

Greater Good Gathering

Crosswalk: Campaigns to Commerce

Speakers

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The Greater Good Gathering held on February 6–7, 2019 explored the future of public policy and how best to advance the greater good in the 21st century in light of technological innovation, economic disruption, ideological polarization, and governance challenges. Event co-sponsors included Columbia University School of International and Public Affairs, Columbia Law School, Union Theological Seminary, The Academy of Political Science, and Public Works LLC/Brain Storm Consulting.

ERIC SCHNURER: Okay, so this is a small panel here. It is a little change of pace until we go to our conclusion. I have with me here Tim Wu, famous both as a Columbia Law School professor and he coined the term net neutrality, as the major developer of the concept. Our last panel was about politics and the governmental world. We are going to be talking more about the real world as this goes along, so Tim's here to transition from government to the non-governmental world.

A subject that I have spent a lot of time writing and teaching about in the last couple of years is the blurring of lines, thanks to technology, between the public sector and the private sector and how that is ceasing to be a relevant distinction. That was in many ways the root of how this Greater Good conference and some of the things built around it came to be.

An article just appeared in the *Washington Post* on Monday to commemorate the 15th anniversary of Mark Zuckerberg launching Facebook. They noted that Facebook has recently announced its own court system, and that this is a bid by Facebook for sovereignty in the same way that nation states have sovereignty. For about a decade, I have been using Facebook in my classes as an example of what I would consider a government, or at least a government of the future, because you pretty much have no other choice. There is no escape. They make the rules, regardless of what you want, and polls show that it is less popular than the IRS. So in every way, Facebook is a government, in my view.

I wanted to start out, Tim—your work is around how companies are functioning as governments in the world today, and I would like you to comment on that and talk about where we are headed.

TIM WU: I think that's right. I think that many of what we would consider public functions today are carried out by the private sector—governmental public functions like building infrastructure, building broadband infrastructure. One of the things that has happened over the last 20 years is that public functions or quasi-public functions have become entirely privatized, and I think that that is right.

SCHNURER: Why don't we start out with what is net neutrality, and why did that become a concern?

WU: Net neutrality came about when I was working in Silicon Valley. I worked in Silicon Valley in the 1990s and early 2000s, and it became clear to me at that point that the internet, which had been sort of this open and very idealistic medium, was going to face a series of challenges and threats in the future. There were two that I want to highlight.

One is that I felt that the owners of the pipes—the phone companies and cable companies—would become increasingly interested and think important their control over the internet, and that they would ultimately try to block it or censor it or filter things. This was one aspect that I thought was important. Although I did not fully predict it at the time, I also thought in the long-term that there would be an increasing danger of rising monopoly and private powers.

Now, that sort of seemed crazy in the early 2000s when everyone presumed the internet was sort of going to be competitive forever and a new company would come every three years or five years and upend. However, ultimately, things did shift. We did move into a much more monopolized space. So these two concerns—net neutrality deals with the cable and phone companies and my later work concerned with monopolization on top of the internet—have all come to pass.

It is sort of funny, because the early 2000s isn't that long ago, but it is kind of amazing to look back at how idealistic we were about those times, how sure we were that the internet was going to be this magic dust that would solve so many of society's problems. We would finally have an open democracy. Finally the news would be in the hands of the people. Everything would be fine. I feel that the last couple of years, it is as if we have woken up from a party with a terrible hangover and we are questioning what happened.

But we did have the net neutrality rules, and that was some success. Speaking generally, if there were things that we thought were good about the early internet—its openness, it was sort of folksy, comprised of a lot of smaller entities, a lot of small business—we did absolutely nothing to try and preserve that. There were no institutional mechanisms, with a couple of exceptions. Wikipedia declared itself a nonprofit, and frankly, I think Wikipedia looks good 20 years later. They do not have, I don't know if I want to say fake news or 'viral deception' kind of problems.

Somehow, they have avoided it, but everybody else had this idea, maybe kind of an American kind of idea that like Diet Coke, you could have the same flavor and not become obese. We could have all our benefits, but everybody could become billionaires, too. Unfortunately, it did not work. Every company, even Google, which was a relatively idealistic company, still went for the standard corporate form. They had the big IPO, and then they got themselves involved in a business model that has led in very negative directions.

SCHNURER: That is a good place to pick up, because your background is in law. You are on a law faculty, spent most of your career as a lawyer, but also in the technology field. Lawrence Lessig has written about "code is law", and there are obviously many similarities. From the perspective of a legal thinker who is interested in technology, are there ways that law can actually address the problems you were talking about, and somehow restructure what is going on so that you can get back to where we were six, 10, 15 years ago?

WU: I think that is the conversation right now. In the early 2000s, if we go back to this founding period of the internet, I think we had this faith that everything would take care of itself. Crowd sharing would come up with the right answers. You didn't need things like journalism ethics anymore, because if there were errors in journalism, bloggers would catch them.

We had these mythologies of things that were going to fix problems, and so the general tenor was we do not really need law at all. But there is a problem with code or just letting everything be self-regulating. You can say what you want about the legal system—law and government—but at least it has some accountability. We have delegated everything to private government. What is really the accountability of any of these companies or private platforms we have set up?

Let us say Facebook felt they really wanted to have an influence over elections. They decide they knew better than the people. Is there any real remedy or not? That is the debate right now. It was somewhat captured by the last panel, where people did not really know what they want to do. I think we are afraid both of killing the golden goose and going too far, but then also afraid that we have entered a system where the person on the street feels like they really have no control over so many things in their life. I think this drives this radicalism in politics in our time.

SCHNURER: A lot of your work is about how government can get a hold of the tech world and wrestle it to the ground in one fashion or another. Largely, any kind of traditional regulatory frameworks and antitrust is how you approach it, but if Congress would do your bidding, what would you tell them they ought to be doing legislatively?

WU: Let me reframe that slightly and tell you about the challenge you are going to face over the next 10 years. We have been in this place before, where you start to have private companies that are doing something essentially public. Let us zoom back about 100 years ago. The telephone company, AT&T, had risen to be a monopoly and were running what was public in most countries. Some countries nationalized their phone companies. The United States took a different approach, which was a regulated monopoly.

Same situation with the railroads. Same as radio. Same as many other situations. I think there is no question that we are going to face the following question in the next 10 years. We have a series of incredibly powerful platforms with great influence over the country—Amazon, Facebook, Google, and so forth, that have an enormous effect on what people see, what people buy, what people do. Historically there are two fundamental ways to deal with that if government is going to be involved. Actually, there are three.

One is that the government nationalizes and owns all of them. That seems unlikely at this point, but you never know. It happened in the twentieth-century. People in the twentieth-century also thought that was crazy. Government owning—across Western Europe, across the Soviet Union and so forth—that was a major model, but it is not in fashion at this point.

The other two that are in fashion is that you have some model of a regulated monopoly. We accept that Amazon or Facebook is going to be a monopolist, but we are going to prescribe the rules by which they operate. That was the AT&T story. Many European countries have taken this route over time.

The last option, the one I happen to believe in, is the antitrust route, or the competition-driven route, which suggests that you break the monopoly using government power. Let us talk about Facebook, because this is where I have done the most research and am making the most efforts. You would bring the lawsuit that says that Facebook has a monopoly, that monopolization is illegal in the United States, and break the company into three pieces minimum. At least, the starting point. That is a different idea. It is an idea of trying to tame these companies, decentralize them, shake things out, and create some opportunities for smaller business. I think people in this room and across this country will disagree over which of these three models is the best. I guess I should say there are four, because the other, you just let things go and have a totally laissez-faire approach and hope for the best. I think those are the choices facing this country.

SCHNURER: The first time I really thought about that subject and the three models you were laying out was when I was at the Kennedy School. I took a class over at Harvard Law School with a little known law professor who had just written a book called *Regulation* and we went through very detailed explorations of that. It was a professor named Stephen Breyer, who I know you have some knowledge of.

WU: Yes, Justice Breyer was my boss on the Supreme Court. America has flirted with all of these models at different times and in different ways. The United States actually nationalized the phone system at one point during World War I, but it never really caught on. During the first New Deal, there was a lot of interest in a regulated monopoly and intense government supervision. It has some very appealing features. I am resistant to it, and I will explain why.

I am the kind of person who thinks that concentrated power is dangerous. I believe in the constitutional idea of breaking power into smaller pieces. I know it creates a lot more chaos and so forth. I am concerned about a union of a company like Facebook or of Google. The state creates this union of private and public power, which I find terrifying. Even though it seems appealing and we think at least we would have control over them, just the idea that you are run by such a concentrated series of powers to me is not attractive.

I am personally very attracted to the idea of breakups. We did this before, in the 1910s in particular. We had antitrust campaigns that went across the country to break up every industry, and I would not stop with tech. You are going to start thinking I am radical, but this was Woodrow Wilson and Theodore Roosevelt, so I am in good company—and Louis Brandeis, who is the hero of my latest book. You target all the monopolistic and oligopolistic industries. Target them for much greater structure relief, much greater breakup, and have much more intense policies about allowing giant mergers that seal up entire industries. I think that what we have is a situation where private power has become too unaccountable.

SCHNURER: I am glad you mentioned your latest book. I was going to ask you about that, because the whole saga of the industries that became too big and eventually were regulated in some fashion—railroads, telecom, radio, TV, and so forth—that's basically the subject of *The Curse of Bigness*. Tell us about the book and all that together.

WU: *The Curse of Bigness* is trying to address exactly the questions here and suggests that there are some structural answers to some of the problems we are dealing with. The tradition of the United States sees these long cycles and a problem in excessive economic concentration, and suggests that we have had answers for this in the past, namely the antitrust law. In the Progressive Era, our answer was to have much greater control on the size and concentration of industries, and we have forgotten that. The basic idea is just to remind this country of its own history.

Now, how does it relate to the last panel and some of the questions of democracy that we are facing? I think that we feel there is a crisis in democracy not just because elections seem dominated by celebrities and things like that, but also because there is a sense of economic grievance and a sense that people have no real say in American economic policy—making them reach out for much stronger answers, much stronger solutions.

I think that if you just look at a couple of obvious areas, why is it that wages have not gone up for 40 years? The majority of people work for money. If the majority controls the country, you would think that they would try to create a system where their wages would go up at least once every 40 years. That has not happened once. If the majority actually controls this country, I think it would be unthinkable that pharmaceutical drug prices would be the way they are and that health insurance would be structured the way it currently is. But again, the majority does not get what it wants.

We have a situation, where majoritarianism itself, a basic premise of democracy, is in question. I am not saying that is the only premise of democracy—to protect minority rights as well—but there is also this idea that the majority gets its say. This is the original idea. Much of this happens because if you have an overconcentration of industrial wealth, an overconcentration of industry—that political power shifts away from voting majorities and towards industry. That is basically the theme of *The Curse of Bigness*, which is to say the preoccupation that I have with economic structure is not just an economic view but a political issue. When there is too much concentrated private power, the people lose control over their own democracy.

SCHNURER: Everything that you just said could have been said, say, 40 years ago, and in fact was a large part of the political debate 40 years ago. I wanted to, in that context, talk about how we are going to conclude this whole discussion tomorrow with a group of students largely from SIPA who are working on various social ventures. I had a chance to interview all of them yesterday, and you will be meeting them tomorrow. I was struck by a number of things that they said about how they conceptualize what they are looking at, and this recurred to me listening to the previous panel.

A lot of these students are trying to take the aggregations of user data that come about because of people using digital technologies, and then turn that data into something valuable. They want to turn it into something valuable to help the people whose data it is. I'll give you an example—there was an article in *The Post* on something similar last week—the idea of people who are in banks here, microlending in less developed countries. Once they participate in some kind of process like this, once you put it online, once you digitize it in this collection—it shows that people in nontraditional ways have a history of paying back their loans. You can then take that data and go to large financial institutions and say—you didn't see this stuff before, but now we've got the data to show this is a really reliable person. Give them a loan. Give them a loan at a better rate. So, they're using this aggregation of data to essentially extract something for the consumer from these companies.

I do not think that is how it mostly happens in our economy. What I thought was interesting were the political operatives we had up here, both Democratic and Republican. They were very enthusiastic about all this data and knowing exactly how you think about everything. That lets us help you because we can tell you everything you want to know about our candidate, and this is a real service.

Well, the commercial businesses are saying the same thing. Now, we are able to sell you stuff that you did not know you wanted, but now you know you want it, because we are able to tell you that. Well, that does not strike me as exactly what these students are talking about. It strikes me as the opposite of it. How manipulative is this? How scared do we need to be about that? The real issue is choice: even if we had a perfectly functioning democracy, unlike what you just described, is choice, a necessary element of that democracy, disappearing in this new technological world? Is it being manipulated in a drug sort of fashion?

WU: I think it is a great question. There is a lot there. It is hard to answer it simply. I have two reactions to what you are saying. The first question—aren't things different in tech? I actually take the opposite view. I think that, maybe I am kind of old fashioned, but I think sometimes we use tech as an excuse not to trust our instincts or our history as to what has come before. At one point, telephone companies were a tech industry. At one point, the airlines were a tech industry. Pharmaceuticals. Everything is a tech industry at some point until they get 20 years old, then they are just those guys who fly the airplanes or whatever. Tech just means a relatively new industry.

There are some considerations for new industry. I do not think you want to regulate them out of existence, but I think 10 years from now, we will no longer be calling many of the tech companies “tech companies” anymore. I do not know what we will call them. It will be something else we call tech, so that is a bit of a moving target. I think some of the old instincts about what matters and how markets work have proven to be correct. People used to say on the internet, scale did not matter. A tiny blog could compete with CNN or so forth. There are a few bloggers who achieved some success. Or a little seller. But no one says now that you can set up a little shop and compete with Amazon. It is like a bad joke. Scale ended up mattering a lot, which is like the oldest kind of industrial thing. That is Standard Oil stuff. Scale mattered. Network effects mattered. Sorry to get economic, but having more people on your network mattered as opposed to just being a puppet.

Many of the old economics essentially came back. Also, people said no monopoly is lasting. Everything is going to be over in five years. That was true for about 10 or 15 years, which is usually true in early technology, but then you started having lasting monopolies, greater barriers to entry. I think the work tech has blinded us to sort of old fashioned industrial realities, which is why I am leaning back to these Progressive Era solutions. I think we should just point out what is happening. We have a return to something very much like the Gilded Age, where across the economy, you have monopolies or oligopolies that concentrate wealth into a very small group of people. They are essentially unregulated, the antitrust laws and the controls on concentration have gotten much weaker, and I think that has left us with both the economics and the policies of the gilded age.

Now, my second reaction, focused on your question about data, is whether data makes things fundamentally different. In some ways yes, and in some ways, no. I think to my way of looking at it, the great significance of data is that it has that same advantage that industrial scale used to have. Why is it so hard to compete with Google, Amazon, or Facebook? It is because they start with such a massive advantage in data and also user base. Trying to come up with a product that is as good as theirs is extremely difficult without access to that amount of data. It is sort of the substrate and I think that is how we should look at the problem. I am sure the students that you are talking about would have better odds of their venture succeeding if there was some way they were able to also get access to all the data that Google has.

Now, on the other hand, do we want that? Do we want anybody else to be able to do that? That is the hard privacy question. The way I think about data is that it is a self-reinforcing entrenchment of the most powerful companies, and will continue to be that. This is one of the reasons I believe very profoundly that we need to take structural solutions.

SCHNURER: To me, the real fact about the information economy, and I think this has now dawned on everybody in the last year because of everything around Facebook—and not just the hacking but the data privacy. You started comparing it to being the same as an old industrial industry. The information technology industry is an extractive industry, and what they are mining is you. So you are not only the mine workers, you are the coal as well. The danger of that long-term is very, very serious.

WU: Well, it tees up a question. I am good at asking what questions America will be debating for the next 10 years. This is the other one. I said one is this old question of do we break stuff up? Do we regulate it? Related to this is ultimately what do Americans think about privacy? Some people think Americans do not care about privacy. It is the land of the free, and people walk around naked, and that is great. I do not think that is true either. So many Americans can be incredibly private. It is not a left wing, right wing kind of thing.

SCHNURER: I do think it is an older/younger kind of thing. I think the younger generation has a very different view of privacy, in part because they have grown up not having it. We have one Estonian here, who I particularly wanted to have come over and visit us. He will be talking tomorrow. I was over in Estonia a couple of years ago. I was very struck by the way they all talk about how all of your data is available to the government. But that it is a wonderful thing, because nobody would ever violate your privacy thanks to Blockchain—which we all know is perfect in the future. Moreover, it was this attitude that struck me. If you said this in America, it would sound crazy, except that people in their 20s actually like this. It is basically mutually assured destruction. We all have all of our data out there. So nobody is going to rat on you, because then their life will be ruined, too. Except that it turns out there are people who are willing to blow up the whole ship and take themselves down with it.

WU: Yeah. I do not have anything conclusive, but this is my suspicion. My suspicion is that Americans do care about privacy. If you ask them if they would favor a reasonable privacy law, they would say yes. I fear this is one of the areas where yet again, the majority does not get what it wants. This is my version of ‘politics is broken’. I don’t like how elections are done, either, but I am particularly concerned with these issues, and there are a lot of them.

Let us talk about Google, something Europeans and Americans differ on. If something really embarrassing happened in your life that you would like to forget about—maybe you had a divorce proceeding, and the documents leaked, and they include whatever allegations were made—that can end up being the top result on a Google search. For many people, purely private citizens, it is very tough for them. It is embarrassing. It is hard to get a job and all these kinds of things can happen. In Europe, generally, there are ways of trying to get that stuff removed. None exist in the United States. I think Americans, if you asked them, would say yeah—if you are just a private citizen, you are not a celebrity or something, and there is something really humiliating or untrue—you should be able to get it downgraded or hidden a little bit. I think people would support that kind of thing. I do not know. Maybe I could poll this room. Maybe I am wrong, but how many people think that they would like a mechanism where they have some control over their search results for themselves? Right?

But Jim’s a celebrity, so he is different. He is also a journalist, and journalists sometimes have the opposite instinct, which is that we need to be able to get stuff on people. I am not saying unfindable. I am not saying you cannot reach it, but just less readily available. I think most people think that, but once again, I think the majority cannot get their way. I have been in policy debates around privacy in Washington, and I think it is completely unrepresentative of what people feel and think. This is, to me, the main problem with democracy. I keep coming back to it, but things that a majority of people want have no chance of going anywhere, and I link it to the basic problem of capture.

SCHNURER: Tim, we thank you for joining us.

WU: Thanks for the opportunity.

ABOUT THE SPEAKERS

ERIC B. SCHNURER, founder of the Greater Good Gathering, has been involved with public policymaking at the highest levels for nearly forty years, since he worked in the White House during college writing speeches for President Jimmy Carter. He has served in all three branches of the federal government and for numerous state governments, as a speechwriter, prosecutor,

policy advisor, general counsel, and chief-of-staff—and has worked in the private sector as a journalist, professor, business executive, and social entrepreneur. Today, he is President and CEO of a policy consulting firm advising Members of Congress, governors, mayors and other officials across the country; a regular contributor on the future of government and public policy for several major national and international publications; an adjunct professor of policy at various universities; and a sought-after speaker internationally. His latest venture is Virtu.us, a start-up designed to boost investment in human capital and public goods—and build community—in an era of declining public-sector responsiveness.

TIM WU is the Julius Silver professor at Columbia University Law School, and a contributing opinion writer for the *New York Times*. He clerked for Judge Posner and Justice Breyer, and has worked at the Federal Trade Commission, the White House, and the New York Attorney General's office. He is the author of *The Master Switch*, *The Attention Merchants*, and *The Curse of Bigness*. In 2013 he was named one of America's 100 Most Influential Lawyers, and in 2017 he was named to the American Academy of Arts and Sciences.