (for example, unavoidable harm due to the lack of political freedom) for such claims.

¹²⁶ Raz, p. 226.

Thus, it is possible that any form of political freedom is not a human right. And according to Theory Alpha, if this antecedent obtains in our actual world, we must grant that any form of political freedom is (theoretically) not a human right. Therefore, Theory Alpha may turn out to discredit conventional liberty human rights that we treasure.

To respond to this potential objection, I should first say that I fully agree with the reasoning of the imaginative case of a benevolent authoritarian regime. It *is possible* that under Theory Alpha any claim to any form of political freedom is not a human right *if* without political freedom the antecedents of the Human Right Generation Conditionals do *not* obtain. But for the objection to fully succeed, that is, for conventional liberty rights to be really disregarded as human rights under Theory Alpha, we must check if without political freedom the antecedents of the Human Right Generation Conditionals I proposed, particularly the Harm Conditional, do not obtain in a particular state. This is not well supported by the human history we have so far. Therefore, while theoretically speaking, the above potential objection may work given that Theory Alpha allows the variation of the contents of human rights, it is very likely that Theory Alpha does not disregard conventional liberty rights *in our reality*. That being said, what this objection intends to picture as a weakness of Theory Alpha is an advantage for it to debar any form of Western, cultural or liberal imperialism. This is because Theory Alpha does not presume that the historical or current democracy in the West is the sole solution to all political or social issues for the sake of a ‘free of harm’ life. Theory Alpha therefore allows pluralism of (good) political systems, as long as any of such political system avoids inflicting unavoidable harm or harm that cannot be conveniently avoided, or a fair degree of risks of such harm to the people living under it. Again, the political pluralism under Theory Alpha is the result of allowing

variation of the contents of human rights; the logic-universality of human rights as represented by, for example, the Harm Conditional must be maintained.

To summarize the above discussion: while it may seem bold for me to say so, Theory Alpha with the distinction of logic-universality and content-universality, and the allowance of content variation of human rights in contexts, resembles the combination of universality and particularity of *ius gentium* in Roman law as Finnis interprets. As Finnis claims:

The other part of what they meant by *ius gentium* consists in its shared substantive content, that is, in the substantially identical kinds of human conduct picked out by all civilized legal systems as forbidden or required or authorized, and so forth. Of each legal system—more precisely, of each country or political community— it is true (1) that all of its norms are authoritative because they *are* part of *that* particular system, adopted by that particular country, and true (2) that some of those norms are authoritative for a further reason, that they not only are but *ought to have been* adopted by that country because they ought (at least in their substance) to be adopted by any and every country and more or less universally are adopted (at least ‘on paper’).¹²⁷

I quote Finnis here in length as I want to suggest that the logic-universality of human rights as proposed is similar to *ius gentium* as described here by Finnis. Content variation of human rights in different contexts across time and space is not a problem for human rights as long as there are consistent universal reasons (i.e. logic-universality) behind such variation, and these universal reasons of human rights ought to have been adopted in every context. Whether the Human Right Generation Conditionals for grounding human rights as I proposed are the *ius gentium* of human rights is of course subject to discussion. However, I hope that the distinction between logic-universality and content-universality of human rights and how such distinction can help human rights discourse to solve the issues of trans-historical universality have been clearly explained.

¹²⁷ Finnis, II, p. 102.

4.3 On relativism of human rights

Henceforth I would turn to the issue of relativism of human rights, which is, in a wider context, also connected to the cultural imperialism that I have mentioned a few times previously. Nickel rightly points out the obvious facts that our world is full of diversities, and ‘how a single set of rights can be appropriate to such a diverse world’¹²⁸ is certainly a legitimate and challenging question. In a broader philosophical context, the essential argument of moral relativism — there are more than one framework of moral judgements on the same matter and no single one is definitive¹²⁹ — requires solid philosophical theories to refute. Presumably, discussions on this topic shall have positive input to our current task of defending Theory Alpha. In this section, I will first review Nickel and Griffin’s responses to human rights relativists, and then give my own opinion according to Theory Alpha.

Nickel in his book, *Making Sense of Human Rights*, offers eight responses to relativism, with the following headings:

- 1) Human rights yield far stronger protections of tolerance and security than relativism can support;
- 2) The milder forms of relativism are compatible with thinking that at least some human rights are a good idea;
- 3) A stronger case for international human rights can be made by appealing to widely recognized problems and widely shared values;
- 4) Intervention is not the main means of promoting human rights;
- 5) Human rights are compatible with great cultural and political diversity;
- 6) Human rights collide with culture and religion much less than one might expect;

¹²⁸ Nickel, p. 168.

¹²⁹ Griffin, *On Human Rights*, p. 129.

- 7) Human rights treaties have been ratified by most governments;
- 8) Human rights are widely accepted by ordinary people around the world.¹³⁰

Under each heading, Nickel provides further discussions to try showing that the statements of these headings are indeed the case. I shall not discuss them in full detail as readers can refer to Nickel's original texts. What I would like to suggest, though, is that I believe such approach, while offering an abundant number of responses, does not offer the adequate argumentative power to convince tough relativists or even the softer ones, as they may reply to Nickel in the same form but with reverse or unsupportive statements:

- a) A relativist approach of human right yields far stronger protections of tolerance and security than universalism or absolutism can support;
- b) The milder forms of universalism or absolutism are compatible with thinking that at least some human rights are a bad idea;
- c) A stronger case of regional (instead of international) human rights can be made by appealing to locally recognized problems and locally shared values;
- d) Neither intervention nor a universalist human right system is the main means of promoting human rights;
- e) Human rights are indeed compatible with great cultural and political diversity, but a universal framework of them does not;
- f) Universal human rights collide with culture and religion much more than one might expect ('And it is true!');
- g) Human rights treaties have been ratified by *just* most governments, but they all follow these treaties differently in practice, the fact of which supports our points;
- h) The concept of 'human rights' *is* widely accepted by ordinary people around the world, but ordinary people cannot tell what they actually are, and when they can, they disagree with each other. (And do not forget that human right scholars behave in the same or a similar way.)

¹³⁰ Nickel, pp. 170–84.

For each of the above statement, a tough relativist may find as much support as they can to show that these statements are true as well. In fact, one may say that Nickel's second response is somewhat equivalent with our tough relativists' statement b) here; his forth response may directly supports statement a) here, especially when some governments and people may consider that even a humble non-intervention suggestion of educating states or different societies about international human rights standards is in fact a form of indoctrination, and therefore also a form of intervention. I have no intention to provide a fully-fledged argument from the relativist side that I speculate here. But it is worth asking that, given the principle of charity, according to what can we decide which side is correct? One can easily suspect that each side in the dispute may likely appeal to theories, explanations, or empirical data that they prefer or are supporting their theses while downplaying evidence from the opposition. The possibility of downplaying contrasting or even contradictory evidence also suggests that even when one may grasp a holistic view of all social or cultural phenomena, it is still a myth of weighting each fact and compare them justly; in fact, things can be incommensurable — Interestingly, I just found myself in the relativist position. At any rate, merely citing examples do not settle the dispute about human rights relativism.

Similar to Nickel, Griffin also has a chapter in his *On Human Right* focusing on relativism that covers both ethical relativism and the arguments for relativity of human rights. Griffin's approach in defending a universal human right framework is in general on a more abstract and theoretical level compared to Nickel's. According to Griffin, a divergence of ethical practices may be a difference in either material conditions, or incommensurable values, or metaphysical beliefs, or an arational opting in a highly constrained way, rather than ethical frameworks; ethical relativism may thus be in fact the relativity of basic evaluation framework, in which case has its

roots in the relativity of facts or of metaphysical conceptual schemes.¹³¹ While we may disagree that this is at best an explanation on the source of ethical relativism, it is nevertheless, I reckon, an insightful and likely true observation. The weakness of it, apparently, is its inconclusiveness, as Griffin also admits.¹³² However, I would suggest that this is not a ‘bad’ weakness at all, as it is a neutral challenge for both universalism (or absolutism) and relativism of human rights or more generally, ethics: universalism would need to show that it *is not* the case that there is a relativity of facts or of metaphysical concepts, while relativism would need show the exact opposite.

What I would like to focus now is Griffin’s response to relativity of human rights and his opinions on the problem of ethnocentricity of the culture of human rights. The argument from Griffin that I will focus on here seems to arise from Griffin’s own account of human rights, namely, that there are elements of policies in (some) human rights such as a human right to life that forbids killing the innocent, and ‘[such] policies are, it is true, social artefacts.’¹³³ Griffin thinks that some potential value of the subject that is concerned by a human right (such as human lives) would determine almost all societies to the same content of that human right (such as strict prohibition of killing the innocent); he further suggests that we can actually work out which convention in which society works better than others, and agree to opt for the better practice rationally, while for those conventions we cannot decide, we can accept that the difference between conventions is ‘merely a highly constrained difference in arational opting,’ and we can adopt a common convention.¹³⁴ While I agree that his example of a human right to life in his this

¹³¹ Griffin, *On Human Rights*, pp. 129–32.

¹³² Griffin, *On Human Rights*, p. 132.

¹³³ Griffin, *On Human Rights*, p. 136.

¹³⁴ Griffin, *On Human Rights*, p. 136.

section would work probably quite well, his approach here, I fear, would not suffice to address disagreements about the contents of a much wider variety of human rights, which seems to me a main issue in the dispute of relativism of human rights. The cause of such insufficiency, if I may say so, is the superficiality of the solution: Griffin neither explains what it means for a convention to be ‘working rather better than’ another, nor does he explain or give an example about how we may easily agree on a common convention — *assuming* it exists — when we cannot decide which of the diverse conventions works better. Further, under what conditions is a difference due to ‘arational opting’? Griffin does not explain either. Perhaps, this is why at the end of his section 7.2 he can only conclude that ‘judgements about human interests and about human rights do not offer appreciably more scope for relativism than do judgements about natural facts.’¹³⁵

Griffin’s solution to the problem of ethnocentricity of the human rights culture is unfortunately problematic in my opinion. He interprets the problem of ethnocentricity as that if articulation or justification of universal human rights is only available in Western terms, then they would not be authoritative.¹³⁶ But he asks the question why it is a difficulty for Easterners to adopt Western ideas when ‘[hundreds] of thousands of Westerners have adopted Asian religions [...] [having] looked into these religions on their own terms and been attracted by what they found.’¹³⁷ Why cannot the ‘Easterners’¹³⁸ overcome the similar obstacle in the same way as the

¹³⁵ Griffin, *On Human Rights*, p. 136.

¹³⁶ Griffin, *On Human Rights*, p. 137.

¹³⁷ Griffin, *On Human Rights*, p. 137.

¹³⁸ It is unclear what the term ‘Easterners’ used by Griffin actually refers to. Are people in Eastern Europe, Russia, Middle East, all parts of Asia and Polynesia all be considered ‘Easterners’? But if Aussies and Kiwis are not ‘Easterners’ presumably, why should Indonesians and Polynesians be? Given that presumably, post-WWII Japan respect international human rights more than the Chinese, are Japanese ‘Westerners’ as well?

Westerners in terms of human rights? Griffin clearly thinks 'Easterners' should. Being a self-claimed (very) Westernized Asian, I should say, actually many Easterners do. In fact, many national reforms and revolutions in the modern Asian history, such as the Chinese revolutions led in different periods by respectively the Nationalist Party and Communist Party, and Japan's Meiji Restoration, were all inspired by Western ideas (for example, communism for the Chinese communist revolution) and were actual implementations of these ideas. Many 'Easterners' are still applying Western beliefs, such as liberalism or even communism. But this question asked by Griffin may seem to be off-topic, as, in the analogy of accepting religions, the truth of each religion is not determined by simply counting how many believers of each religion there are, or what their ethnic backgrounds are. The monotheistic claim of 'one God, now and forever' of Abrahamic religions is essentially incompatible with the cosmology and metaphysics of Buddhism. What relativism, and particularly relativism of human rights really question is which belief is true rather than which one is more accessible to non-believers or has more believers from different ethnic groups. Therefore, the number of 'Easterners' accepting or denying does not and should not make the Western standards or ideas of human rights more true or false. Nevertheless, Griffin continues to suggest that there are two paths to introduce 'unforced agreement on human rights' on the scene: 1) build the system of human rights at its best from Western resources and hope 'non-Westerners' will buy it; 2) find out what in 'non-Western' cultures that can fit the idea or system of human rights locally in a coherent way.¹³⁹ As much as Griffin may hope to solve the problem, these two approaches do not appear to address the

¹³⁹ Griffin, *On Human Rights*, pp. 137–38.

cultural imperialism at all but rather to bold it, for even the second method can be interpreted as searching in the 'non-Western' cultures through coloured glasses of the West.

A final remark on both Nickel and Griffin's approaches to the challenge of human rights relativism: in my opinion, the biggest flaw in both philosophers' defence of a universal human rights system would be the lack of a detailed and operational formula about how various human rights can be justified consistently across the world as well as applicable in different societies. A theory of human rights, may it be a philosophical or a legal one, should at the end be able to be utilized for building social policies that can be practically implemented in a consistent way. Consistency is crucial to human rights, and is perhaps the source of their universality, for if a human right to *X* in reality can *only* mean people in one country are able to enjoy *Y* via principles or traditions of *A* while people in another country are able to enjoy *Z* via principles or traditions of *B* with the fact that *Y* is different from *Z* and *A* is different from *B*, then surely none would consider the human right to *X* universal. Nickel and Griffin's defences of a universalism of human rights at best give some reasons for us to think why a relativism of human rights may be weak and unsatisfactory when we set aside the problems in their defence. A working universalism of human rights would need a formula that provide global application in different cultures with consistency. Theory Alpha is an attempt of such working universalism of human rights: the Human Right Generation Conditionals try to capture the logic-universality that would provide the required consistency and universality of the idea of human rights and thus rejects human rights relativism at a basic level, while allowing content variation of human rights would allow human rights to be applicable in different cultures and societies.

4.4 On claimability under Theory Alpha

A common objection towards any proclaimed human right is how this right can be claimed. This challenge of ‘claimability’ is famously put forward by O’Neill.¹⁴⁰ The concept and the challenge of claimability are largely based on the widely accepted Hohfeldian system of rights to raise concern about the validity of claims.¹⁴¹ In the Hohfeldian analysis of rights, claim-rights generate logically correlative duties that are borne by those against whom the right holders can make valid claims.¹⁴² Rights are thus *claimable* as long as the correlated duty-bearers can be identified.¹⁴³ The profile of a claim right should thus tell us ‘*who owes what to whom.*’¹⁴⁴

According to O’Neill, claimability distinguish first-generation rights (‘liberty rights’) and second-generation rights (‘welfare rights’) in a substantial and asymmetrical way as:

[We] can know who violates a liberty right without any allocation of obligations, but we cannot tell who violates a right to goods or services unless obligations have been allocated.¹⁴⁵

This asymmetry, as O’Neill argues, leads to several difficulties for socio-economic rights, and ultimately undermine their validity as claim rights. To start with, international documents that

¹⁴⁰ Onora O’Neill, ‘The Dark Side of Human Rights’, *International Affairs*, 81.2 (2005), 427–39
<<https://doi.org/10.1111/j.1468-2346.2005.00459.x>>.

¹⁴¹ Adam Etinson, ‘Human Rights, Claimability and the Uses of Abstraction’, *Utilitas*, 25.4 (2013), 463–86
<<https://doi.org/10.1017/S0953820813000101>>.

¹⁴² Leif Wenar, ‘Rights’, in *The Stanford Encyclopedia of Philosophy*, ed. by Edward N. Zalta, Fall 2015 (Metaphysics Research Lab, Stanford University, 2015), sec. 2.1.2
<<https://plato.stanford.edu/archives/fall2015/entries/rights/>>.

¹⁴³ Etinson, p. 465. O’Neill also suggests, ‘There cannot be a claim to rights that are rights against nobody, or nobody in particular: universal rights will be rights against all comers; special rights will be rights against specifiable others.’ See O’Neill, p. 430.

¹⁴⁴ Etinson, p. 467.

¹⁴⁵ O’Neill, p. 428.

endorse socio-economic rights outline the correlative obligations and the duty-bearers in an obscure way. Though these obligations are often allocated to signatory states to dissolve this type of vagueness of rights, O’Neill suggests that this solution hurts global human rights movement in three ways:

- 1) States that do not ratify an international human rights document does not bear, and therefore does not need to fulfil the obligations they are supposed to carry out, which entails that the proclaimed human rights would unlikely be respected or implemented in these states;
- 2) The obligations allocated in this way will be special or institutional rather than universal, and so are the correlated rights — they are not universal human rights as they are claimed to be;
- 3) Obligations spelt out in this way are second-order obligations to enforce and implement first-order rights, but with the lack of details of the first-order obligations matching these first-order rights. Without first-order obligations, no assumed first-order rights could be therefore claimed, which in return render those assigned second-order obligations invalid. International documents on human right would thus lose their normative force.¹⁴⁶

O’Neill suggests that the distinction between first-generation and second-generation rights stays sharp here, for even without institutional implementation, we already know ‘*who owes what to whom*’ in terms of liberty rights; liberty rights are *affirmed* (rather than *created*) by institutional arrangements.¹⁴⁷ This distinction leads to a dilemma for socio-economic rights: if they are viewed as pre-institution¹⁴⁸ rights with normative force, they will spell out details about the pre-institutional correlative obligations; but these obligations are only specified via institutional schemes, suggesting these rights are special or at best aspirational, rather than universal and pre-

¹⁴⁶ O’Neill, pp. 431, 434.

¹⁴⁷ O’Neill, p. 432.

¹⁴⁸ By ‘pre-institutional’, O’Neill means a right is ‘independent of institutions or transactions’. See *ibid.*

institutional.¹⁴⁹ O’Neill obviously opts for viewing socio-economic rights as aspirational or manifesto rights.

Claimability is *prima facie* a feature or requirement of human rights. And if O’Neill’s argument is all true, then it is a huge challenge for socio-economic rights. Since I consider that the internet has great impacts not only on our freedom of expression but also our socio-economic life, I tend to regard a human right to internet access as not only a liberty right as seen in the legal overview of section 1.1, but also a socio-economic life in cases other than those related to the conventional sense of freedom of expression, given the current tendency of the integration of the internet with our daily life. Therefore, it is worthwhile to consider what we can say about O’Neill’s argument given our Theory Alpha. This is the main focus of this section.

First of all, it is worthwhile for readers to consider some assumptions in O’Neill’s argument. According to Ashford, there are two unjustified assumptions in O’Neill’s argument: 1) ‘[...] the negative duties imposed by rights are perfect in nature even in the absence of just institutions.’ 2) ‘[...] imperfect duties are not claimable,’ and (thus positive rights) would require institutional arrangements to make them claimable.¹⁵⁰ I would like to suggest that there are two other assumptions in O’Neill argument: 3) liberty rights are negative rights imposing only negative and thus perfect duties, while socio-economic rights are positive rights imposing positive and thus imperfect duties; 4) claimability is necessary for the validity of a claim-right, namely, that a genuine claim-right must be claimable in the way that O’Neill sketches. The truth of O’Neill’s

¹⁴⁹ O’Neill, pp. 432–34.

¹⁵⁰ The two quotes are from Elizabeth Ashford, ‘The Duties Imposed by the Human Right to Basic Necessities’, in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. by Thomas Pogge (UNESCO and Oxford University Press, 2007), pp. 214–15.

claim that only liberty rights can be genuine human rights rely on the truth of these four assumptions. However, Ashford argues against the first and second assumptions.¹⁵¹ The third one is debunked by Shue.¹⁵² Further, Etinson suggests that the fourth assumption may not be the case.¹⁵³ If these philosophers' arguments have been successful, we already have some reasons not to accept O'Neill's argument.¹⁵⁴

I will now turn to my response to O'Neill using Theory Alpha. I will simply grant that claimability is a requirement of human rights and accept O'Neill's definition of claimability. Recall that the claimability challenge is primarily targeting socio-economic rights, and it is a problem only because in practice the correlative duties of socio-economic rights are assigned to states, which brings up three problems: 1) states do not bear the responsibilities if relevant human right documents are not ratified; 2) such assigned duties are special and institutional, rather than universal; 3) the lack of first-order duties results in first-order rights and the presumably correlative second-order duties of states being invalid.

The first thing to note, in response to O'Neill, is that Theory Alpha does not rely on any international human right document. Therefore, if duties (correlated to some human rights) that are assigned to states can be justified under Theory Alpha, even though states do not ratify particular human right documents and do not bear the *legal* duties, they nevertheless bear, or *should* bear the *moral* or *natural* duties correlated to the actual human rights *in theory*

¹⁵¹ Ashford.

¹⁵² Shue, chap. 2.

¹⁵³ Etinson.

¹⁵⁴ Due to the focus and limit of this dissertation, I will not discuss the mentioned philosophers' arguments here, but their arguments are recommended to the readers.

(particularly, Theory Alpha). The first problem of the claimability may thus seem non-crucial here.¹⁵⁵

Secondly, human rights recognized, justified or generated via Theory Alpha are primarily negative due to the relation between them and harm (in the Harm Conditional) or other conditions (in specific tokens of the General Conditional).¹⁵⁶ This is because, if we accept Shue's three-fold duty framework as cited in section 3.2, then the correlative duties of human rights under Theory Alpha would be primarily avoiding or restraining oneself from causing unavoidable harm or risks of such harm (according to the Harm Conditional; these would be other conditions as specified in the specific tokens of the General Conditional). The duty to avoid depriving is primarily negative, and perhaps, in O'Neill's term, first-order.¹⁵⁷ It is therefore possible for states or any individual to bear valid first-order duties correlated to socio-economic rights under Theory Alpha, and so the power of the problem 3) is also diminished.

The critical task is thus evaluating problem 2), and how states bear any duty under Theory Alpha. Recall that at the beginning of chapter II, we see that the traditional conception of universality of human rights rejects any relation with any particular institution. But as in our discussion on the concept of 'Lifestyle', such rejection should no longer be insisted. In fact, many 'unproblematic' liberty rights are strongly regarded as universal human rights simply due

¹⁵⁵ Only theoretically speaking. In another word, the first problem raised by the claimability challenge may be considered as a practical issue, while philosophy of human rights is generally on some theoretical issues. If Theory Alpha is accepted, then the problem may shift to another practical problem, namely how do we get states to recognize and implement human rights that are justified under Theory Alpha.

¹⁵⁶ See the third point of my further explanation of the Harm Conditional in section 2.5 on page 46.

¹⁵⁷ Note that in 'The dark side of human rights', O'Neill does not clearly explain what 'first-order' or 'second-order' means. But given the close relation of 'first-order obligations' she attaches to liberty rights ('First-order obligations to respect liberty rights must be universal', see O'Neill, p. 428.), I will assume here that restraint from depriving is a first-order duty.

to the historical lessons and human suffering under particular institutions, such as the government of a state. And state has actually been a basic Lifestyle of human beings for thousands of years. If we recall the Human Right Generation Conditionals (on pages 43-44 and page 50 respectively), we may now see that something is missing in this formulation, which is the agent to perform the exclusion or inclusion of people from or within a Lifestyle. As we can easily observe, in many cases such exclusion or inclusion are performed by states or in the name of the state. In fact, in some cases only states have the power — the resources, the legitimacy, the methods — to perform such acts. To some extent, the basic Lifestyle of state has a sole performer or agent, namely, the state: the state is the Lifestyle. While it is true that on a narrow and strict sense of ‘state’, a state consists of many elements including the people living under the ruling of the state within its territory, it is also true that the power distribution of the state within itself, at least in our reality, is never even or balanced. Quite often, the word ‘state’ is used to refer to the government, authority or group that actually controls all the power. In many other basic Lifestyles, the states are often an overwhelmingly powerful agent to perform most exclusion or inclusion of people in relation to these Lifestyles (such as in the case of including people within aggressive state censorship). It is thus the fact or reality of states being such powerful agents in Lifestyles that justifies their liability in issues of human rights. Since the agents that perform the exclusion of people from or inclusion of them within a Lifestyle is logically implied¹⁵⁸ by the Human Right Generation Conditionals, and a state as such an agent is only an instance of all the possible agents, it should be concluded that duties correlative to human rights can be legitimately assigned to states as universal given our previous discussion of

¹⁵⁸ Or perhaps, more precisely, linguistically implied.

logic-universality. It is also, for the same fact, that we may be justified to regard, as Frosini suggests, a right to internet access ‘as a social right, or better as an individual claim to a state’s performance, like services such as education, health and welfare.’¹⁵⁹

If the above discussion of claimability of human rights make sense, then it seems that we can conclude that the claimability challenge as raised by O’Neill is not a severe problem for Theory Alpha, or human rights via Theory Alpha.

4.5 How to determine basic Lifestyles

Back in section 2.5 I pointed out that a *basic* Lifestyle is a Lifestyle such that the inclusion within or exclusion from which would result in either unavoidable Condition *C* (such as harm), or *C* that cannot be conveniently avoided, or a fair degree of risks of such condition to the people being affected by such inclusion or exclusion. Since the concept of Lifestyle plays a critical role in the conditionals I have proposed, it is fairly important that there is a practical method to determine what a Lifestyle is, its basicness, and its causal relation or correlation with harm.

To determine a Lifestyle, if we contemplate on why governments would often have a transport (or transportation) department or why organisations often have a human resources department, we shall have some clues to possible methods or reasoning for determining Lifestyles in other areas of human societies. For determining the basicness of a Lifestyle, the one built-in method in Theory Alpha is to see whether a Lifestyle, when people are included within or excluded from it, will necessarily suffer from some Condition *C* (such as harm), will not be

¹⁵⁹ Tommaso Edoardo Frosini, ‘Access to Internet as a Fundamental Right’, *Italian Journal of Public Law*, 5 (2013), 226–34 (p. 230). A note to avoid false citation: It is unclear in Frosini’s text if the quotation here is his thought, or the thought of Agathe Lepage, whose book, *Liberté et droits fondamentaux à l’épreuve de l’internet* (2002) was cited by Frosini for the paragraph in which the quotation is from.

able to conveniently avoid such condition, or will likely face risks of such condition. This is the way in which I propose tap water in modern urban life and the usage of the internet and computers in modern universities as two basic Lifestyles in the previous sections (2.3 and 3.1 respectively).

The most interesting and challenging question is likely how to determine the causal relation or correlation between a Lifestyle and unavoidable Condition *C* (such as harm), or *C* that cannot be conveniently avoided, or a fair degree of risks of such condition. It is required, for the Human Right Generation Conditionals to work properly, that we prove or disprove that it is *indeed* a particular Lifestyle that cause or contribute to the Condition *C*s as specified in the Conditionals. There have been some relevant discussions in the later part of section 3.2 on this topic.

A dispute about a human right may resemble a lawsuit of tort in at least common law system, and the recognition of that human right may be seen, in analogy, as a compensation as well as prevention of the same type of harm in the future for the plaintiff in a lawsuit of tort. If this resemblance and analogy work, then we can implement the ‘but-for’ test which is commonly used in tort law, which questions ‘whether *but for the defendant’s conduct, the plaintiff would not have been injured.*’¹⁶⁰ There are two issues that are related to this: first, it would seem rather uncommon to consider a Lifestyle in any case being similar to a defendant. But this is perhaps just a confusion caused by a convenient way of speech. Of course, a ‘Lifestyle’ as defined in chapter II would never be considered an agent, but it would be mistaken — apart from thinking of a Lifestyle as a conscious entity being aloof above human beings in a context — to think of a

¹⁶⁰ Benjamin C. Zipursky, ‘Proximate Cause in the Law of Torts’, in *The Routledge Companion to Philosophy of Law*, ed. by Andrei Marmor (New York; London: Routledge, 2015), pp. 261–73.

Lifestyle as consisting of no person. No matter how abstract we describe Lifestyles, most of them are ultimately initiated by human activities, especially in terms of those ‘social’ Lifestyles with a narrow sense of ‘social’.¹⁶¹ In some cases, a Lifestyle can be a set of related human activities. For example, a Lifestyle of authoritarianism is initiated by some people pushing forward an absolutely centralized political system and some other people’s omissions of defending democratic principles; in a way, it is the particular human actions and behaviours that make up an actual authoritarianism. Without these human activities being actual, authoritarianism and a Lifestyle of it are simply flimsy ideas; with these actual human activities, there are people to be held responsible for the harm done by authoritarianism. Therefore, a Lifestyle may only be a representation of intentions or actions of a massive number of normative agents — persons that are morally accountable. The ‘defendant’ in the tort law analogy would be these agents, and our claim for a human right as compensation for any harm that has been done to us by the Lifestyle and as a prevention of the same harm in the future is actually a claim against these normative agents.

The second issue of the application of the ‘but-for’ test in Theory Alpha lies with the theoretical and practical problem of proximate cause in tort law. As Zipursky reports, ‘[the] concept of proximate cause specifically targets that aspect of the concept of causation that is not captured by the but-for test.’¹⁶² If we adopt the model of causation determination in tort law in Theory Alpha, and if in legal practices of tort law, the lack of strong establishment of proximate cause would result in attenuated causation link, then the same issue is likely to affect the usage of

¹⁶¹ There are some basic Lifestyles that are not initiated by human beings in the sense I am suggesting here. For example, our daily activities seeking subsistence, safety and social connections, and the natural disasters (though those that are causally initiated by human beings do not count) are of a narrow sense of ‘natural’ Lifestyle.

¹⁶² Zipursky, p. 262.

Theory Alpha in the same or similar way. Unfortunately, I have no expertise of law, and discussing this issue is not practical in this dissertation, so I will leave the issue to the readers and experts.

4.6 The problem of luck

I hope the readers would have been convinced by my argument so far in this dissertation for a possible human right to internet access. I can imagine, however, that some readers may consider that, even if Theory Alpha is acceptable, and that someone does suffer from unavoidable harm or risks of such harm under a basic Lifestyle of internet, still in a way it seems not right to say that person has a human right to internet access. A person can be born into and grow in a basic Lifestyle of internet naturally without any possibility to have internet access, not because of any setting of the social or political structure — namely, no one has any intention or is in negligence that causes that person to have no internet access. And in any case, it does not seem right to say any one owes anything including all that are required for internet access to that person *in the first place*, especially given that the internet is a service and will never be free of cost. So how can that person has a valid claim to internet access?

I think this is a problem similar to some moral problems related to luck (a word and concept I am using in the most general sense). Imagine I fell off the lovely pier of St Andrews, not because I was uncareful, negligent of the risk, or intentional, but merely because of being unlucky — a sudden blow of the almighty Scottish wind pushed me off the pier while I was walking there, and I am about to drown in the sea. You happen to be there and notice me. As a stranger and passer-by, someone who may self-sacrifice to rescue me (or perhaps not), and also someone who does not know me and never has any emotional tie to me, you may want to save me. But still you would likely wonder if you *must* do so, for apparently you do not owe me

anything. In fact, if you do owe me something, such as a huge amount of money, you may simply happily walk away. What reasons can convince us that a stranger in this case, or in any case of human rights, *must* offer a service to the merely unlucky? Cruft has suggested in a session of supervision that this is what O'Neill's claimability argument is actually targeting: for if no one owes anything to anyone else, how can some human rights be claimed?

I will only try to offer some sensible responses. First of all, we should consider if some seemingly adversities are in fact a result of negligence, or a result of unfulfillment or undue performance of duties. If an earthquake struck, causing thousands of deaths, of course the damage of that earthquake is a mere misfortune. Many people will naturally think that they do not owe anything to those who suffer afterwards. But while no one can precisely predict when the earthquake would have exactly happened, the movement of the regional Earth's crust could have been constantly under monitoring, the forecast of a possible earthquake could have been more accurate, the warning to the residents about the earthquake could have been sent faster, the education about self-protection and evacuation during an earthquake and the evacuation itself could have been done better, the buildings could have been designed and constructed to be more resistant to earthquakes, post-earthquake rescue and medical service could have been done quicker and better, the town could have been moved to another location, and so on. But of course, it will be inappropriate to blame anyone without giving any regard to the scientific and engineering limit, and in some cases the financial limits that we are subjected to. But even in those areas, some people could possibly have done better so that less people would die in an earthquake. The more we know about the universe, society and human beings, the less we can be excused for being ignorant, for we should and could have known better. But it might be over-demanding, or indeed a perfectionism to require that we always try our best to know better. Still,

the examples that I have listed about what people should or could have known or done better are something we must consider when we think of the validity of some human rights regarding the issue of luck.

One may also claim that she is ‘not owing anything to anyone else’ in some other cases other than natural disasters. Those cases, we may say, are shifts of basic Lifestyles, such as a fundamental change from writing letters and telephoning to using the internet for communication, or a fundamental change from democratic government to an authoritarian one. These shifts can be either long or short, subtle or sudden, good or bad. But when a shift can be observed as completed, sometimes people may think that no genuinely new human rights shall be recognized regarding the new goods or services that they or the public would be asked to provide to all members in the society, because ‘no one owes anything to others.’ I would argue, however, that this is not true. In terms of the shifts of basic Lifestyles due to certain innovation such as the internet or tap water, the reasoning against ‘no one owes anything to others’ is similar to that in the case of political changes: when a Lifestyle replaces another one as the new basic, it is people’s actions that make it happen. Every internet user’s acceptance and constantly regular usage of the internet affirm and strengthen the internet’s penetration into and integration with our daily life and contributes to the expansion of the cyberspace. It is the internet users¹⁶³ that are accounted for the dominance of the internet, and therefore, everyone shares a bit of responsibility for the result. And if the whole Lifestyle does harm to people — for example, by putting those who have no internet access in disadvantage in social activities such as competition — those who help the internet to achieve this status does bear some responsibility. When the harm is

¹⁶³ Notice that by ‘internet users’, I do not only refer to some individuals, but also institutions or groups such as companies or government agencies.

impossible or inconvenient to escape from, then those that are harmed because of having no internet access are entitled for some compensation, namely a human right to internet access.

Therefore, the excuse of ‘not owing anything to anyone else’ must be put under scrutiny before omission of aid can be justified. But what then, if people have indeed known and done their best, but adversities still happened? And why should some non-related persons, organisation or countries offer any service or help in those events? What are the reasons, and what can Theory Alpha say about this?

In the extreme cases of mere bad luck — or purely random adversities, really — I reckon that it is difficult to give a conclusive answer about whether we can claim any human right to needed aid, given all the different moral intuitions we may have, and debates on philosophical theories or thoughts such as that of effective altruism.¹⁶⁴ As a result, a properly in-depth discussion is beyond the scope of this dissertation. I will only give my discussion here that I consider appropriate but not a philosophical overstatement regarding the effectiveness of Theory Alpha.

We may first acknowledge two points: α) there is likely only a small number of such cases in which no one really owes anything to anyone else and that people are indeed randomly hurt only by the universe; β) *if* we accept the intuition that there is no objective morality external to the existence of human beings (or sentient and intelligent beings), then *according to my definition of ‘harm’* in section 2.4 which includes the phrase ‘morally indefensible’, we may say

¹⁶⁴ I have been aware of effective altruism though I am not an expert on this topic. For a classic paper, see Peter Singer, ‘Famine, Affluence, and Morality’, *Philosophy and Public Affairs*, 1.3 (1972), 229–243. For a discussion on the criticism against effective altruism, see Jeff McMahan, ‘Philosophical Critiques of Effective Altruism’, *The Philosophers’ Magazine*, 2016 <<https://doi.org/10.5840/tpm20167379>>.

that adversities caused only by the universe do not involve morality *in the first place*, and therefore, we cannot say that there is *initially* any harm done to people in these adversities, even though there are much pain (being) experienced by the unlucky people.

If we reckon these two points, particularly β), then we have two different ways to consider human rights in purely random adversities.

First, if we accept Theory Alpha, particularly the Harm Conditional as our primary way to justify human rights; further, if we grant that β) is correct, then since there is no *initial* harm (but only pain) involved in purely random adversities, we cannot apply the Harm Conditional and justify any human right in these adversities *at this stage*, even though it can be argued that the possibility of such purely random adversities is indeed a basic Lifestyle (but with pain instead of harm) that no one can be excluded from. If we also grant that α) is true, then as long as Theory Alpha can process most cases of human rights justification, purely random adversities would not reduce much of the power of Theory Alpha. We would feel sorry for people who suffer in adversities, and we may aid them according to effective altruism or whatever moral theories, but such actions would not be in the framework of human rights according to Theory Alpha.

Second, while there is indeed no harm involved *initially* in purely random adversities, it can be quite often observed that there is much pain being involved — and perhaps this is the reason behind the name of ‘adversity’. Once we recognize pain, and we acknowledge that we have the capacities to end or lessen the pain, we must consider if our sustaining the pain of the unlucky people by omission of aid would cause any harm (particularly the harm that fits the Harm

Conditional) even though no one has initiated the pain. If sustaining pain by omission of aid¹⁶⁵ does lead to harm that fits the Harm Conditional, then according to Theory Alpha, unlucky people do have a natural human right against sustaining pain by omission of aid. In another word, they do have a human right to needed aid in purely random adversities. It can be suggested that the state can bear the duty of providing the needed aid, given certain arrangement of the state or agreement between the state and its people.¹⁶⁶ In this way, a human right to needed aid is quite feasible, though if the establishment of this right is not backed by a natural theory of human rights, this right would be more a legal one than a natural one. However, this reasoning is not inconclusive for two reasons: 1) it is inconclusive whether it is a morally indefensible setback of the interests of the people whose pain is being sustained or not being interfered with, when the pain is not initiated by the agents who recognize it. For example, it should be rather common in many countries and regions that doctors cannot perform euthanasia on patients who are suffering from great pain, unrecoverable and willing to end their pain with a painless death. It is however *not* common at all to say that doctors who cannot perform euthanasia and therefore sustaining great pain are harming the patients; 2) Even if we bring in the factor of capabilities to aid, quite often it is unclear whether people do have capabilities or not. It is especially unclear if it is morally indefensible to fail to acquire any capabilities to aid. For example, it is not clear if it is morally indefensible for me to stay at a comfortable hotel room for £50 per night rather than

¹⁶⁵ To avoid possible confusions, it should be noted that I am using ‘sustaining pain by omission of aid’ as a whole expression in this discussion.

¹⁶⁶ It may be argued that this is not plausible as it is unclear, if we assumed claim-rights always correlate with duties, what rights the state has in these purely random adversities. I have not discussed this point back in section 4.4, and I consider a proper discussion would require a dedicated analysis on states and the relation between the state and its people, which cannot be done in this dissertation. However, we may simply consider that the right that the state has is the right to the sustaining of the state as such, viz. its current organisation, its legitimacy, and its sovereignty.

spend my nights on a cramped hostel bunk bed for £15 per night and donate the ‘extra’ £35 to some British charity, when I am indeed capable of doing so.¹⁶⁷

At any rate, the discussion in this section should have shown that not all bad luck or adversities are free of human responsibilities. But even in purely random adversities, it is possible to have a human right to needed aid according to Theory Alpha, if we grant that sustaining pain by omission of aid is harming. I will leave the question of whether sustaining pain by omission of aid is harming or not to my readers. The discussions in this section should have nevertheless established that people who are affected by the shifting to a basic Lifestyle of the internet, such as those that are born in this basic Lifestyle, would be justified to enjoy a human right to internet access.

¹⁶⁷ A quick argument that sustaining pain by omission of aid cannot be a morally indefensible setback of the interests of the unlucky people is this: To avoid any potential harm to any person, we should check every inch of land on earth to see if there is any unlucky person suffering purely random adversities and if we can aid them. As technology advances, we could have known, and we should have known. But this is overdemanding.

VI. Final Remarks

As I have mentioned in the preview section (1.3), there are two main tasks in this dissertation. First, given the naturalistic approach of this dissertation, we must answer how a natural human right to internet access can be grounded. Second, how (or why), according to the ground or justification as answered in the first task, can there can be a natural human right to internet access. I have attempted at the first task in chapter II with the proposal of the Human Right Generation Conditionals. Chapter IV has further addressed issues or potential objections regarding my proposal. Particularly, section 4.2 has dealt with issues of universality of human rights along the line of the argument I advanced in chapter II. The second task has been attempted with chapter III. If my discussion has been convincing, then we should accept that there can be a standalone natural human right to internet access in general besides cases related to the freedom of expression according to Theory Alpha. But if my proposal fails to achieve this, at least I hope my proposal would contribute to a wider recognition of a legal human right to internet access in general, that is, besides cases related to freedom of expression.

A list of questions can be constructed to judge whether a theory of human rights is satisfactory. An example may be the following one:

- (1) What kind of a statement does a declaration of human rights make?
- (2) What makes human rights important?
- (3) Can economic and social rights (the so-called second generation rights) be reasonably included among human rights?
- (4) How should the claim to a universal status of human rights be assessed, especially in a world with much cultural variation and widely diverse practice?
- (5) What grounds or justifies human rights?
- (6) Which proposed human rights are real human rights? Should we dismiss some classes of human rights claims as morally, legally or conceptually questionable?

(7) Are there human rights at all, or should we embrace the sceptical conclusion that there are no genuine human rights?¹⁶⁸

Theory Alpha with its Human Rights Generation Conditionals will provide a set of answers to these questions:

- 1) Section 2.5 presents the Human Right Generation Conditionals that would justify a human right to internet access. Section 3.3 discusses what may be the content of this possible right;
- 2) As shown by my Human Right Generation Conditionals, what makes human rights important are the protections of people from unavoidable Condition *C* (such as harm), or *C* that cannot be conveniently avoided, or a fair degree of risks of such condition;
- 3) Yes;
- 4) Section 4.2 has dealt with this problem, and Theory Alpha allows content variation of human rights across time and space as long as the logic-universality is preserved;
- 5) The Human Right Generation Conditionals as I specified in section 2.5;
- 6) Human rights that are recognized when the antecedents of the Human Right Generation Conditionals obtain are genuine human rights. The answer to the second question here is implicit in the dissertation: human rights that are recognized without the relevant antecedents in the Human Right Generation Conditionals being obtained are dubious;
- 7) Question 7 is perhaps the trickiest one. I am inclined to suggest that this is likely an inconclusive question without definite true answers, for the reason that this question is framed as an existential question of metaphysics about human rights which are in the moral realm; namely, it is a metaphysical question concerning the existence of some moral entities. I personally do not think that this is the best attitude we should have towards human rights. Instead, I believe that we *should* adopt and develop the concept of human rights, claims rights carefully and build a working global system of human rights that could indeed protect everyone.

¹⁶⁸ Questions (1) to (4) are from Amartya Sen, 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs*, 32.4 (2004), 315–56 (pp. 318–19) <<https://doi.org/10.1111/j.1088-4963.2004.00017.x>>, and the rest are from Rowan Cruft, S. Matthew Liao, and Massimo Renzo, 'The Philosophical Foundations of Human Rights: An Overview', in *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), pp. 1–41 (p. 4).

In short, I believe that Theory Alpha can answer these seven questions in a coherent and convincing way.

While I hope that Theory Alpha has been strongly argued for and will make contribution to the discourse and development of philosophy and practice of human rights, undoubtably there are a few important issues of the internet and human rights that have not been thoroughly discussed or mentioned in this dissertation. To name a few: although I believe Theory Alpha can provide guidance towards good solutions of some problems, issues are often very complicated and must be discussed in dedication elsewhere. The much-discussed issue of net neutrality in the US in the recent months is an important topic and directly related to internet access, but I would not be able to analyse it here due to the focus on philosophy in this dissertation. As I mentioned before, the implementation of a human right to internet access may involve some discussions on distributive justice, but this is another important philosophical topic that I could not focus in this dissertation. A particularly important practical and theoretical problem that this dissertation has not discussed is the international interference on the ground of human rights in issues related to internet access, particularly in the case of online censorship. I reckon that this is an extremely difficult problem due to the facts that the internet is relying on physical infrastructures under state sovereignty while all these infrastructures in different countries are connected in a way to form the worldwide web that the interest of every internet user on earth can be, to different extents, at stake. But as this problem involve the issue of international interference, which is not the subject of this dissertation, I will only note it here to raise awareness. At any rate, I wish Theory Alpha can provide or inspire some solutions to these and other problems related to the internet and the philosophy of human rights.

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