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Citizens,
by Cass Sunstein

The authors of the American Constitution met behind closed doors in Philadelphia during the summer of 1787. When they completed their labors, the American public was, naturally enough, exceedingly curious about what they had done. A large crowd gathered around what is now known as Convention Hall. One of its members asked Benjamin Franklin, as he emerged from the building, “What have you given us?” Franklin’s answer was hopeful, or perhaps a challenge: “A republic, if you can keep it.” In fact we should see Franklin’s remark as a reminder of a continuing obligation. The text of any founding document is likely to be far less important, in maintaining a republic, than the actions and commitments of the nation’s citizenry over time.

This suggestion raises questions of its own. What is the relationship between our choices and our freedom? Between citizens and consumers? And how do the answers relate to the question whether, and how, government should deal with people’s emerging power to filter speech content?

In this chapter my basic claim is that we should evaluate new communications technologies, including the Internet, by asking how they affect us as citizens, not mostly, and certainly not only, by asking how they affect us as consumers. A central question is whether emerging social practices, including consumption patterns, are promoting or compromising our own highest aspirations. More particularly I make two suggestions, designed to undermine, from a new direction, the idea that consumer sovereignty is the appropriate goal for communications policy.

The first suggestion is that people’s preferences do not come from nature or from the sky. They are a product, at least in part, of social circumstances, including existing institutions, available options, and past choices. Prominent among the circumstances that create preferences are markets themselves. “Free marketeers have little to cheer about if all they can claim is that the market is efficient at filling desires that the market itself creates.” Unrestricted consumer choices are important, sometimes very important. But they do not exhaust the idea of freedom, and they should not be equated with it.

The second suggestion has to do with the fact that in their capacity as citizens, people often seek policies and goals that diverge from the choices they make in their capacity as consumers. If citizens do this, there is no legitimate objection from the
standpoint of freedom – at least if citizens are not using the law to disfavor any particular point of view or otherwise violating rights. Often citizens attempt to promote their highest aspirations through democratic institutions. If the result is to produce a communications market that is different from what individual consumers would seek – if as citizens we produce a market, for example, that promotes exposure to serious issues and a range of shared experiences – freedom will be promoted, not undermined.

The two points are best taken together. Citizens are often aware that their private choices, under a system of limitless options, may lead in unfortunate directions, both for them as individuals and for society at large. They might believe, for example, that their own choices, with respect to television and the Internet, do not promote their own well-being, or that of society as a whole. They might attempt to restructure alternatives and institutions so as to improve the situation.

At the same time, I suggest that even insofar as we are consumers, new purchasing opportunities, made ever more available through the Internet, are far less wonderful than we like to think. The reason is that these opportunities are accelerating the “consumption treadmill,” in which we buy more and better goods not because they make us happier or better off but because they help us keep up with others. As citizens, we might well seek to slow down this treadmill, so as to ensure that social resources are devoted, not to keeping up with one another, but to goods and services that really improve our lives.

**Choices and circumstances: the formation and deformation of preferences**

Many people seem to think that freedom consists in respect for consumption choices, whatever their origins and content. Indeed, this thought appears to underlie enthusiasm for the principle of consumer sovereignty itself. On this view, the central goal of a well-functioning system of free expression is to ensure unrestricted choice. A similar conception of freedom underlies many of the celebrations of emerging communications markets.

It is true that a free society is generally respectful of people’s choices. But freedom imposes certain preconditions, ensuring not just respect for choices and the satisfaction of preferences, whatever they happen to be, but also the free formation of desires and beliefs. Most preferences and beliefs do not preexist social institutions; they are formed and shaped by existing arrangements. Much of the time, people develop tastes for what they are used to seeing and experiencing. If you are used to seeing stories about the local sports team, your interest in the local sports team is likely to increase. If news programming deals with a certain topic – say, welfare reform or a current threat of war – your taste for that topic is likely to be strengthened. And when people are deprived of opportunities, they are likely to adapt and to develop preferences and tastes for what little they have. We are entitled to say that the deprivation of opportunities is a deprivation of freedom – even if people have adapted to it and do not want anything more.

Similar points hold for the world of communications. If people are deprived of access to competing views on public issues, and if as a result they lack a taste for those views, they lack freedom, whatever the nature of their preferences and choices. If
people are exposed mostly to sensationalistic coverage of the lives of movie stars, or only to sports, or only to left-of-center views, and never to international issues, their preferences will develop accordingly. There is, in an important respect, a problem from the standpoint of freedom itself. This is so even if people are voluntarily choosing the limited fare.

The general idea here— that preferences and beliefs are a product of existing institutions and practices and that the result can be a form of unfreedom, one of the most serious of all— is hardly new. It is a longstanding theme in political and legal thought. Thus Tocqueville wrote of the effects of the institution of slavery on the desires of many slaves themselves: “Plunged in this abyss of wretchedness, the Negro hardly notices his ill fortune; he was reduced to slavery by violence, and the habit of servitude has given him the thoughts and ambitions of a slave; he admires his tyrants even more than he hates them and finds his joy and pride in servile imitation of his oppressors.” In the same vein, John Dewey wrote that “social conditions may restrict, distort, and almost prevent the development of individuality.” He insisted that we should therefore “take an active interest in the working of social institutions that have a bearing, positive or negative, upon the growth of individuals.” For Dewey, a just society “is as much interested in the positive construction of favorable institutions, legal, political, and economic, as it is in the work of removing abuses and overt oppressions.” More recently, Robert Frank and Philip Cook have urged that in the communications market, existing “financial incentives strongly favor sensational, lurid and formulaic offerings” and that the resulting structure of rewards is “especially troubling in light of evidence that, beginning in infancy and continuing through life, the things we see and read profoundly alter the kinds of people we become.”

Every tyrant knows that it is important, and sometimes possible, not only to constrain people’s actions but also to manipulate their desires, partly by making people fearful, partly by putting certain options in an unfavorable light, partly by limiting information. And nontyrannical governments are hardly neutral with respect to preferences and desires. They hope to have citizens who are active rather than passive, curious rather than indifferent, engaged rather than inert. Indeed, the basic institutions of private property and freedom of contract— fundamental to free societies and indeed to freedom of speech— have important effects on the development of preferences themselves. Thus both private property and freedom of contract have long been defended, not on the ground that they are neutral with respect to preferences, but on the ground that they help to form good preferences— by producing an entrepreneurial spirit and by encouraging people to see one another, not as potential enemies, or as members of different ethnic groups, but as potential trading partners.

The right to free speech is itself best seen as part of the project of helping to produce an engaged, self-governing citizenry.

**Limited options: of foxes and sour grapes**

When government imposes restrictions on people’s opportunities and information, it is likely to undermine freedom not merely by affecting their choices but also by affecting their preferences and desires. Of course this is what concerned Tocqueville and Dewey, and in unfree nations, we can find numerous examples in the area of
communications and media policy, as official censorship prevents people from learning about a variety of ideas and possibilities. This was common practice in communist nations, and both China and Singapore have sought to reduce general access to the Internet, partly in an effort to shape both preferences and beliefs. When information is unavailable and when opportunities are shut off, and known to be shut off, people may not end up not wanting them at all.

The social theorist Jon Elster illustrates the point through the old tale of the fox and the sour grapes. The fox does not want the grapes, because he believes them to be sour, but the fox believes them to be sour because they are unavailable, and he adjusts his attitude toward the grapes in a way that takes account of their unavailability. The fox cannot have the grapes, and so he concludes that they are sour and that he doesn’t want them. Elster says, quite rightly, that the unavailability of the grapes cannot be justified by reference to the preferences of the fox, when the unavailability of the grapes is the very reason for the preferences of the fox.

Elster’s suggestion is that citizens who have been deprived of options may not want the things of which they have been deprived; and the deprivation cannot be justified by reference to the fact that citizens are not asking for these things, when they are not asking because they have been deprived of them. In the area of communications and media policy, it follows that a system of few or dramatically limited options – including, for example, an official government news program and nothing else – cannot reasonably be defended, even if there is little or no public demand for further options. The absence of the demand is likely to be a product of the deprivation. It does not justify the deprivation. This point holds with respect to television stations and the Internet as with everything else.

Thus far I have been making arguments for a range of opportunities, even in societies in which people, lacking such opportunities, are not asking for more. Of course the issue is very different in the communications universe that is the main topic of this book – one in which people have countless possibilities from which to choose. But here too social circumstances, including markets, affect preferences, not only the other way around. From the standpoint of citizenship, and freedom as well, problems also emerge when people are choosing alternatives that sharply limit their own horizons.

Preferences are a product not only of the number of options but also of what markets accentuate and of past choices, and those choices can impose constraints of their own. Suppose, for example, that one person’s choices have been limited to sports, and lead him to learn little about political issues; that another person focuses only on national issues, because she has no interest in what happens outside American borders; and that still another restricts himself to material that reaffirms his own political convictions. In different ways, each of these person’s choices constrains both citizenship and freedom, simply because it dramatically narrows their field of interests and concerns. This is not a claim that people should be required to see things that do not interest them; it is a more mundane point about how any existing market, and our own choices, can limit or expand our freedom.

Indeed people are often aware of this fact, and make choices so as to promote wider understanding and better formation of their own preferences. Sometimes we select radio and television programs and Websites from which we will learn
something, even if the programs and the sites we choose are more demanding and less fun than the alternatives. And we may even lament the very choices that we make, on the ground that what we have done, as consumers, does not serve our long-term interests. Whether or not people actually lament their choices, they sometimes have good reason to do so, and they know this without saying so.

These points underlie some of the most important functions of public forums and of general interest intermediaries. Both of these produce unanticipated exposures that help promote the free formation of preferences, even in a world of numerous options. In this sense, they are continuous with the educational system. Indeed they provide a kind of continuing education for adults, something that a free society cannot do without. It does not matter whether the government is directly responsible for the institutions that perform this role. What matters is that they exist.

Democratic institutions and consumer sovereignty

None of these points means that some abstraction called “government” should feel free to move preferences and beliefs in what it considers to be desirable directions. The central question is whether citizens in a democratic system, aware of the points made thus far, might want to make choices that diverge from those that they make in their capacity as private consumers. Sometimes this does appear to be their desire. What I am suggesting is that when this is the case, there is, in general, no legitimate objection if government responds. The public’s effort to counteract the adverse effects of consumer choices should not be disparaged as a form of government meddling or unacceptable paternalism, at least if the government is democratic and reacting to the reflective judgments of the citizenry.

What we think and what we want often depends on the social role in which we find ourselves, and the role of citizen is very different from the role of consumer. Citizens do not think and act as consumers. Indeed, most citizens have no difficulty in distinguishing between the two. Frequently a nation’s political choices could not be understood if viewed only as a process of implementing people’s desires in their capacity as consumers. For example, some people support efforts to promote serious coverage of public issues on television, even though their own consumption patterns favor situation comedies; they seek stringent laws protecting the environment or endangered species, even though they do not use the public parks or derive material benefits from protection of such species; they approve of laws calling for social security and welfare even though they do not save or give to the poor; they support antidiscrimination laws even though their own behavior is hardly race- or gender-neutral. The choices people make as political participants seem systematically different from those they make as consumers.

Why is this? Is it a puzzle or a paradox? The most basic answer is that people’s behavior as citizens reflects a variety of distinctive influences. In their role as citizens, people might seek to implement their highest aspirations in political behavior when they do not do so in private consumption. They might aspire to communications system of a particular kind, one that promotes democratic goals, and they might try to promote that aspiration through law. Acting in the fashion of Ulysses anticipating the Sirens, people might “precommit” themselves, in democratic processes, to a course of
action that they consider to be in the general interest. And in their capacity as citizens, they might attempt to satisfy altruistic or other-regarding desires, which diverge from the self-interested preferences often characteristic of the behavior of consumers in markets. In fact social and cultural norms often incline people to express aspirational or altruistic goals more often in political behavior than in markets. Of course selfish behavior is common in politics; but such norms often press people, in their capacity as citizens, in the direction of a concern for others or for the public interest.

Indeed, the deliberative aspects of politics, bringing additional information and perspectives to bear, often affects people’s judgments as these are expressed through governmental processes. A principal function of a democratic system is to ensure that through representative or participatory processes, new or submerged voices, or novel depictions of where interests lie and what they in fact are, are heard and understood. If representatives or citizens are able to participate in a collective discussion of broadcasting or the appropriate nature of the Internet, they can generate a far fuller and richer picture of the central social goals, and of how they might be served, than can be provided through individual decisions as registered in the market. It should hardly be surprising if preferences, values, and perceptions of what matters, to individuals and to societies, are changed as a result of that process.

**Unanimity and majority rule**

Arguments based on citizens’ collective desires are irresistible if the measure at issue is adopted unanimously – if all citizens are for it. But more serious difficulties are produced if (as is usual) the law imposes on a minority what it regards as a burden rather than a benefit. Suppose, for example, that a majority wants to require free television time for candidates or to have three hours of educational programming for children each week – but that a minority objects, contending that it is indifferent to speech by candidates, and that it does not care if there is more educational programming for children. Or suppose that in response to the danger of group polarization, a majority wants to require that Websites that propound one political view must provide links to Websites promoting another view. It might be thought that those who perceive a need to bind themselves to a duty, or a course of action of some kind, should not be permitted to do so if the consequence is to bind others who perceive no such need.

Any interference with the preferences of the minority is indeed unfortunate. But in general, it is difficult to see what argument there might be for an across-the-board rule against the modest kind of democratic action that I will be defending here. If the majority is prohibited from promoting its aspirations or vindicating its considered judgments through legislation, people will be less able to engage in democratic self-government. The choice is between the considered judgments of the majority and the preferences of the minority. I am not suggesting, of course, that the minority should be foreclosed where its rights are genuinely at risk. As we shall see in chapter 8, the remedies that I will suggest do not fall in that category.
Unhappy sovereigns: the consumption treadmill

Throughout the discussion I have assumed that insofar as people are indeed acting as consumers, new communications technologies are an unambiguous boon. This is a widespread assumption, and it is easy to see why. If you want to buy anything at all, it has become much easier to do so. If you’d like a Toyota Camry, or a Ford Taurus, or a sports utility vehicle, many sites are available; wallets and watches and wristbands are easily found on-line; shirts and sweaters can be purchased in seconds. Nor is convenience the only point. As a result of the Internet, ordinary people have a much greater range of choices, and competitive pressures are, in a sense, far more intense for producers. Just to take one example, priceline.com allows you to “Name Your Own Price” for airline tickets, hotel rooms, groceries, new cars, mortgages, rental cars, sporting goods, strollers, swings, televisions, exercise equipment, and much more.

Indeed the growth of options for consumers has been a prime engine behind the growth of the Internet.

Insofar as the number of .coms is growing, it might seem clear that consumers, as consumers, are far better off as a result. But there is a problem: Extensive evidence shows that our experience of many goods and services is largely a product of what other people have, and when there is a general improvement in everyone’s consumer goods, people’s well-being is increased little or not at all.7 Notwithstanding the evidence on its behalf, this might seem to be a positively weird suggestion. Isn’t it obvious that better consumer goods are good for consumers? Actually it isn’t so obvious. The reason is that people evaluate many goods by seeing how they compare to goods generally. If consumer goods as a whole are (say) 20 percent better, people are not going to be 20 percent happier, and they may not be happier at all.

To see the point, imagine that your current computer is the average computer from ten years ago. Chances are good that ten years ago, that computer was entirely fine, for you as for most other people. Chances are also good that if there had been no advances in computers, and if each of us had the same computer, in terms of quality, as we had ten years ago, little would be amiss. But in light of the massive improvement in computers in the last decade, you would undoubtedly be disappointed by continuing to own a computer from ten years before. Partly this is because it would seem hopelessly slow and infuriatingly inefficient, since the frame of reference has been set by much more advanced computers. Partly this is because your decade-old computer will not be able to interact well with modern ones, and it will place you at a serious disadvantage in dealing with others, not least in the marketplace.

This point need not depend on a claim that people are envious of their neighbors (though sometimes they are), or that people care a great deal about their status and on how they are doing in comparison with others (though status is indeed important). For many goods, the key point, developed by the economist Robert Frank, is that the frame of reference is set socially, not individually.8 Our experience of what we have is determined by that frame of reference. What the Internet is doing is to alter the frame of reference, and by a large degree. This is not an unmixed blessing for consumers, even if it is a terrific development for many sellers.

To evaluate the Internet’s ambiguous effects on consumers, it is necessary only to see a simple point: When millions of consumers simultaneously find themselves with
improved opportunities to find goods, they are likely to find themselves of a kind of “treadmill” in which each is continually trying to purchase more and better, simply in order to keep up with others and with the ever-shifting frame of reference. Indeed, what is true for computers is all the more true for countless other goods, including most of the vast array of products available on the Internet, such as sports utility vehicles, CD players, and televisions. Computers are evaluated socially, to be sure, but at least it can be said that fast and efficient ones might genuinely improve our lives, not least by enabling us to improve the operation of our democracy. But for many consumer goods, where the frame of reference is also provided socially, what really matters is how they compare to what other people have, and not how good they are in absolute terms. What would be a wonderful car or television, in one time and place, will seem ridiculously primitive in another.

In sum, the problem with the consumption treadmill, moving ever faster as a result of the Internet, is that despite growing expenditures, and improved goods, the shift in the frame of reference means that consumers are unlikely to be much happier or better off. Even if the Internet is making it far easier for consumers to get better goods, or the same goods at a better price, there is every reason to doubt that this is producing as much of an improvement in life, even for consumers, as we like to think.

This argument should not be misunderstood. Some “goods” actually do improve people’s well-being, independently of shifts in the frame of reference. Robert Frank argues that these goods tend to involve “inconspicuous consumption,” from which people receive benefits apart from what other people have or do. When people have more leisure time, or when they have a chance to exercise and keep in shape, or when they are able to spend more time with family and friends, their lives are likely to be better, whatever other people are doing. But when what matters is the frame set for social comparison, a society focused on better consumer goods will face a serious problem: People will channel far too many resources into the consumption “treadmill,” and far too few into goods that are not subject to the treadmill effect, or that would otherwise be far better for society (such as improved protection against crime or environmental pollution, or assistance for poor people).

For present purposes my conclusions are simple. New technologies unquestionably make purchases easier and more convenient for consumers. To this extent, they do help. But they help far less than we usually think, because they accelerate the consumption treadmill without making life much better for consumers of most goods. If citizens are reflective about their practices and their lives, they are entirely aware of this fact. As citizens, we might well choose to slow down the treadmill, or to ensure that resources that now keep it moving will be devoted to better uses. And insofar as citizens are attempting to accomplish that worthy goal, the idea of liberty should hardly stand in the way.

**Democracy and preferences**

When people’s preferences are a product of excessively limited options, there is a problem from the standpoint of freedom, and we do freedom a grave disservice by insisting on respect for preferences. When options are plentiful, things are much better. But there is also a problem, from the standpoint of freedom, when people’s
past choices lead to the development of preferences that limit their own horizons and their capacity for citizenship.

My central claim here has been that the citizens of a democratic polity may legitimately seek a communications market that departs from consumer choices, in favor of a system that promotes goals associated with both freedom and democracy. Measures that promote these goals might be favored by a large majority of citizens even if, in their capacity as consumers, they would choose a different course. Consumers are not citizens and it is a large error to conflate the two. One reason for the disparity is that the process of democratic choice often elicits people’s aspirations.

When we are thinking about what we as a nation should do—rather than what each of us as consumers should buy—we are often led to think of our larger, long-term goals. We may therefore seek to promote a high-quality communications market even if, as consumers, we seek “infotainment.” Within the democratic process, we are also able to act as a group, and not limited to our options as individuals. Acting as a group, we are thus in a position to solve various obstacles to dealing properly with issues that we cannot, without great difficulty, solve on our own.

These points obviously bear on a number of questions outside of the area of communications, such as environmental protection and antidiscrimination law. In many contexts, people, acting in their capacity as citizens, favor measures that diverge from the choices they make in their capacity as consumers. Of course it is important to impose constraints, usually in the form of rights, on what political majorities may do under this rationale. But if I am correct, one thing is clear: A system of limitless individual choices, with respect to communications, is not necessarily in the interest of citizenship and self-government. Democratic efforts to reduce the resulting problems ought not to be rejected in freedom’s name.

Notes

8. See id.
9. See id.