



Tim Wu on Twitter, Facebook & net neutrality

Interview by Timothy Garton Ash, director of Free Speech Debate

TGA: Tim Wu, you've seen FreeSpeechDebate.com and the ten draft principles, how do you react to them?

TW: Terrific! I think someone needs to put this kind of thing together. It's not an easy thing to do and I'm glad you've done it.

TGA: We talked before about the difference between norms and laws. You're a lawyer by training, could you talk a bit about the need for the difference between general norms and specific laws.

TW: Yeah, it's a great point. From a jurisprudential perspective, the difference between a norm and a law is only the law has a threat of force behind it. What I think is interesting: in areas like this norms can be in some ways much more powerful than the laws. The laws depend on enforcement; they depend on cases being made. A free speech norm kind of reaches out to everyone and affects behaviour on an ongoing basis. In some ways what's interesting about norms is that they're self-executing sometimes. If someone really believes in something they do it even whether or not it is enforced by an outside enforcer. If you have an internalised norm of free speech, people act on it. Also, you can have a situation of decentralised enforcement with norms, which is to say that someone sees something happening (and this is what I think your website is closely linked to) is that people see things happening, they don't like it and they rise up against it. Now, it doesn't always have the power of calling in the police but it can prove very effective on a day-to-day basis.

TGA: Can I just follow-up on that because one of the things you highlight in your book *The Master Switch* is how the American tradition is very strong on controlling public power; weak on controlling private power, and private power

is incredibly important online. It seems to me that this soft power of norms also applies to the Googles and Facebooks and Twitters, does it not?

TW: Absolutely. I think in the American tradition, since about the 20th century when many governmental functions were moved to the private sphere - carriage, telecommunications, mass media - that suddenly private speech control became as important and probably more important than public speech control. This transition happened in the 20th century. Today the rest of the world is starting to experience what has already been the experience in America, which is to say they have private decision-makers having an almost disproportionate role in determining what free speech is. When that's the way things are, norms - as you suggested - become all-important. The way in which the major owners of the big switches - the big intermediaries, the big guys in the information world - their attitudes towards free speech really make all the difference, it begins with them. It does not end with them but it begins with them, and it can be even personal: what personally they feel they should be doing becomes very important. In order for there to be a sense of personal responsibility to protect free speech, there needs to be a community of norms that enforce those ideals. So yeah, I think your website is part of that movement but I think it's extremely important in the story of some of the big intermediaries today, whether it's Google, Twitter, Facebook and so forth, that they feel the sort of social pressure to promote free speech.

TGA: So our second principle is, "We defend the freedom of the internet and all other forms of communication against illegitimate encroachments by both public and private powers." First of all, you're invited to vote on that. Would you vote yes?

TW: Sure, of course.

TGA: Great, so click the "yes" box. Now you said to me in an email, "Tim, this is a very high principle but it could be an even higher one."

TW: Right, I'm trying to remember exactly what I thought when I said that. The highest level has just to do with human autonomy to begin with. That is to say, as tool-using creatures, to put it that way, we are only as free as our tools let us be. And to the degree to which they're controlled externally in ways we don't necessarily agree with, is the degree to which our freedom is limited. Now I don't believe in the kind of anarchy, "We have total freedom at all times", but I do very much believe in what you might describe as a chosen life, which is another word for just saying human autonomy.

TGA: If I can just interrupt there? Do you think that the expression of human autonomy, through the technologies of the internet, is actually being increasingly circumscribed; it's actually being reduced compared to not just the cyber-utopian expectations, hopes of 10, 15 years ago but the reality?

TW: I'd say it is in the sense that we are increasingly, mostly in commercial ways. Actually in two ways. First of all, more and more countries feel more confidence to circumscribe the internet and that they're getting better at it. But I think what most of us experience are the interests of existing companies in protecting revenue models, and steering us in ways that protect those revenue models. I wouldn't say it's too extreme yet but I think it's something to be watched. Most of the pressure against free speech in the west is a commercial type and it's much less obvious than, say, throwing a protestor in jail. It has more to do with trying to subtly push people in various directions, turn them into consumers, turn it into a happy place for commerce and advertising and things like that. It's a much more subtle thing but it also needs to be watched.

TGA: So could we, I mean simplifying massively, say that if you're in China or Iran the great threat to that possibility is the public power? For us in more or less free countries, the greater threat is private powers and the profit motive?

TW: I think that's exactly right. Yeah, because that's where the power over speech lies in these respective countries.

TGA: Tim Wu, you are credited with coining the term "net neutrality". Tell us in the simplest possible terms what net neutrality is.

TW: It's a pretty simple idea which is accountant, I think, for its relative degree of acceptance, which is to say that the big carriers of information on the internet should treat everything they carry roughly the same. So it's a non-discrimination principle. It's the same principle which says a hotel should make its rooms available to any guest with money - you know, same room, same rate. A taxi cab should carry you where you want to go and not take you to the gift store. That is the principle which "common carriage" is the original word that informs net neutrality. If you get on the internet and you say I want to go to place A, the carrier should take you to place A and not B, C or the gift store.

TGA: Do you think it is now being significantly eroded?

TW: I'd say it's a struggle. How's that? I think the last 10 years have had a number of successes and a number of failures and it's more like an ongoing battle than a story of complete loss. In the United States, and I think in parts of Europe, the success would be

on the norm side, that is to say I think there is a reaction and people have a way of expressing their reaction, which is really important when there's discrimination against a website or slowing down websites.

TGA: Give us an example where you think...

TW: I think that there's no way Netflix would have ever gotten started without net neutrality. I think it's also clear that Skype would not exist. We wouldn't be having this conversation without net neutrality, without there being a norm, particularly on mobile. In fact we know that it was the plan of the American mobile companies to cut Skype out once they moved to the iPhone and Android. That was the idea; that Skype should never be allowed to operate on these platforms. There were reactions to those plans: normative and some legal. I think the Obama administration adopted the cause of net neutrality pretty early on by a speech by the candidate Barack Obama. And so I count those as successes. It's hard for me to tell the story of woe and sadness when the president of the United States has personally dedicated himself to net neutrality. On the other hand, I do believe that in all the countries where we see blocking and filtering, those are straightforward violations of net neutrality, and so there have been some losses as well. But it is more in the nature of an ongoing battle than in the nature of a complete wipeout or a complete victory.

TGA: Would you say that what's happened under the Obama administration is an example of public power, in the form of the regulatory power, constraining the illegitimate encroaching of a private power?

TW: At its best!

TGA: For example, what the FCC [Federal Communications Commission] has done, would you...?

TW: At its best. You know, different parts of government act in different ways. And of course this government is the same government that proposed the SOPA, the Stop Online Piracy Act, so it's been a mixed bag. But I would say that occasionally government can do what I think it was originally intended to, which is act in the will of the people to create norms of free speech for large intermediaries to follow. And the net neutrality rules are not perfect in the United States but are an example of that. They're an older tradition, in fact, and I harken back to the telephone, the telegraph, where the government intervenes to say, "You know, you have to treat everyone equally." There's almost some analogy, particularly in America, to civil rights laws where, in the 20th century, the United States said to hotels you have to serve black people. We know you

don't like them but you have to serve them when they're here on business or any other purpose. So the government can sometimes act to fight invidious discrimination and that's what I think it's done over the last four years at times.

TGA: At times and at best.

TW: Yes that's right.

TGA: Whereas, as we know in American politics, money speaks very loudly, and so you have SOPA, the Stop Online Piracy Act, with Hollywood in particular lobbying, producing, leading towards a bill which is clearly very overboard in the way it's drawn, and then being driven back by Northern California, by Silicon Valley. So it's almost as if one great private power - those of Northern California, Silicon Valley - drive back the private powers of Southern California, of Hollywood, and government, Congress is the theatre in which that battle is played out.

TW: I couldn't have said it better myself. It's exactly how laws are made in the United States: battles between private interests. You have to hope that the private interests are balanced enough on each side so that somehow the people end up being the beneficiaries but it doesn't always work that way.

TGA: And in the case of SOPA specifically?

TW: In SOPA specifically it so happened that an advantageous moment for Silicon Valley to assert itself and try and gain some political leverage over its rival happened to coincide with the public interest. It's really a different conversation but counting on that system to always work that way is dangerous and the moment that Silicon Valley would agree on something that isn't in the public interest, then we're in trouble.

TGA: Do we have an example of where Hollywood and Silicon Valley agree on something that isn't in the public interest?

TW: Not yet! They disagree on so much that not quite yet. Although they could very easily agree on a modified version of SOPA that makes someone else pick up the bill. You know, Hollywood wants to take piracy down to zero - I mean, who wouldn't? Silicon Valley wants its costs to be zero. So they could gang up on somebody else. In fact, they talk about the credit card companies, who are fighting a number of other battles (you know, I'm not going to say that the credit card companies can't fight for themselves because they can), but that is a good example where they'll try to turn everything over to somebody else.

TGA: But it's a pretty perilous, as it were, guardian of global freedom of expression online if you have to rely on, so to speak, a balance of power between various private interests.

TW: That is exactly what I think. I'll give you another example. Google is in some ways one of the companies that's done the most to protect norms of online freedom but relying on Google too much is extremely dangerous. For example, Google was a big backer of net neutrality until they decided to do a deal with Verizon for the Android system, and Android was suddenly more important to them. And then they continued to be a backer of net neutrality except for when it came to wireless, basically. They sort of modified their positions. And that's the problem here, I think. It's very important to distinguish the principle of internet freedom and the principle of "Silicon Valley should win all the battles it's involved in". Because sometimes they're the same thing but sometimes they're not. I think increasingly there's going to be a great challenge as the larger internet companies mature, develop more stable monopolies, become interested in defending their market positions. Their interests, I think, are going to begin to change and in fact you can see that they already are changing. Twitter is a great example of this; you can see it in action. Twitter moving from a force of speech and rebellion, which they still sort of are, to taking on positions of greater responsibility, but really positions that allow its global expansion in a way that doesn't offend sovereign governments.

TGA: Can we talk about Twitter because that's such an interesting example of this very moment because on the one hand it's clearly driven by a profit motive - it has a commercial interest to get into these markets - on the other hand in principle should they not abide by the laws of at least legitimate states?

TW: They should abide by the laws of legitimate states but that policy which is true in some instances I think is being used too broadly. So I believe very strongly in the principle that if you're doing business in a legitimately, democratically elected state you should follow their laws. Some people don't believe that but I believe that. If the Germans have a sense that as a population they don't agree with certain types of speech, then I actually believe - and this is an exception to some more extreme free speech people than I - that that will should be respected. But Twitter has taken that, which I think is correct, and exported it to sort of a general rule where they will take down individual tweets that sovereigns want them to take down, even if they aren't doing business in that country.

TGA: And even if they are not democratic.

TW: Even if they are not democratic. And you know I don't know why. They're not under any real legal obligation to take down sites that, let's say Venezuela, assuming they don't do business with them, disagrees with. They are not within, legally speaking, the jurisdiction of that state and so that country might not like it but there are things that happen in the world that countries don't like but they can't control. So I think Twitter has done something legitimate in some circumstances but is taking it too far and obviously prepares companies for expansion into other markets which is always very tempting for a company in the period Twitter's in, but it definitely risks sacrificing its soul. And I mean this not only for the sort of spirit of the company but even in some ways the financial health of the company: if you go too far with these measures you can lose something. Google saw this in China, and I can talk about that if you like. Google went to China and sacrificed a lot of its ideals to do so. They became physically present in China and then they left I think two years later, having done nothing in the interim but sacrifice whatever integrity they had had in these areas. So I think it's a risky game for companies to play in. When a company's DNA - I mean this quite seriously - when its origins are in free speech, when it begins to break from those principles it does so at its peril.

TGA: So how do we decide on the sliding scale between the fully legitimate democratic government and the totally illegitimate North Korea? At what point do we stop respecting or half respect the laws of that country?

TW: My main point is you should at least try.

TGA: Try to make the judgment?

TW: In other words, I think a responsible freedom of speech company should try to at least accept that there is a decision being made. How's that? And so, the decision is being made in different ways. But I think what is not a responsible attitude is just to say, "Well, countries are countries". So you and I may disagree about certain countries. We could look at Thailand or some other countries. China is actually a challenging one. It is pretty clearly a censorial regime that's not legitimately elected. You know, there's some disagreement at the borders but the important point is that you even make a decision, as opposed to just saying, "Well, this country says something, we do it."

TGA: There are two principles. One is what I call the Wu principle: the premise should be that laws made by democracies are, I quote, "pre-emptively legitimate". I beg your pardon, are "presumptively legitimate" - the presumption of legitimacy. The other position is: if there's a sovereign state, whatever its character, you respect its laws.

TW: Right. The second principle - sovereign state, you must respect its rule - actually is true if you are physically in that state. That's what gets complicated about it. If you

physically decide to locate in that territory, I think you just have to obey the rules of that state. It's too much to ask Twitter to put its employees, its assets at risk. However, nothing says you have to go under those states.

TGA: Sorry, just to be clear, so the critique of Twitter is not that it takes off content, which is illegal in a democracy like Germany?

TW: No.

TGA: The critique is it seems to be prepared to do the same anywhere, anticipating going into those markets.

TW: Correct. It's a blanket policy for an issue which is, to my mind, quite nuanced.

TGA: Right. Twitter in Egypt, if they'd had this policy, what would have happened during the Egyptian revolution?

TW: I mean that's the question. It's possible that the Mubarak government might have said we'd like to take down all the tweets with these hashtags; we're going to work with you carefully and go ahead and do it. Under their policy I think they would have done that. Their policy is pretty sketchy on their website, so they may say something different. And I think it would have been a pity. Particularly I think in some ways it's a violation, not of any law obviously, but of their ethics as an information carrier.

TGA: On that same point, Facebook and China. Do you think Facebook should go into China?

TW: No.

TGA: Because?

TW: I think that, let me back up a bit and say something about these businesses. Now there are a lot of companies in China, I think for example Volkswagen is in China and many other countries, but I think that information companies bear special duties. It's not unlike the media industries during the time of the Soviet Union. The New York Times made a principle they wouldn't sell their censored version of the New York Times in Russia, the Soviet Union, because it was against their principles. And I think that Silicon Valley sometimes likes to think that it doesn't actually bear any special responsibilities - they are just carrying other people's content - but they are the greatest media powers of our time and I think they bear, they do bear, special ethical duties in that respect. So, I think the kind of censorship that Facebook would find itself doing in China would be unacceptable to anyone who believes in free speech. They would certainly have to censor carefully what kind of groups could be made, what kind of

conversations went on, and so forth. As a businessman, and moreover I strongly suspect, the impact of going into China for Facebook (and this is in their own private interest) would be that they would end up strengthening a Chinese competitor, who would come to rule the Chinese market at their expense with their technologies. So if the track record of other companies is any sign, I don't think it would make good business sense and I think it would leave them ethically tarred at the same time.

TGA: So it would be both bad and a bad move?

TW: Yeah, I think so. Facebook is fundamentally founded on the right of association. You know, you can join up with other people who you want to be in a network with and that's the thing that makes Facebook powerful. We call it social networking but it's also known as the right to association. In China the right to association is limited in certain respects so it would make Facebook into a police officer of social networking, and I don't think it wants to be there either for its own ethics or for what it would do to the company, the expenses of the company.

This is a transcript of the interview prepared by a member of our team. In case of doubt, the spoken version is authoritative.