

Reflections on making Internet governance democratic and participative

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Abstract: Recent events have made clear that there is a conflict between the demand that global governance must be democratic and the ideology of multistakeholderism which underlies the status quo of Internet governance. This paper examines to what extent this conflict is real (as opposed to being a matter of misunderstandings and/or intentional misrepresentations of the other side's positions), and it reflects on how the underlying problem of making Internet governance democratic as well as participative can be solved.

1. Introduction: The need to re-emphasize democracy

Democracy and the concept of *democratic society* have always been about more than just electing a government and making decisions by voting. For example, other essential elements include public discussion of political topics, and that it must be possible to raise awareness of problems through public demonstrations and other forms of activism.

At present, humanity is in the process of a very significant transition to a state of organization which is much more globalized and much more ICT-based than anything that we have experience with. This affects all aspects of democracy. The customary nation-state-based traditions of developing solutions to public policy problems are not easily directly applicable to challenges which are fundamentally global.² In addition, even at the national and local level, in many countries changes to the laws are taking place which reduce the opportunities for effective democratic activism. For example, what is the point in organizing demonstrations if it is only possible for the demonstrations to take place in locations where neither the media nor members of the general public will be present in significant numbers?³ In the Internet realm the situation is even worse: so far it has not been included among the design objectives of Internet technology that in some way a *digital analogue to the possibility of participating in a protest march through the streets* should be available. Is it really asking too much if we insist that the development of the Internet and its

¹ Strong inspiration by intense internal discussions of the Just Net Coalition, <http://JustNetCoalition.org>, of which the first author is a co-convenor, is hereby gratefully acknowledged.

² In fact many global problems are made worse by powerful nations which focus on their own perceived interest rather than taking a global perspective. This will be addressed in a forthcoming paper on democracy and problem-solving logic.

³ For example, in the US this takes the form of “free speech zones”, http://en.wikipedia.org/wiki/Free_speech_zone. There are parallel developments in other countries.

underlying technical standards should not be driven predominantly by commercial interests, but that all human rights⁴ concerns including matters of social justice and democracy (and not just those human rights which are directly aligned with the commercial interests of the big Internet companies, such as i.e. the rights to freedom of expression and freedom of communication) should be given greater weight than the commercial interests of corporations!?

Unfortunately, the necessary emphasis and attention to matters of democracy is currently lacking in the realm of Internet governance. For example, the theme of the UN's most recent Internet Governance Forum (IGF), which took place in Istanbul in September 2014, was: "Connecting Continents for Enhanced Multistakeholder Internet Governance".⁵ This is symptomatic of a discourse in which the principle of "multistakeholder governance" is accepted as axiomatic and the only way in which it may be discussed is from a perspective of "improving", rather than questioning this multistakeholder governance.⁶ There was a good number of workshop proposals with an emphasis on democracy in the title, such as for example the Just Net Coalition's proposal of a workshop on the topic "multistakeholderism in a democratic framework", but none of the democracy-related workshop proposals were accepted.⁷ Shouldn't it be considered a crucial aspect of the international discourse on a new form of governance to make sure that this new form of governance is established in a way that is consistent with the principle that governance must be democratic!?⁸

From our perspective, the importance of insisting on democratic governance in relation to the Internet is fundamental. In the long run the stakes might even be whether democracy itself will survive the current transition to a globalized and very much ICT-based world.⁹

Of course it cannot be assumed that the traditional ways in which democracy has been implemented in the context of national states would directly translate to the Internet or should not be reconsidered in light of globalization. Nevertheless, many of the lessons which have been learned during the history of democracy will be applicable, in particular lessons about various kinds of abuses against which governance systems need to be made as robust as possible.

⁴ See for example <http://www.twn.my/title2/resurgence/2014/287-288/cover07.htm>

⁵ <http://www.intgovforum.org/cms/igf-2014>

⁶ A critique of the tendency to make everything multistakeholder is available at <https://gurstein.wordpress.com/2015/04/19/another-example-of-multistakeholder-governance-in-action-the-global-cyberspace-15-unicorn/>

⁷ <http://www.intgovforum.org/cms/147-igf-2014/1851-igf-2014-workshop-status>

⁸ A critique of present multistakeholder models is available at <https://gurstein.wordpress.com/2014/10/19/democracy-or-multi-stakeholderism-competing-models-of-governance/>

⁹ For a good discussion of this, see Robert McChesney, *Digital Disconnect*. A review is available at: <http://boundary2.org/2015/04/08/the-internet-vs-democracy/>

2. At a March 2015 conference at UNESCO: Opposition to the principle of democratic governance

At UNESCO's "Connecting the Dots" conference on 3-4 March 2015 in Paris, a very remarkable course of events has taken place in which the US government and a number of their allies, and also a civil society representative, Jeremy Malcolm, insisted that the outcome document should not characterize the form of multistakeholder governance which the document was to call for as "democratic". This is a regression from the outcome documents of the World Summit of Information Society (WSIS) in 2003¹⁰ and 2005¹¹, as well as in 2014 the NETmundial conference¹² and the WSIS+10 High Level Event¹³. For a detailed account of the March 2015 failed consensus process at UNESCO see:

http://www.justnetcoalition.org/UNESCO_meeting_-_chronicle_of_events .

In resulting discussions on the "governance" list of the Civil Society Internet Governance Caucus¹⁴, it became clear that the deep rift among civil society participants of the Internet governance discourse (which had been evident already on many previously occasions) can be well-characterized as a rift between pro-multistakeholder and pro-democracy viewpoints.

Here the proponents of pro-multistakeholder viewpoints are not explicitly asserting an opposition to democracy, but several prominent proponents of this set of viewpoints are arguing against the assertion of democracy as a guiding principle.

Some of these arguments are as follows:

"Multi-stakeholder was never meant to be separate or even the opposite of democracy. On the contrary, it has been the attempt to expand the democratic idea, which clearly has been optimized and operationalized for the nation state and thus has not much to offer for the global sphere." (Jeanette Hofmann)

"The very meaning of 'democracy,' much less its desirability, is completely unclear in a globalized environment." (Milton Mueller)

The latter point leads directly to claims that JNC's references to democracy must mean something different from the well-established literal meaning of the word. These claims have been repeated multiple times each by quite a few of the advocates of pro-multistakeholder viewpoints, and this in spite of repeated assurances that no, we mean "democratic" in the sense of its literal meaning, and in spite of the fact that when the word "democratic" is used together with "multistakeholder" in the same sentence, no other interpretation of the word makes any sense.¹⁵

Other advocates of pro-multistakeholderist viewpoints don't directly attack democracy, but they still

¹⁰ Paragraph 48 in <http://www.itu.int/osis/docs/geneva/official/dop.html>

¹¹ Paragraph 29 in <http://www.itu.int/osis/docs2/tunis/off/6rev1.html>

¹² <https://www.netmundial.org/principles>

¹³ <http://www.itu.int/osis/implementation/2014/forum/dam/documents.html#high-level>

¹⁴ <http://igcaucus.org/>

¹⁵ See for example <http://www.ip-watch.org/2015/03/11/no-democracy-is-not-excess-baggage/>

insist on elevating a principle of multistakeholderism to a very high status, and they in fact give it a status which is as high or higher than the status which is ascribed to the principle that Internet governance must be democratic. This is often done by insisting on the importance of multistakeholder governance without mentioning democracy at all. Even if democracy is mentioned, they greatly reduce the relative importance of democracy by not speaking of democracy as a principle which is much more important than any principle of multistakeholderism.

A related claim of our opponents is that regardless of what we may mean, the word “democratic”, it is claimed, has a different meaning in UN contexts. This claim is in our view untrue. For example, the word “democratic” is used in its literal meaning, without referring specifically to national governments or to the processes through which such governments are elected, in the language on to what extent limitations on some human rights are acceptable in binding human rights treaties, namely in articles 14, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), and in article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESC). That should in our view convince everyone that the literal meaning of this word is clear enough that it can be used in the same, literal sense, also in other international documents.

Whenever a word has a well-established literal meaning, and it is commonly used in the sense of that meaning, then it has that meaning everywhere where that literal meaning makes sense, and where it is not clear from the context that the word is meant in a different sense.¹⁶

That said, there is unavoidably always the risk that some people will misinterpret words, for example because they were misinformed about the perspective and intentions of those who use the words, or because they act in bad faith with an intention of distorting the words of political opponents.

This risk can be minimized by using words which are as clear as possible, but it can never be completely avoided. If anyone has a genuine concern about possible misinterpretation of our advocacy, they are welcome to propose words to express the literal meaning of “democratic” in a way that will better avoid such a risk of misinterpretation than what is achieved by using the word “democratic” itself.

In the present case, we think that the main reason for the resistance to proposals for using the word “democratic” as part of normative international documents on Internet governance is that our opponents know that we are serious advocates for democracy, and that we will not be satisfied when just a bit of lip service is given to democracy. We insist that Internet governance must be made democratic in actual reality. The current “battle of words” in relation to normative international documents is only a first step towards eventually achieving the full goal of ensuring that all important global governance processes must be democratic.

¹⁶ This conclusion is independent of whether the claim is true that in some contexts the word “democratic” is used to refer to the “one state, one vote” principle used in the UN General Assembly. That is in our view not at all in any way any kind of democratic process, but it can nevertheless be a legitimate process of international diplomacy depending on how it is used. In particular, this mechanism can provide an important counterbalance to the reality that in most other mechanisms of international interaction, Western interests have disproportionately great power and influence.

3. The literal meaning of the word “democratic”

The literal meaning of δημοκρατία (dēmokratía), in modern language “democracy”, is that “it’s the people who have the power to rule”. This is since ancient times seen in contrast to “the rule of an elite”, the ancient Greek term for the latter being ἀριστοκρατία (aristokratía).

In this context, the concept of *elites* is to be understood broadly. In the extreme case of an *absolute monarchy*, the “ruling elite” consists of a single person. In situations without effective rule of law, where therefore *mob rule* prevails, the “ruling elite” consists of the groups which form the mobs. Where there are *powerful companies* with huge influence on some aspects of how people live and interact, then in regard to those aspects there is a “ruling elite” which consists of the people who are part of the relevant decision-making processes within those companies. Examples of companies which currently have such power on a global or nearly global scale include Google, Facebook and Microsoft. To the extent that decisions on public policy matters (i.e. topics where the disagreements are about what is the public interest or about what is better from such a perspective, rather than purely about what is technically a better solution) are made through processes in which most participants are part of the Internet’s “technical community”, the members of that *technical community*, together with the decision-makers in the companies that these people are associated with or would like to be associated with, have also formed an anti-democratic elite.

The above-described literal meaning of the word “democracy”, in contrast to this broad concept of elites, has important implications.

In particular, the only way in which “rule of ‘the people’” can be implemented is by means of rule of law, with laws which conform to the universal principles which are recognized as human rights, and which implement these human rights besides whatever else “the people” may decide by means of whatever democratic processes are used for decision-making.

No decision which addresses a matter to which human rights are relevant can be democratic if it does not strive to uphold and implement all human rights which are relevant to the decision under consideration. Otherwise it would be a decision which effectively or at least potentially excludes one or more persons (those whose human rights are violated in a significant way) from “the people who have the power to rule”.¹⁷

Also, as soon as any governance responsibilities are delegated to a government or other institution (which is probably unavoidable except in the context of relatively small communities – for example putting a secretariat or some other group in charge of organizing a broadly-participative deliberative process is already an act of delegation of a governance responsibility), the following principles are immediate consequences of the concept of democracy that it must be “the people who have the power to rule”:

- Transparency: the people must be able to review the actions of those to whom responsibilities have been delegated.

¹⁷ The fact that this concept of human rights was not yet established and understood in antiquity is the main reason why the political system of ancient Athens is not a democratic system of governance by modern standards.

- Accountability: if those to whom responsibilities have been delegated did not perform these duties in accordance to generally accepted principles of how such tasks should be conducted, it must be possible to hold them accountable.
- Freedom of expression: besides formal forms of accountability, the “court of the public opinion” must always be available.
- Division of powers: checks and balances to avoid any great concentrations of power. (The classical example is of course the division of powers of government into judicial, executive, legislative.)

4. Democracy can and should be deepened by maximizing the degree to which the democratic processes are participative

It is important that governance processes must not only be democratic, but they must in addition be made *participative* to the greatest extent possible. Lack of participativeness does not only mean that the insights which various people could have contributed to the public policy processes are lost; it also frustrates people who try to provide inputs, if those inputs are then not taken seriously. When people get the impression that only corporate lobbyists, but not ordinary citizens like themselves, are able to provide effective input to public policy processes, they will feel disenfranchised with the democratic system a whole. This is a cause of citizen disinterest in voting or otherwise participating in democratic processes.

The possibilities for making governance processes participative were limited before the Internet age. However in today's day and age, there are no reasons for not including highly participative processes in every system of democratic governance. Specifically in relation to the Internet, this is stated in the Just Net Coalition's foundational document, the *Delhi Declaration For a Just and Equitable Internet*¹⁸, as follows:

It is urgently required to establish appropriate platforms and mechanisms for global governance of the Internet that are democratic and participative. These must be anchored to the UN system, and include innovative methods for ongoing and deep participation of non-governmental actors in policy making processes.

Demands for participativeness of Internet governance processes are currently very popular; in fact, practically all participants in the discourse about the future of Internet governance insist on the importance of this. Often such demands are expressed in the form of calling for “multistakeholder” governance of the Internet.

In this context it is crucial continually to pay attention to the realities of inclusion and exclusion: Are measures taken to make it as easy as reasonably possible for everyone to get their viewpoints and concerns fully and appropriately taken into consideration, or are there groups for whose views and concerns that is not the case?

¹⁸ <http://justnetcoalition.org/delhi-declaration>; the quotation is from point 18.

Our demand for participative mechanisms is not a general endorsement of the so-called “multistakeholder processes”, which are generally not democratic unless special care is taken to *make them democratic, in the sense of embedding them in an overall system of governance which is democratic in the sense of the literal meaning of the word “democratic” as explained above.* We propose that this should be seen as a parallel to how voting is not in itself automatically a democratic process, but *if appropriate care is taken* in regard to parameters like (1) how the candidates or proposals to be voted on are determined, (2) who has the right to vote, (3) practically enabling these people to exercise their right to vote, and (4) preventing ballot fraud, *then a vote can be appropriately referred to as a “democratic vote”.*

We see it as a major problem when even at UN-based international conferences, such as the March 2015 conference at UNESCO which was discussed in section 2, processes are used which are totally *ad hoc* in that they lack any clear rules or principles.¹⁹ Regrettably, even manifest irregularities do not stop the proponents of multistakeholderism from asking for more of the same kind of process.²⁰

On a deeper level – independently of whether concrete multistakeholder processes are appropriately conducted and appropriately embedded in an overall democratic governance system – the ideology of multistakeholderism is also anti-democratic in its shifting of the emphasis of who can legitimately make decisions from “the people” to “stakeholders”. This shift of emphasis is intentionally promoted by some of the proponents of this ideology, for example by the World Economic Forum (WEF), with the goal to legitimize the anti-democratic trend towards increasing the influence that stakeholders such as international corporations can exert on decision making processes. From the democratic perspective that is of course totally illegitimate. Democratic power by definition rests with the people directly, not with private companies, and human rights relate to people.

Another central problem of the ideology of multistakeholderism is its denial of the fact that it's anti-democratic when its discourse processes are elitist rather than inclusionary, in particular with respect to people who are neither members of the “technical community” nor otherwise well-aligned with the interests and values of this community. It is because of this problem that we insist that the platforms and mechanisms for global governance of the Internet must be anchored in the UN system, as this is in our view the only anchor which is available at present for preventing, to the extent possible, the capture of global processes by an elite. To be clear, anchoring anything in the UN system does not automatically make it democratic, but such anchoring of the platforms and mechanisms for global governance of the Internet can contribute to preventing capture by elites, which in itself is a precondition for any platforms or mechanism being part of an overall democratic system.

¹⁹ Concrete rules for consensus processes are proposed in http://www.apig.ch/best_practices.pdf.

²⁰ Specifically, the most recent prominent demand for participativeness of a UN-based process related to Internet governance, the “[Call For an Open WSIS+10 Preparatory Process](http://www.openwsis2015.org/)” (see <http://www.openwsis2015.org/>), states the following in relation March 2015 conference at UNESCO which was discussed in section 2: “The benefits of a process that facilitates effective stakeholder engagement can be seen most recently in the Outcome Document that was developed and adopted by all stakeholders during the March 2015 UNESCO ‘Connecting the Dots’ conference.” By any reasonable standard of consensus processes, that conference had a failed consensus process rather than a successful consensus leading to an outcome document being “adopted by all stakeholders”.

Specifically, in relation to open-participation multistakeholder processes in which any individual or organization is welcome to participate, we post the following centrally important question regarding whether those processes are democratic or non-democratic: **what happens if no consensus is reached?**

In the current system of Internet governance, lack of consensus means too often that no governance decision is taken and therefore businesses are free to act with unlimited irresponsibility, in whatever way they choose (or are compelled to act by state surveillance demands, which are in many cases in direct violation of human rights). As a result, the current governance system (as a whole) for the Internet is clearly not democratic.

However it might be possible to design open-participation multistakeholder processes that could be used for the purpose of developing sets of competing legislative proposals, which would then be debated and voted on by national parliaments.²¹

Besides open-participation multistakeholder processes, there are also multistakeholder processes in which representatives of stakeholder categories are selected by some set of mechanisms. These selection processes have, at least do date, always had highly problematic aspects. We are not aware of any serious proposals for designing international processes of selecting stakeholder group representatives in a sufficiently robust way to make such processes usable in the context of a democratic governance system for any purposes that would go beyond very narrow and well-defined tasks in relation to which political views and interests are relatively unimportant.

Another problem with the *status quo* of Internet governance is the dominant role which the English language plays in the discourse. This creates a serious anti-democratic obstacle to broad participation from regions where English is neither spoken natively nor used as the primary language for communication between people groups. It is not democratic when essentially the only participants from these regions in the international discourse on Internet governance are people whose personal values and interests are strongly aligned with those of Western culture and Western international corporations.

Ideally, the discourse on making governance processes appropriately inclusive should not be centered on the notion of multistakeholderism with its anti-democratic connotations, and it should not be restricted to only those solution concepts which fit the pattern of multistakeholder processes. Rather, at the current stage, any and all ideas for making Internet governance appropriately democratic, participative and inclusive should be welcomed and considered regardless of what forms they might take.

This call for openness for all kinds of solution proposals, without restricting (already before any kind of constructive discourse has really taken place) the space of potential solution proposals only to multistakeholderist proposals, is particularly important in the current context where at the heart of the sociodynamics of the ideology of multistakeholderism is the desire of members of the Internet “technical community” to be able to prevent or at least minimize the risk of state action that interferes with the Internet. That leads directly to resistance against any Internet related public

²¹ For a concrete proposal in that direction see <http://WisdomTaskForce.org>

policy problem-solving process that would involve legal as well as technical means to achieve public policy objectives.

Besides the matter of the organizational structures which are used to implement discourse processes, it is also important to make the way in which the discussions themselves are conducted as inclusive as possible. It may be possible to make progress in this regard by using, in addition to textual communication, graphical representations of the logical structure of proposals for solving governance problems.²² These “logic trees” would illustrate how precisely it is proposed that the various elements of what is proposed for solving a problem would together solve the problem. The benefits from using these methods would include improved clarity of thinking as well as making the discourse processes more inclusive by making it easier for non-professional, occasional participants to quickly identify the part of a complex proposal that relates to a particular interest or concern.

5. The human rights and social justice perspective

Besides the literal general meaning of the word “democratic” as discussed above, the words “democratic” and “democracy” are also used in reference to specific structures of decision making on the basis of voting, with the implied claim that those decision-making processes are democratic in the sense of the literal meaning of the word.

This is most significant in the context of national government²³, where some fundamental democratic principles have the status of human rights. Specifically, article 21(3) of the Universal Declaration of Human Rights²⁴ (UDHR) states: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

It is not correct to think that this is irrelevant to the Internet and to matters of Internet governance: even if traditional notions of “government” may be becoming increasingly problematic in today's highly globalized world, it cannot be denied that governments certainly are needed in Internet related contexts as implementors and guarantors of human rights.²⁵ Even when governments fail to take their responsibilities in this regard seriously enough, the fundamental international consensus

²² The logic tree methods of the “thinking processes” of Eli Goldratt's Theory of Constraints (TOC) may be appropriate to use for this, possibly with some adaptations to make them even more suitable for supporting public political discourse being conducted via the Internet. For a detailed description of the TOC logic tree methods, see the book “The logical thinking process” by H. William Dettmer, 2007. Quality Press, ISBN 978-087389-723-5.

²³ Many studies view “democratic governance” not as something which a country has or not, but consider that “democratic governance and its different dimensions can be more or less present in a country”. Democracy appears to have a positive effect on human well-being: “The literature on democracy and development thus suggests that there are tangible benefits for countries that are more democratically governed than for countries that are not. The findings are not particularly robust for the traditional measure of economic growth, but it appears that for those measures of development that capture broader understandings of human well-being, there does appear to be a ‘democracy advantage’”. These quotations are from the 2012 study of the Institute for Democracy and Conflict Resolution (IDCR) titled “Democratic Governance and Sustainable Human Development”, available online at <http://www.esrc.ac.uk/my-esrc/grants/RES-189-25-0308/outputs/Download/52022563-679a-4e79-84a7-a79a744603c2>

²⁴ <http://www.un.org/en/documents/udhr/index.shtml>

²⁵ For example, the NETmundial outcome document states “Governments have primary, legal and political accountability for the protection of human rights.” See “Internet governance process principles”/“Accountable”, at <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>

that governments have these responsibilities is already very valuable: it provides a basis for demanding of the various governments that they must live up to these responsibilities.

These responsibilities include “achieving progressively the full realization” of the various economic, social and cultural rights recognized in the International Covenant on Economic, Social and Cultural Rights²⁶ (ICESCR). In today’s increasingly Internet-mediated world, these concerns of economic and social justice are unavoidably to a large extent matters of Internet governance, in the sense of the generally-accepted definition of that term, which is *the development and application of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet*.

Therefore, while it may be true that some traditional conceptualizations and implementations of “government” may need to be revised and national governance systems may need to be redesigned (of course in accordance to and in implementation of article 21(3) of the Universal Declaration of Human Rights as quoted above), whatever will be determined to be the appropriate forms of government in the age of globalization must be democratic; and they must fulfill and realize important roles and responsibilities in relation to the concerns of social and economic justice that are related to the Internet and its increasingly important role in society.

These human rights aspects of Internet governance have only become so crucially important relatively recently. In the early days of the Internet, before the Internet began fundamentally reshaping human societies, Internet governance mechanisms that were in fact a form of industry self-regulation in the sense of what e.g. the European Commission is promoting as “principles for better self- and co-regulation”²⁷ were much more acceptable than they are today.

6. The way forward

How democratic governance, in the sense of that literal meaning, is to be implemented, in an inclusive and participative way, in our increasingly globalized and increasingly ICT-based world – of which the Internet is nowadays already a rather central aspect (which central aspect is widely expected to continue to grow) – is something that requires discussion and consensus building.

In our view, this needed discussion and consensus building should be based on first of all agreeing that governance is needed to some extent, and that to the extent that governance is needed, it must be democratic in the sense of the literal meaning of the word “democratic” as stated above.

At the same time, we must also continue to work on less ambitious ideas for making governance systems more robust in relation to abuses of various kinds, and in particular reduce the ways in which existing governance systems are dominated by elites. Incremental improvements are valuable and helpful even where they do not fully achieve the desired objective that all Internet governance must be democratic and participative.

In all of these discussions, it is important to keep in mind the well-known failure modes of governance processes, and make it a primary design goal to minimize the possibility and the impact

²⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

²⁷ <http://ec.europa.eu/digital-agenda/best-practice-principles-better-self-and-co-regulation>

of the occurrence of such failure modes. There are many examples; we mention some here. When the ideal of democracy is implemented imperfectly, often some elite will gain power and use it for their own benefit, which results in public anger, which in turn gives opportunities to populists for exploiting this public anger. Bureaucracies tend to have a strong bias in the direction of always wanting to expand themselves, which sometimes results in them being advocates for more and heavier regulation. Lawyers as a group benefit from increasing complexity of the law. Politicians and unelected government officials have tendencies to being overly supportive of the desires of big businesses whose lobbyists invite them to a good lunch or dinner. (Illegitimate desires expressed by lobbyists can go in the direction of deregulation, to allow companies to act with unlimited irresponsibility, or in the direction of regulation which would hinder new market entrants, or regulation which would prevent or at least delay structural change²⁸.) Governance systems must be intentionally designed and maintained to serve the needs of democratic governance: this doesn't come about by accident.

Not all aspects of human activity require regulation or any other kind of explicit governance action. On the contrary, regulation should be limited to what is strictly necessary. This is true on the Internet just as it is true offline. However we insist that in all cases of any doubt or dispute, decisions must be made democratically regarding precisely what aspects of human or business activity need formal regulation and what aspects don't need regulation. These democratic decision processes must of course take into account human rights and they must take into account the reality of change. Areas of activity which don't need regulation today might need it in a couple of years, and vice versa.

²⁸ Recent attempts to strengthen copyright, such as ACTA, are an excellent example of regulation that is introduced to delay structural change.