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*No one can read all the news that's published every day, so
why not set up your page to show you the stories that
best represent your interests?*

—Google News

*Majority rule, just as majority rule, is as foolish as its critics
charge it with being. But it never is merely majority rule. . . .
The important consideration is that opportunity be given ideas to
speak and to become the possession of the multitude. The essential
need is the improvement of the methods and constitution of debate,
discussion and persuasion. That is the problem of the public.*

—John Dewey, *The Public and Its Problems*

*One must take men as they are, they tell us, and not as the world's
uninformed pedants or good-natured dreamers fancy
that they ought to be. But “as they are ought to read “as we
have made them. . . . In this way, the prophecy of the
supposedly clever statesmen is fulfilled.*

—Kant, *The Contest of Faculties*

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1

The Daily Me

It is some time in the future. Technology has greatly increased people's ability to "filter" what they want to read, see, and hear. With the aid of the Internet, you are able to design your own newspapers and magazines. You can choose your own programming, with movies, game shows, sports, shopping, and news of your choice. You mix and match.

You need not come across topics and views that you have not sought out. Without any difficulty, you are able to see exactly what you want to see, no more and no less. You can easily find out what "people like you" tend to like and dislike. You avoid what they dislike. You take a close look at what they like.

Maybe you want to focus on sports all the time, and to avoid anything dealing with business or government. It is easy to do exactly that. Maybe you choose replays of your favorite tennis matches in the early evening, live baseball from New York at night, and professional football on the weekends. If you hate sports and want to learn about the Middle East in the evening from the perspective you find most congenial, you can do that too. If you care only about the United States and want to avoid international issues entirely, you can restrict yourself to material involving the United States. So too if you care only about Paris, or London, or Chicago, or Berlin, or Cape Town, or Beijing, or your hometown.

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Perhaps you have no interest at all in “news.” Maybe you find “news” impossibly boring. If so, you need not see it at all. Maybe you select programs and stories involving only music and weather. Or perhaps your interests are more specialized still, concentrating on opera, or Beethoven, or Bob Dylan, or modern dance, or some subset of one or more of the above. (Maybe you like early Dylan and hate late Dylan.)

If you are interested in politics, you may want to restrict yourself to certain points of view by hearing only from people with whom you agree. In designing your preferred newspaper, you choose among conservatives, moderates, liberals, vegetarians, the religious right, and socialists. You have your favorite columnists and bloggers; perhaps you want to hear from them and from no one else. Maybe you know that you have a bias, or at least a distinctive set of tastes, and you want to hear from people with that bias or that taste. If so, that is entirely feasible. Or perhaps you are interested in only a few topics. If you believe that the most serious problem is gun control, or climate change, or terrorism, or ethnic and religious tension, or the latest war, you might spend most of your time reading about that problem—if you wish from the point of view that you like best.

Of course everyone else has the same freedom that you do. Many people choose to avoid news altogether. Many people restrict themselves to their own preferred points of view—liberals watching and reading mostly or only liberals; moderates, moderates; conservatives, conservatives; neo-Nazis or terrorist sympathizers, Neo-Nazis or terrorist sympathizers. People in different states and in different countries make predictably different choices. The citizens of Utah see and hear different topics, and different ideas, from the citizens of Massachusetts. The citizens of France see and hear entirely different perspectives from the citizens of China and the United

States. And because it is so easy to learn about the choices of “people like you,” countless people make the same choices that are made by others like them.

The resulting divisions run along many lines—of religion, ethnicity, nationality, wealth, age, political conviction, and more. People who consider themselves left-of-center make very different selections from those made by people who consider themselves right-of-center. Most whites avoid news and entertainment options designed for African Americans. Many African Americans focus largely on options specifically designed for them. So too with Hispanics. With the reduced importance of the general-interest magazine and newspaper and the flowering of individual programming design, different groups make fundamentally different choices.

The market for news, entertainment, and information has finally been perfected. Consumers are able to see exactly what they want. When the power to filter is unlimited, people can decide, in advance and with perfect accuracy, what they will and will not encounter. They can design something very much like a communications universe of their own choosing. And if they have trouble designing it, it can be designed for them, again with perfect accuracy.

Personalization and Democracy

IN MANY RESPECTS, our communications market is rapidly moving in the direction of this apparently utopian picture. As of this writing, many newspapers, including the *Wall Street Journal*, allow readers to create “personalized” electronic editions, containing exactly what they want, and excluding what they do not want.

If you are interested in getting help with the design of an entirely individual paper, you can consult an ever-growing number of sites, including individual.com (helpfully named!) and crayon.com (a less helpful name, but evocative in its own way). Reddit.com “learns what you like as you vote on existing links or submit your own!” Findory.com will help you to personalize not only news, but also blogs, videos, and podcasts. In its own enthusiastic words, “The more articles you click on, the more personalized Findory will look. Our Personalization Technology adapts the website to show you interesting and relevant information based on your reading habits.”

If you put the words “personalized news” in any search engine, you will find vivid evidence of what is happening. Google News provides a case in point, with the appealing suggestion, “No one can read all the news that’s published every day, so why not set up your page to show you the stories that best represent your interests?” And that is only the tip of the iceberg. Consider TiVo, the television recording system, which is designed to give “you the ultimate control over your TV viewing.” TiVo will help you create “your personal TV lineup.” It will also learn your tastes, so that it can “suggest other shows that you may want to record and watch based on your preferences.” In reality, we are not so very far from complete personalization of the system of communications.

In 1995, MIT technology specialist Nicholas Negroponte prophesied the emergence of “the Daily Me”—a communications package that is personally designed, with each component fully chosen in advance.¹ Negroponte’s prophecy was not nearly ambitious enough. As it turns out, you don’t need to create a Daily Me. Others can create it for you. If people know a little bit about you, they can discover, and tell you, what “people like you” tend to like—and they can create a Daily Me, just for you, in a matter of seconds.

Many of us are applauding these developments, which obviously increase fun, convenience, and entertainment. But in the midst of the applause, we should insist on asking some questions. How will the increasing power of private control affect democracy? How will the Internet and the explosion of communications options alter the capacity of citizens to govern themselves? What are the social preconditions for a well-functioning system of democratic deliberation, or for individual freedom itself?

My purpose in this book is to cast some light on these questions. I do so by emphasizing the most striking power provided by emerging technologies, *the growing power of consumers to “filter” what they see*. In the process of discussing this power, I will attempt to provide a better understanding of the meaning of freedom of speech in a democratic society.

A large part of my aim is to explore what makes for a well-functioning system of free expression. Above all, I urge that in a diverse society, such a system requires far more than restraints on government censorship and respect for individual choices. For the last decades, this has been the preoccupation of American law and politics, and in fact the law and politics of many other nations as well, including, for example, Germany, France, England, Italy, Russia, and Israel. Censorship is indeed the largest threat to democracy and freedom. But an exclusive focus on government censorship produces serious blind spots. In particular, a well-functioning system of free expression must meet two distinctive requirements.

First, people should be exposed to materials that they would not have chosen in advance. Unplanned, unanticipated encounters are central to democracy itself. Such encounters often involve topics and points of view that people have not sought out and perhaps find quite irritating. They are important partly to ensure against fragmentation and ex-

tremism, which are predictable outcomes of any situation in which like-minded people speak only with themselves. I do not suggest that government should force people to see things that they wish to avoid. But I do contend that in a democracy deserving the name, lives should be structured so that people often come across views and topics that they have not specifically selected.

Second, many or most citizens should have a range of common experiences. Without shared experiences, a heterogeneous society will have a much more difficult time in addressing social problems. People may even find it hard to understand one another. Common experiences, emphatically including the common experiences made possible by the media, provide a form of social glue. A system of communications that radically diminishes the number of such experiences will create a number of problems, not least because of the increase in social fragmentation.

As preconditions for a well-functioning democracy, these requirements hold in any large country. They are especially important in a heterogeneous nation, one that faces an occasional risk of fragmentation. They have all the more importance as each nation becomes increasingly global and each citizen becomes, to a greater or lesser degree, a “citizen of the world.” Consider, for example, the risks of terrorism, climate change, and avian flu. A sensible perspective on these risks, and others like them, is impossible to obtain if people sort themselves into echo chambers of their own design.

An insistence on these two requirements should not be rooted in nostalgia for some supposedly idyllic past. With respect to communications, the past was hardly idyllic. Compared to any other period in human history, we are in the midst of many extraordinary gains, not least from the standpoint of democracy itself. For us, nostalgia is not only unpro-

ductive but also senseless. Things are getting better, not worse. Nor should anything here be taken as a reason for “optimism” or “pessimism,” two potential obstacles to clear thinking about new technological developments. If we must choose between them, by all means let us choose optimism.² But in view of the many potential gains and losses inevitably associated with massive technological change, any attitude of optimism or pessimism is far too general to be helpful. What I mean to provide is not a basis for pessimism, but a lens through which we might understand, a bit better than before, what makes a system of freedom of expression successful in the first place. That improved understanding will equip us to understand a free nation’s own aspirations and thus help in evaluating continuing changes in the system of communications. It will also point the way toward a clearer understanding of the nature of citizenship and of its cultural prerequisites.

As we shall see, it is much too simple to say that any system of communications is desirable if and because it allows individuals to see and hear what they choose. Increased options are certainly good, and the rise of countless “niches” has many advantages. But unanticipated, unchosen exposures and shared experiences are important too.

Precursors and Intermediaries

Unlimited filtering may seem quite strange, perhaps even the stuff of science fiction. But in many ways, it is continuous with what has come before. Filtering is inevitable, a fact of life. It is as old as humanity itself. No one can see, hear, or read everything. In the course of any hour, let alone any day, every one of us engages in massive filtering, simply in order

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to make life manageable and coherent. Attention is a scarce commodity, and people manage their own attention, sometimes unconsciously and sometimes deliberately, in order to ensure that they are not overwhelmed.

With respect to the world of communications, moreover, a free society gives people a great deal of power to filter out unwanted materials. Only tyrannies force people to read or to watch. In free nations, those who read newspapers do not read the same newspaper; many people do not read any newspaper at all. Every day, people make choices among magazines based on their tastes and their point of view. Sports enthusiasts choose sports magazines, and in many nations they can choose a magazine focused on the sport of their choice—*Basketball Weekly*, say, or the *Practical Horseman*. Conservatives can read *National Review* or the *Weekly Standard*; countless magazines are available for those who like cars; *Dog Fancy* is a popular item for canine enthusiasts; people whose political views are somewhat left of center might like the *American Prospect*; there is even a magazine called *Cigar Aficionado*.

These are simply contemporary illustrations of a long-standing fact of life in democratic countries: a diversity of communications options and a range of possible choices. But the emerging situation does contain large differences, stemming above all from a dramatic increase in available options, a simultaneous increase in individual control over content, and a corresponding decrease in the power of *general-interest intermediaries*.³ These include newspapers, magazines, and broadcasters. An appreciation of the social functions of general-interest intermediaries will play a large role in this book.

People who rely on such intermediaries have a range of chance encounters, involving shared experiences with di-

verse others, and also exposure to materials and topics that they did not seek out in advance. You might, for example, read the city newspaper and in the process find a range of stories that you would not have selected if you had the power to do so. Your eyes might come across a story about ethnic tensions in Germany, or crime in Los Angeles, or innovative business practices in Tokyo, or a terrorist attack in India, or a hurricane in New Orleans, and you might read those stories although you would hardly have placed them in your Daily Me. You might watch a particular television channel—perhaps you prefer channel 4—and when your favorite program ends, you might see the beginning of another show, perhaps a drama or news special that you would not have chosen in advance but that somehow catches your eye. Reading *Time* or *Newsweek*, you might come across a discussion of endangered species in Madagascar or genocide in Darfur, and this discussion might interest you, even affect your behavior, maybe even change your life, although you would not have sought it out in the first instance. A system in which individuals lack control over the particular content that they see has a great deal in common with a public street, where you might encounter not only friends, but also a heterogeneous array of people engaged in a wide array of activities (including perhaps bank presidents, political protesters, and panhandlers).

Some people believe that the mass media is dying—that the whole idea of general-interest intermediaries providing shared experiences and exposure to diverse topics and ideas for millions was a short episode in the history of human communications. As a prediction, this view seems overstated; even on the Internet, the mass media continues to have a huge role. But certainly the significance of the mass media has been falling over time. We should not forget that from the standpoint of human history, even in industrialized societies,

general-interest intermediaries are relatively new, and far from inevitable. Newspapers, radio stations, and television broadcasters have particular histories with distinctive beginnings and possibly distinctive endings. In fact the twentieth century should be seen as the great era for the general-interest intermediary, which provided similar information and entertainment to millions of people.

The twenty-first century may well be altogether different on this score. Consider one small fact: in 1930, daily newspaper circulation was 1.3 per household, a rate that had fallen to less than 0.50 by 2003—even though the number of years of education, typically correlated with newspaper readership, rose sharply in that period. At the very least, the sheer volume of options and the power to customize are sharply diminishing the social role of the general-interest intermediary.

Politics, Freedom, and Filtering

In the course of the discussion, we will encounter many issues. Each will be treated in some detail, but for the sake of convenience, here is a quick catalogue:

- the large difference between pure populism, or direct democracy, and a democratic system that attempts to ensure deliberation and reflection as well as accountability;
- the intimate relationship between free-speech rights and social well-being, which such rights often serve;
- the pervasive risk that discussion among like-minded people will breed excessive confidence, extremism, contempt for others, and sometimes even violence;

- the potentially dangerous role of social cascades, including “cybercascades,” in which information, whether true or false, spreads like wildfire;
- the enormous potential of the Internet and other communications technologies for promoting freedom in both poor and rich countries;
- the utterly implausible nature of the view that free speech is an “absolute”;
- the ways in which information provided to any one of us is likely to benefit many of us;
- the critical difference between our role as citizens and our role as consumers;
- the inevitability of regulation of speech, indeed the inevitability of speech regulation benefiting those who most claim to be opposed to “regulation”;
- the extent to which the extraordinary consumption opportunities created by the Internet might not really improve people’s lives because for many goods, those opportunities merely accelerate the “consumption treadmill”;
- the potentially destructive effects of intense market pressures on both culture and government.

But the unifying issue throughout will be the various problems, for a democratic society, that might be created by the power of complete filtering. One question, which I answer in the affirmative, is whether individual choices, innocuous and perfectly reasonable in themselves, might produce a large set of social difficulties. Another question, which I also answer in the affirmative, is whether it is important to maintain the equivalent of “street corners” or “commons” where people are exposed to things quite involuntarily. More particularly, I seek to defend a particular conception of democracy—a delibera-

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tive conception—and to evaluate, in its terms, the outcome of a system with perfect power of filtering. I also mean to defend a conception of freedom associated with the deliberative conception of democracy and to oppose it to a conception that sees consumption choices by individuals as the very embodiment or soul of freedom.

My claim is emphatically not that street corners and general-interest intermediaries will or would disappear in a world of perfect filtering. To what extent the market will produce them or their equivalents is an empirical issue. Many people like surprises; many of us are curious, and our searches reflect our curiosity. Some people have a strong taste for street corners and for their equivalent on television and the Internet. Indeed, the Internet holds out immense promise for allowing people to be exposed to materials that used to be too hard to find, including new topics and new points of view. If you would like to find out about different forms of cancer and different views about possible treatments, you can do so in less than a minute. If you are interested in learning about the risks associated with different automobiles, a quick search will tell you a great deal. If you would like to know about a particular foreign country, from its customs to its politics to its weather, you can do better with the Internet than you could have done with the best of encyclopedias. (The amazing *Wikipedia*, produced by thousands of volunteers on the Internet, is itself one of the best of encyclopedias.)

Many older people are stunned to see how easy all this is. From the standpoint of those concerned with ensuring access to more opinions and more topics, the new communications technologies can be a terrific boon. But it remains true that many apparent “street corners,” on the Internet in particular, are highly specialized, limited as they are to particular views. What I will argue is not that people lack curiosity or that street

corners will disappear but instead that there is an insistent need for them, and that a system of freedom of expression should be viewed partly in light of that need. What I will also suggest is that there are serious dangers in a system in which individuals bypass general-interest intermediaries and restrict themselves to opinions and topics of their own choosing. In particular, I will emphasize the risks posed by any situation in which thousands or perhaps millions or even tens of millions of people are mainly listening to louder echoes of their own voices. A situation of this kind is likely to produce far worse than mere fragmentation.

What Is and What Isn't the Issue

Some clarifications, designed to narrow the issue, are now in order. I will be stressing problems on the “demand” side on the speech market. These are problems that stem not from the actions of *producers*, but instead from the choices and preferences of *consumers*. I am aware that on one view, the most important emerging problems come from large corporations, and not from the many millions, indeed billions, of individuals who make communications choices. In the long run, however, I believe that some of the most interesting questions, and certainly the most neglected ones, involve consumer behavior. This is not because consumers are usually confused, irrational, or malevolent. It is because choices that seem perfectly reasonable in isolation may, when taken together, badly disserve democratic goals.

Because of my focus on the consumers of information, I will not be discussing a wide range of issues that have engaged attention in the last decade. Many of these issues

involve the allegedly excessive power of large corporations or conglomerates.

- I will not deal with the feared disappearance of coverage of issues of interest to small or disadvantaged groups. That is decreasingly likely to be a problem. On the contrary, there has been a tremendous growth in “niche markets,” serving groups both large and small. With a decrease in scarcity, this trend will inevitably continue. Technological development is a great ally of small groups and minorities, however defined. People with unusual or specialized tastes are not likely to be frozen out of the emerging communications universe. The opposite is much more likely to be true; they will have easy access to their preferred fare—far easier than ever before.
- I will not be exploring the fascinating increase in people’s ability to participate in *creating* widely available information—through art, movies, books, science, and much more. With the Internet, any one of us might be able to make a picture, a story, or a video clip available to all of us; YouTube is merely one example. In this way, the Internet has a powerful democratizing function.⁴ Countless websites are now aggregating diverse knowledge. *Wikipedia*, for example, has thousands of authors, and the very form of the wiki allows people to contribute to the creation of a product from which they simultaneously benefit. For diverse products—books, movies, cars, doctors, and much more every day—it is easy to find sources that tell you what most people think, and it is easy as well to contribute to that collective knowledge. Prediction markets, for example, aggregate the judgments of numerous forecasters, and

they are proving to be remarkably accurate. There is much to be said about the growing ability of consumers to be producers too.⁵ But that is not my topic here.

- I will provide little discussion of monopolistic behavior by suppliers or manipulative practices by them. That question has received considerable attention, above all in connection with the 1999–2000 antitrust litigation involving Microsoft. Undoubtedly some suppliers do try to monopolize, and some do try to manipulate; consider, for example, the fact that many browsers provide some automatic bookmarks designed to allow users to link with certain sites but not others. Every sensible producer of communications knows that a degree of filtering is a fact of life. Producers also know something equally important but less obvious: consumers' *attention* is the crucial (and scarce) commodity in the emerging market. Companies stand to gain a great deal if they can shift attention in one direction rather than another.

This is why many Internet sites provide information and entertainment to consumers for free. Consumers are actually a commodity, often “sold” to advertisers in return for money; it is therefore advertisers and not consumers who pay. This is pervasively true of radio and television.⁶ To a large degree, it is true of websites too. Consider, for example, the hilarious case of Netzero.com, which provides Internet access. A few years ago, Netzero.com described itself—indeed this was its motto—as “Defender of the Free World.” In an extensive advertising campaign, Netzero.com portrayed its founders as besieged witnesses before a legislative committee, defending basic liberty by protecting everyone's “right” to have access to the Internet. But is Netz-

ero.com really attempting to protect rights, or is it basically interested in earning profits? The truth is that Netzero.com is one of a number of for-profit companies giving inexpensive Internet access to consumers (a social benefit to be sure), but making money by promising advertisers that the consumers it services will see their commercials. There is nothing at all wrong with making money, but Netzero.com should hardly be seen as some dissident organization of altruistic patriots.

Especially in light of the overriding importance of attention, some private companies will attempt to manipulate consumers, and occasionally they will engage in monopolistic practices. Is this a problem? No unqualified answer would make sense. An important question is whether market forces will reduce the adverse effects of efforts at manipulation or monopoly. I believe that to a large extent, they will; but that is not my concern here. For a democracy, many of the most serious issues raised by the new technologies do not involve manipulation or monopolistic behavior by large companies.

- I will not be discussing private power over “code,” the structure and design of programs. In an illuminating and important book, Lawrence Lessig explored the risk that private code makers will control possibilities on the Internet, in a way that compromises privacy, the free circulation of ideas, and other important social values.⁷ As Lessig persuasively demonstrates, this is indeed a possible problem. But the problem should not be overstated, particularly in view of the continuing effects of extraordinary competitive forces. The movement for “open-source” software (above all Linux), in which people can contribute innovations to code, is flourishing, and in any case competitive pressures im-

pose limits on the extent to which code makers may move in directions that consumers reject. Privacy guarantees, for example, are an emerging force on the Internet. Undoubtedly there is room, in some contexts, for a governmental role in ensuring against the abusive exercise of the private power over code. But that is not my concern here.

- In the same vein, I will put to one side the active debate over the uses of copyright law to limit the dissemination of material on the Internet and elsewhere. This is an exceedingly important debate, to be sure, but one that raises issues very different from those explored in this book.⁸
- I will not be discussing the “digital divide,” at least not as this term is ordinarily understood. People concerned about this problem emphasize the existing inequality in access to new communications technologies, an inequality that divides, for example, those with and those without access to the Internet. That is indeed an important issue, certainly domestically and even more so internationally, because it threatens to aggravate existing social inequalities, many of them unjust, at the same time that it deprives many millions (perhaps billions) of people of information and opportunities. But in both the domestic and the international context, that problem seems likely to diminish over time, as new technologies, above all the Internet, are made increasingly available to people regardless of their income or wealth.⁹

Of course we should do whatever we reasonably can to accelerate the process, which will provide benefits, not least for both freedom and health, for millions and even billions. But what I will describe will operate even

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if everyone is on the right side of that divide, that is, even if everyone has access to the Internet. My focus, that is, will be on several other sorts of digital divides that are likely to emerge in the presence of universal access—on how reasonable choices by individual consumers might produce both individual and social harm. This point is emphatically connected with inequalities, but not in access to technologies; it does not depend in any way on inequalities there.

The digital divides that I will emphasize may or may not be a nightmare. But if I am right, there is all the reason in the world to reject the view that free markets, as embodied in the notion of “consumer sovereignty,” exhaust the concerns of those who seek to evaluate any system of communications. The imagined world of innumerable, diverse editions of the Daily Me is not a utopian dream, and it would create serious problems from the democratic point of view.

2

An Analogy and an Ideal

The Neighborhood Me

THE CHANGES now being produced by new communications technologies are understated, not overstated, by the thought experiment with which I began. What is happening goes far beyond the increasingly customized computer screen.

Many of us telecommute rather than going to work; this is a growing trend. Rather than visiting the local bookstore, where we are likely to see a number of diverse people, many of us shop for books on Amazon.com. Others avoid the local stores, because one or another company is entirely delighted to deliver *Citizen Kane* and a pizza. Thus media analyst Ken Auletta enthuses, “I can sample music on my computer, then click and order. I don’t have to go to a store. I don’t have to get in a car. I don’t have to move. God, that’s heaven.”¹

If you are interested in anything at all—from computers to linens to diamonds to cars to medical advice—an online company will be happy to assist you. Indeed, if you would like to attend college, or even to get a graduate degree, you may be able to avoid the campus. College education is available online.²

It would be foolish to claim that this is bad, or a loss, in general or on balance. On the contrary, the dramatic increase

in convenience is a wonderful blessing for consumers. Driving around in search of gifts, for example, can be a real bother. (Can you remember what this used to be like? Is it still like that for you?) For many of us, the chance to point-and-click is an extraordinary improvement. And many people, both rich and poor, take advantage of new technologies to “go” to places that they could not in any sense have visited before—South Africa, Germany, Iran, France, Venice, Beijing, stores and more stores everywhere, an immense variety of specialized doctors’ offices. But it is far from foolish to worry that for millions of people, the consequence of this increased convenience is to decrease the set of chance encounters with diverse others—and also to be concerned about the consequence of the decrease for democracy and citizenship.

Or consider the concept of collaborative filtering—an intriguing feature on a number of sites, one that has now become routine and is rapidly becoming part of daily life online. Once you order a book from Amazon.com, for example, Amazon.com is in a position to tell you the choices of other people who like that particular book. Once you have ordered a number of books, Amazon.com knows, and will tell you, the other books—and music and movies—that you are likely to like, based on what people like you have liked. Other websites are prepared to tell you which new movies you’ll enjoy and which you won’t—simply by asking you to rate certain movies, then matching your ratings to those of other people, and then finding out what people like you think about movies that you haven’t seen. (Netflix is particularly happy to help you on this count.) For music, there are many possibilities: Musicmobs and Indy are examples, with the latter proclaiming, “Indy is a music discovery program that learns what you like, and plays more of it.” With wikilens, you can see

what people like you like in restaurants, books, and beers, as well as music and movies.

“Personalized shopping” is becoming readily available, and it is intended to match the interests and purchasing patterns of customers for a dazzling array of products, including radios, computers, fabrics, pens, room designs, and wish lists. (Put “personalized shopping” in Google, and watch what comes up.) Or consider the suggestion that before long we will “have virtual celebrities. . . . They’ll look terrific. In fact, they’ll look so terrific that their faces will be exactly what *you* think is beautiful and not necessarily what your neighbor thinks, because they’ll be customized for each home.”³ (Is it surprising to hear that several websites provide personalized romance stories? That at least one asks you for information about “your fantasy lover,” and then it designs a story to suit your tastes?)

In many ways what is happening is quite wonderful, and some of the recommendations from Amazon.com, Netflix, and analogous services are miraculously good, even uncanny. Countless people have discovered new favorite books, movies, and bands through this route. But it might well be disturbing if the consequence is to encourage people to narrow their horizons, or to cater to their existing tastes rather than to allow them to form new ones. The problem is a real one for movies and music, but it is probably most serious in the democratic domain. Suppose, for example, that people with a certain political conviction find themselves learning about more and more authors with the same view and thus strengthening their preexisting judgments, only because most of what they are encouraged to read says the same thing. In a democratic society, might this not be troubling?

The underlying issues here are best approached through two different routes. The first involves an unusual and some-

what exotic constitutional doctrine, based on the idea of the “public forum.” The second involves a general constitutional ideal, indeed the most general constitutional ideal of all: that of deliberative democracy. As we will see, a decline in common experiences and a system of individualized filtering might compromise that ideal. As a corrective, we might build on the understandings that lie behind the notion that a free society creates a set of public forums, providing speakers’ access to a diverse people, and ensuring in the process that each of us hears a wide range of speakers, spanning many topics and opinions.

The Idea of the Public Forum

In the common understanding, the free-speech principle is taken to forbid government from “censoring” speech of which it disapproves. In the standard cases, the government attempts to impose penalties, whether civil or criminal, on political dissent, libelous speech, commercial advertising, or sexually explicit speech. The question is whether the government has a legitimate, and sufficiently weighty, reason for restricting the speech that it seeks to control.

This is indeed what most of the law of free speech is about. In Germany, France, Russia, the United States, Mexico, and many other nations, constitutional debates focus on the limits of censorship. But in free countries, an important part of free-speech law takes a quite different form. In the United States, for example, the Supreme Court has ruled that streets and parks must be kept open to the public for expressive activity. In the leading case, from the early part of the twentieth century, the Court said, “Wherever the title of streets and parks may rest, they have immemorially been held in trust for the

use of the public and time out of mind, have been used for the purposes of assembly, communicating thought between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.”⁴

Hence governments are obliged to allow speech to occur freely on public streets and in public parks—even if many citizens would prefer to have peace and quiet, and even if it seems irritating to come across protesters and dissidents when you are simply walking home or to the local grocery store. If you see protestors on a local street, and you wonder why they are allowed to be there (and perhaps to bother you), the answer is that the Constitution gives them a right to do so.

To be sure, the government is allowed to impose restrictions on the “time, place, and manner” of speech in public places. No one has a right to set off fireworks or to use loudspeakers on the public streets at 3 a.m. in order to complain about crime, global warming, or the size of the defense budget. But time, place, and manner restrictions must be both reasonable and limited. Government is essentially obliged to allow speakers, whatever their views, to use public property to convey messages of their choosing.

A distinctive feature of the public-forum doctrine is that it creates *a right of speakers’ access, both to places and to people*. Another distinctive feature is that the public-forum doctrine creates a right, not to avoid governmentally imposed *penalties* on speech, but to ensure government *subsidies* of speech. There is no question that taxpayers are required to support the expressive activity that, under the public-forum doctrine, must be permitted on the streets and parks. Indeed, the costs that taxpayers devote to maintaining open streets and parks, from cleaning to maintenance, can be quite high.

Thus the public forum represents one area of law in which the right to free speech demands a public subsidy to speakers.

Just Streets and Parks? Of Airports and the Internet

As a matter of principle, there seems to be good reason to expand the public forum well beyond streets and parks. In the modern era, other places have increasingly come to occupy the role of traditional public forums. The mass media and the Internet as well have become far more important than streets and parks as arenas in which expressive activity occurs.

Nonetheless, the Supreme Court has been wary of expanding the public-forum doctrine beyond streets and parks. Perhaps the Court's wariness stems from a belief that once the historical touchstone is abandoned, lines will be extremely hard to draw, and judges will be besieged with requests for rights of access to private and public property. Thus the Court has rejected the seemingly plausible argument that many other places should be seen as public forums too. In particular, it has been urged that airports, more than streets and parks, are crucial to reaching a heterogeneous public; airports are places where diverse people congregate and where it is important to have access if you want to speak to large numbers of people. The Court was not convinced, responding that the public-forum idea should be understood by reference to historical practices. Airports certainly have not been treated as public forums from "ancient times."⁵

But at the same time, some members of the Court have shown considerable uneasiness with a purely historical test. In the most vivid passage on the point, Supreme Court Justice Anthony Kennedy wrote: "Minds are not changed in streets

and parks as they once were. To an increasing degree, the more significant interchanges of ideas and shaping of public consciousness occur in mass and electronic media. The extent of public entitlement to participate in those means of communication may be changed as technologies change.”⁶ What Justice Kennedy is recognizing here is the serious problem of how to “translate” the public-forum idea into the modern technological environment. And if the Supreme Court is unwilling to do any such translating, it remains open for Congress, state governments, and ordinary citizens to consider doing exactly that. In other words, the Court may not be prepared to say, as a matter of constitutional law, that the public-forum idea extends beyond streets and parks. But even if the Court is unprepared to act, Congress and state governments are permitted to conclude that a free society requires a right of access to areas where many people meet.

Indeed, private and public institutions might reach such conclusions on their own, and take steps to ensure that people are exposed to a diversity of views. Airports and train stations might decide to remain open for expressive activity—as many now are. Broadcasters might attempt, on their own, to create the functional equivalent of public forums, allowing people with a wide range of views to participate—as many now do. An important question is how to carry forward the goals of old law in the modern era.

Why Public Forums? Of Access, Unplanned Encounters, and Irritations

The Supreme Court has given little sense of why, exactly, it is important to ensure that the streets and parks remain open to speakers. This is the question that must be answered if we

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are to know whether, and how, to understand the relationship of the public-forum doctrine to contemporary problems.

We can make some progress here by noticing that the public-forum doctrine promotes three important goals.⁷ *First*, it ensures that speakers can have access to a wide array of people. If you want to claim that taxes are too high, that religious diversity is not being respected, or that police brutality is widespread, you are able to press this argument on many people who might otherwise fail to hear the message. The diverse people who walk the streets and use the parks are likely to hear speakers' arguments about taxes, religious plurality, or the police; they might also learn about the nature and intensity of views held by their fellow citizens. Perhaps some people's views change because of what they learn; perhaps they will become curious, enough so to investigate the question on their own. It does not much matter if this happens a little or a lot. What is important is that speakers are allowed to press concerns that might otherwise be ignored by their fellow citizens.

On the speakers' side, the public-forum doctrine thus *creates a right of general access to heterogeneous citizens*. On the listeners' side, the public forum creates not exactly a right, but an opportunity, if perhaps an unwelcome one: *shared exposure to diverse speakers with diverse views and complaints*. It is important to emphasize that the exposure is shared. Many people will be simultaneously exposed to the same views and complaints, and they will encounter views and complaints that some of them might have refused to seek out in the first instance. Indeed, the exposure might well be considered, much of the time, irritating or worse.

Second, the public-forum doctrine allows speakers not only to have general access to heterogeneous people, but also to specific people and specific institutions with whom they have

a complaint. Suppose, for example, that you believe that the state legislature has behaved irresponsibly with respect to crime or health care for children. The public forum ensures that you can make your views heard by legislators, simply by protesting in front of the state legislature itself.

The point applies to private as well as public institutions. If a clothing store is believed to have cheated customers, or to have acted in a racist manner, protestors are allowed a form of access to the store itself. This is not because they have a right to trespass on private property—no one has that right—but because a public street is highly likely to be close by, and a strategically located protest will undoubtedly catch the attention of the store and its customers. Under the public-forum doctrine, speakers are thus permitted to have access to particular audiences, and particular listeners cannot easily avoid hearing complaints that are directed against them. In other words, listeners have a sharply limited power of self-insulation. If they want to live in gated communities, they might be able to do so, but the public forum will impose a strain on their efforts.

Third, the public-forum doctrine increases the likelihood that people generally will be exposed to a wide variety of people and views. When you go to work or visit a park, it is possible that you will have a range of unexpected encounters, however fleeting or seemingly inconsequential. On your way to the office or when eating lunch in the park, you cannot easily wall yourself off from contentions or conditions that you would not have sought out in advance, or that you would avoided if you could. Here too the public-forum doctrine tends to ensure a range of experiences that are widely shared—streets and parks are public property—and also a set of exposures to diverse views and conditions. What I mean to suggest is that these exposures help promote understanding

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and perhaps in that sense freedom. As we will soon see, all of these points can be closely connected to democratic ideals.

We should also distinguish here between exposures that are *unplanned* and exposures that are *unwanted*. In a park, for example, you might encounter a baseball game or a group of people protesting the conduct of the police. These might be unplanned experiences; you did not choose them and you did not foresee them. But once you encounter the game or the protest, you are hardly irritated; you may even be glad to have stumbled across them. By contrast, you might also encounter homeless people or beggars asking you for money and perhaps trying to sell you something that you really don't want. If you could have "filtered out" these experiences, you would have chosen to do so. For many people, the category of unwanted—as opposed to unplanned—exposures includes a great many political activities. You might be bored by those activities and wish that they were not disturbing your stroll through the street. You might be irritated or angered by such activities, perhaps because they are disturbing your stroll, perhaps because of the content of what is being said, perhaps because of who is saying it.

It is also important to distinguish between exposures to *experiences* and exposures to *arguments*. Public forums make it more likely that people will not be able to wall themselves off from their fellow citizens. People will get a glimpse, at least, of the lives of others, as for example through encountering people from different social classes. Some of the time, however, the public-forum doctrine makes it more likely that people will have a sense, however brief, not simply of the experiences but also of the arguments being made by people with a particular point of view. You might encounter written materials, for example, that draw attention to the problem of domestic violence. The most ambitious uses of public forums are

designed to alert people to arguments as well as experiences—though the latter sometimes serves as a kind of shorthand reference for the former, as when a picture or a brief encounter has the effect of thousands of words.

In referring to the goals of the public-forum doctrine, I aim to approve of encounters that are unwanted as well as unplanned, and also of exposure to experiences as well as arguments. But those who disapprove of unwanted encounters might also agree that unplanned ones are desirable, and those who believe that exposure to arguments is too demanding or too intrusive might also appreciate the value, in a heterogeneous society, of exposure to new experiences.

General-Interest Intermediaries as Unacknowledged Public Forums (of the World)

Of course there is a limit to how much can be done on streets and in parks. Even in the largest cities, streets and parks are insistently *local*. But many of the social functions of streets and parks, as public forums, are performed by other institutions too. In fact society's general-interest intermediaries—newspapers, magazines, television broadcasters—can be understood as public forums of an especially important sort.

The reasons are straightforward. When you read a city newspaper or a national magazine, your eyes will come across a number of articles that you would not have selected in advance. If you are like most people, you will read some of those articles. Perhaps you did not know that you might have an interest in the latest legislative proposal involving national security, or Social Security reform, or Somalia, or recent developments in the Middle East; but a story might catch your attention. What is true for topics is also true for points of view.

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You might think that you have nothing to learn from someone whose view you abhor. But once you come across the editorial pages, you might well read what they have to say, and you might well benefit from the experience. Perhaps you will be persuaded on one point or another, or informed whether or not you are persuaded. At the same time, the front-page headline, or the cover story in a weekly magazine, is likely to have a high degree of salience for a wide range of people. While shopping at the local grocery store, you might see the cover of *Time* or *Newsweek*, and the story—about a promising politician, a new risk, a surprising development in Europe—might catch your attention, so you might pick up the issue and learn something even if you had no interest in advance.

Unplanned and unchosen encounters often turn out to do a great deal of good, for individuals and society at large. In some cases, they even change people's lives. The same is true, though in a different way, for unwanted encounters. In some cases, you might be irritated by seeing an editorial from your least favorite writer. You might wish that the editorial weren't there. But despite yourself, your curiosity might be piqued, and you might read it. Perhaps this isn't a lot of fun. But it might prompt you to reassess your own view and even to revise it. At the very least, you will have learned what many of your fellow citizens think and why they think it. What is true for arguments is also true for topics, as when you encounter, with some displeasure, a series of stories on crime or global warming or Iraq or same-sex marriage or alcohol abuse, but find yourself learning a bit, or more than a bit, from what those stories have to say.

Television broadcasters have similar functions. Maybe the best example is what has become an institution in many nations: the evening news. If you tune into the evening news, you will learn about a number of topics that you would not

have chosen in advance. Because of the speed and immediacy of television, broadcasters perform these public-forum-type functions even more than general-interest intermediaries in the print media. The “lead story” on the networks is likely to have a great deal of public salience, helping to define central issues and creating a kind of shared focus of attention for many millions of people. And what happens after the lead story—the coverage of a menu of topics both domestic and international—creates something like a speakers’ corner beyond anything ever imagined in Hyde Park.

None of these claims depends on a judgment that general-interest intermediaries always do an excellent—or even a good—job. Sometimes such intermediaries fail to provide even a minimal understanding of topics or opinions. Sometimes they offer a watered-down version of what most people already think. Sometimes they suffer from prejudices and biases of their own. Sometimes they deal little with substance and veer toward sound bites and sensationalism, properly deplored trends in the last decades.

What matters for present purposes is that in their best forms, general-interest intermediaries expose people to a range of topics and views at the same time that they provide shared experiences for a heterogeneous public. Indeed, general-interest intermediaries of this sort have large advantages over streets and parks precisely because most of them tend to be so much less local and so much more national, even international. Typically they expose people to questions and problems in other areas, even other nations. They even provide a form of modest, backdoor cosmopolitanism, ensuring that many people will learn something about diverse areas of the planet, regardless of whether they are much interested, initially or ever, in doing so.

Of course general-interest intermediaries are not public forums in the technical sense that the law recognizes. These are private rather than public institutions. Most important, members of the public do not have a legal right of access to them. Individual citizens are not allowed to override the editorial and economic judgments and choices of private owners. In the 1970s, a sharp constitutional debate on precisely this issue resulted in a resounding defeat for those who claimed a constitutionally guaranteed access right.⁸ But the question of legal compulsion is really incidental to my central claim here. Society's general-interest intermediaries, even without legal compulsion, serve many of the functions of public forums. They promote shared experiences; they expose people to information and views that would not have been selected in advance.

Republicanism, Deliberative Democracy, and Two Kinds of Filtering

The public-forum doctrine is an odd and unusual one, especially insofar as it creates a kind of speakers' access right to people and places, subsidized by taxpayers. But the doctrine is closely associated with a longstanding constitutional ideal, one that is very far from odd: that of republican self-government.

From the beginning, the American constitutional order was designed to create a republic, as distinguished from a monarchy or a direct democracy. We cannot understand the system of freedom of expression, and the effects of new communications technologies and filtering, without reference to this ideal. It will therefore be worthwhile to spend some space on the concept of a republic, and on the way the American

Constitution understands this concept, in terms of a deliberative approach to democracy. And the general ideal is hardly limited to America; it plays a role in many nations committed to self-government.

In a republic, government is not managed by any king or queen; there is no sovereign operating independently of the people.⁹ The American Constitution represents a firm rejection of the monarchical heritage, and the framers self-consciously transferred sovereignty from any monarchy (with the explicit constitutional ban on “titles of nobility”) to “We the People.” This represents, in Gordon Wood’s illuminating phrase, the “radicalism of the American revolution.”¹⁰ At the same time, the founders were extremely fearful of popular passions and prejudices, and they did not want government to translate popular desires directly into law. Indeed, they were sympathetic to a form of filtering, though one very different from what I have emphasized thus far. Rather than seeking to allow people to filter what they would see and hear, they attempted to create institutions that would “filter” popular desires so as to ensure policies that would promote the public good. Thus the structure of political representation and the system of checks and balances were designed to create a kind of filter between people and law, so as to ensure that what would emerge would be both reflective and well-informed. At the same time, the founders placed a high premium on the idea of “civic virtue,” which required participants in politics to act as citizens dedicated to something other than their own self-interest, narrowly conceived.

This form of republicanism involved an attempt to create a “deliberative democracy.” In this system, representatives would be accountable to the public at large. But there was also supposed to be a large degree of reflection and debate, both within the citizenry and within government itself.¹¹ The

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aspiration to deliberative democracy can be seen in many places in the constitutional design. The system of bicameralism, for example, was intended as a check on insufficiently deliberative action from one or another legislative chamber; the Senate in particular was supposed to have a “cooling” effect on popular passions. The long length of service for senators was designed to make deliberation more likely; so too for large election districts, which would reduce the power of small groups over the decisions of representatives. The Electoral College was originally a deliberative body, ensuring that the choice of the president would result from some combination of popular will and reflection and exchange on the part of representatives. Most generally, the system of checks and balances had, as its central purpose, the creation of a mechanism for promoting deliberation within the government as a whole.

From these points it should be clear that the Constitution was not rooted in the assumption that direct democracy was the ideal, to be replaced by republican institutions only because direct democracy was impractical in light of what were, by modern standards, extremely primitive technologies for communication. Many recent observers have suggested that for the first time in the history of the world, something like direct democracy has become feasible. It is now possible for citizens to tell their government, every week and even every day, what they would like it to do. Indeed, some websites have been designed to enable citizens to do precisely that. We should expect many more experiments in this direction. But from the standpoint of constitutional ideals, this is nothing to celebrate; indeed it is a grotesque distortion of founding aspirations. It would undermine the deliberative goals of the original design. Ours has never been a direct democracy, and a good democratic system attempts to ensure informed and

reflective decisions, not simply snapshots of individual opinions suitably aggregated.¹²

Homogeneity, Heterogeneity, and a Tale of the First Congress

There were articulate opponents of the original constitutional plan, whose voices have echoed throughout American history; and they spoke in terms that bear directly on the communications revolution. The anti-federalists believed that the Constitution was doomed to failure, on the ground that deliberation would not be possible in a large, heterogeneous republic. Following the great political theorist Montesquieu, they urged that public deliberation would be possible only where there was fundamental agreement. Thus Brutus, an eloquent anti-federalist critic of the Constitution, insisted: "In a republic, the manners, sentiments, and interests of the people should be similar, if this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other."¹³

It was here that the Constitution's framers made a substantial break with conventional republican thought, focusing on the potential uses of diversity for democratic debate. Indeed, it is here that we can find the framers' greatest and most original contribution to political theory. For them, heterogeneity, far from being an obstacle, would be a creative force, improving deliberation and producing better outcomes. If everyone agreed, what would people need to talk about? Why would they want to talk at all? Alexander Hamilton invoked this point to defend discussion among diverse people within a bicameral legislature, urging, in what could be taken as a direct response to Brutus, that "the jarring of parties . . . will promote delibera-

tion.”¹⁴ And in an often forgotten episode in the very first Congress, the nation rejected a proposed part of the original Bill of Rights, a “right” on the part of citizens “to instruct” their representative on how to vote. The proposed right was justified on republican (what we would call democratic) grounds. To many people, it seemed a good way of ensuring accountability on the part of public officials. But the early Congress decided that such a “right” would be a betrayal of republican principles. Senator Roger Sherman’s voice was the clearest and most firm: “[T]he words are calculated to mislead the people, by conveying an idea that they have a right to control the debates of the Legislature. This cannot be admitted to be just, because it would destroy the object of their meeting. I think, when the people have chosen a representative, it is his duty to meet others from the different parts of the Union, and consult, and agree with them on such acts as are for the general benefit of the whole community. If they were to be guided by instructions, there would be no use in deliberation.”¹⁵

Sherman’s words reflect the founders’ general receptivity to deliberation among people who are quite diverse and who disagree on issues both large and small. Indeed, it was through deliberation among such persons that “such acts as are for the general benefit of the whole community” would emerge. Of course the framers were not naïve. Sometimes some regions, and some groups, would gain while others would lose. What was and remains important is that the resulting pattern of gains and losses would themselves have to be defended by reference to reasons. Indeed, the Constitution might well be seen as intended to create a “republic of reasons,” in which the use of governmental power would have to be justified, not simply supported, by those who asked for it.

We can even take Sherman’s understanding of the task of the representative to have a corresponding understanding of

the task of the idealized citizen in a well-functioning republic. Citizens are not supposed merely to press their own self-interest, narrowly conceived, nor are they to insulate themselves from the judgments of others. Even if they are concerned with the public good, they might make errors of fact or of value, errors that can be reduced or corrected through the exchange of ideas. Insofar as people are acting in their capacity as citizens, their duty is to “meet others” and “consult,” sometimes through face-to-face discussions, and if not, through other routes, as, for example, by making sure to consider the views of those who think differently.

This is not to say that most people should be devoting most of their time to politics. In a free society, people have a range of things to do. But to the extent that both citizens and representatives are acting on the basis of diverse encounters and experiences and benefiting from heterogeneity, they are behaving in accordance with the highest ideals of the constitutional design.

***E Pluribus Unum* and Jefferson vs. Madison**

Any heterogeneous society faces a risk of fragmentation. This risk has been serious in many periods in American history, most notably during the Civil War, but often in the twentieth century as well. The institutions of the Constitution were intended to diminish the danger, partly by producing a good mix of local and national rule, partly through the system of checks and balances, and partly through the symbol of the Constitution itself. Thus the slogan *e pluribus unum*, “from many, one,” can be found on ordinary currency, in a brief, frequent reminder of a central constitutional goal.

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Consider in this regard the instructive debate between Thomas Jefferson and James Madison about the value of a bill of rights. In the founding era, Madison, the most important force behind the Constitution itself, sharply opposed such a bill, on the ground that it was unnecessary and was likely to sow confusion. Jefferson thought otherwise, and insisted that a bill of rights, enforced by courts, could be a bulwark of liberty. Madison was eventually convinced of this point, but he emphasized a very different consideration: the unifying and educative functions of a bill of rights.

In a letter to Jefferson on October 17, 1788, Madison asked, “What use, then, it may be asked, can a bill of rights serve in popular Government?” His basic answer was that the “political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the National sentiment, counteract the impulses of interest and passion.”¹⁶ In Madison’s view, the Bill of Rights, along with the Constitution itself, would eventually become a source of shared understandings and commitments among extremely diverse people. The example illustrates the founders’ belief that for a diverse people to be self-governing, it was essential to provide a range of common values and commitments.

Two Conceptions of Sovereignty and Holmes vs. Brandeis

We are now in a position to distinguish between two conceptions of sovereignty. The first involves consumer sovereignty—the idea behind free markets. The second involves political sovereignty—the idea behind free nations. The notion of consumer sovereignty underlies enthusiasm for the Daily Me; it

is the underpinning of any utopian vision of the unlimited power to filter. Writing as early as 1995, Bill Gates cheerfully predicted, "Customized information is a natural extension. . . . For your own daily dose of news, you might subscribe to several review services and let a software agent or a human one pick and choose from them to compile your completely customized 'newspaper.' These subscription services, whether human or electronic, will gather information that conforms to a particular philosophy and set of interests."¹⁷

Gates's prediction has now become a reality. With RSS, and many other services, you can gather information that fits your interests and your preexisting views. Or consider Gates's celebratory words in 1999: "When you turn on DirectTV and you step through every channel—well, there's three minutes of your life. When you walk into your living room six years from now, you'll be able to just say what you're interested in, and have the screen help you pick out a video that you care about. It's not going to be 'Let's look at channels 4, 5, and 7.'"¹⁸

This is the principle of consumer sovereignty in action. The notion of political sovereignty underlies the democratic alternative, which poses a challenge to this vision on the ground that it might undermine both self-government and freedom, properly conceived. Recall here John Dewey's words: "Majority rule, just as majority rule, is as foolish as its critics charge it with being. But it never is *merely* majority rule. . . . The important consideration is that opportunity be given ideas to speak and to become the possession of the multitude. The essential need is the improvement of the methods and constitution of debate, discussion and persuasion. That is *the* problem of the public."¹⁹

Consumer sovereignty means that individual consumers are permitted to choose exactly as they wish, subject to any constraints provided by the price system, and also by their

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current holdings and requirements. This idea plays a significant role in thinking not only about economic markets, but also about both politics and communications as well. When we talk as if politicians are “selling” a message, and even themselves, we are treating the political domain as a kind of market, subject to the forces of supply and demand. And when we act as if the purpose of a system of communications is to ensure that people can see exactly what they “want,” the notion of consumer sovereignty is very much at work. The idea of political sovereignty stands on different foundations. It does not take individual tastes as fixed or given; it does not see people as simply “having” tastes and preferences. For those who value political sovereignty, “We the People” reflect on what we want by exchanging diverse information and perspectives. The idea of political sovereignty embodies democratic self-government, understood as a requirement of “government by discussion,” accompanied by reason giving in the public domain. Political sovereignty comes with its own distinctive preconditions, and these are violated if government power is not backed by justifications and represents instead the product of force or simple majority will.

Of course the two conceptions of sovereignty are in potential tension. If laws and policies are “bought,” in the same way that soap and cereal are bought, the idea of political sovereignty is badly compromised. The commitment to consumer sovereignty will also undermine political sovereignty if free consumer choices result in insufficient understanding of public problems, or if they make it difficult to have anything like a shared or deliberative culture. We will disserve our own aspirations if we confound consumer sovereignty with political sovereignty. If the latter is our governing ideal, we will evaluate the system of free expression at least partly by seeing whether it promotes democratic goals. If we care only about

consumer sovereignty, the only question is whether consumers are getting what they want—a question that seems, unfortunately, to be dominating discussions of the Internet and other new technologies.

The distinction matters for law and policy as well. If the government takes steps to increase the level of substantive debate on television or in public culture, it might well be undermining consumer sovereignty at the same time that it is promoting democratic self-government. And if citizens themselves urge that we ought to try to evaluate the system of communications by reference to democratic ideals, they ought not to be silenced on the ground that consumer sovereignty is all that matters.

With respect to the system of freedom of speech, the conflict between consumer sovereignty and political sovereignty can be found in an unexpected place: the great constitutional dissents of Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis. In the early part of the twentieth century, Holmes and Brandeis were the twin heroes of freedom of speech, dissenting, usually together, from Supreme Court decisions allowing the government to restrict political dissent. Sometimes Holmes wrote for the two dissenters; sometimes the author was Brandeis. But the two spoke in quite different terms. Holmes wrote of “free trade in ideas,” and treated speech as part of a great political market, with which government could not legitimately interfere. Consider a passage from Holmes’s greatest free-speech opinion:

[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in

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the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.²⁰

Brandeis's language, in his greatest free-speech opinion, was altogether different:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. . . . They believed that . . . without free speech and assembly discussion would be futile; . . . that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.²¹

Note Brandeis's suggestion that the greatest threat to freedom is an "inert people," and his insistence, altogether foreign to Holmes, that public discussion is not only a right but "a political duty." Brandeis sees self-government as something dramatically different from an exercise in consumer sovereignty. Brandeis's conception of free speech is self-consciously republican, with its emphasis on the obligation to engage in public discussion. On the republican conception, unrestricted consumer choice is not an appropriate foundation for policy in a context where the very formation of preferences and the organizing processes of the democratic order are at stake.

In fact Brandeis can be taken to have offered a conception of the social role of the idealized citizen. For such a citizen, active engagement in politics, at least some of the time, is a responsibility, not just an entitlement. If citizens are "inert," freedom itself is at risk. If people are constructing a Daily Me that is restricted to sports or to the personal lives of celebri-

ties, they are not operating in the way that citizenship requires. This does not mean that people have to be thinking about public affairs all, most, or even much of the time. But it does mean that each of us has rights and duties as citizens, not simply as consumers. As we will see, active citizen engagement is necessary to promote not only democracy but social well-being too. And in the modern era, one of the most pressing obligations of a citizenry that is not inert is to ensure that “deliberative forces should prevail over the arbitrary.” For this to happen, it is indispensable to ensure that the system of communications promotes democratic goals. Those goals emphatically require both unchosen exposures and shared experiences.

Brandeis was speaking of the republican tradition. It is therefore noteworthy, and not a little comical, that *republic.com* is actually a website. *Republic.com* has nothing to do with republicanism as a political ideal. Instead it offers to sell you essentially whatever you want, as signaled by its distinctive motto: “What you need, when you need it.” Its main offerings include women’s clothing, airline tickets, T-shirts, designer clothes, houses for sale, hotels, and leather jackets. *Republic.com* offers an important service, to be sure, but it is not exactly following in the footsteps of its republican forbears.

Republicanism without Nostalgia

These are abstractions; it is time to be more concrete. I will identify three problems in the hypothesized world of perfect filtering. These difficulties might well beset any system in which individuals had complete control over their communi-

CHAPTER TWO

cations universe and exercised that control so as to create echo chambers or information cocoons.

The first difficulty involves *fragmentation*. The problem here comes from the creation of diverse speech communities whose members talk and listen mostly to one another. A possible consequence is considerable difficulty in mutual understanding. When society is fragmented in this way, diverse groups will tend to *polarize* in a way that can breed extremism and even hatred and violence. New technologies, emphatically including the Internet, are dramatically increasing people's ability to hear echoes of their own voices and to wall themselves off from others. An important result is the existence of *cybercascades*—processes of information exchange in which a certain fact or point of view becomes widespread, simply because so many people seem to believe it.

The second difficulty involves a distinctive characteristic of information. Information is a public good in the technical sense that once one person knows something, other people are likely to benefit as well. If you learn about crime in the neighborhood or about the problem of climate change, you might well tell other people too, and they will benefit from what you have learned. In a system in which each person can “customize” his own communications universe, there is a risk that people will make choices that generate too little information. An advantage of a system with general-interest intermediaries and with public forums—with broad access by speakers to diverse publics—is that it ensures a kind of social spreading of information. At the same time, an individually filtered speech universe is likely to produce too few of what I will call *solidarity goods*—goods whose value increases with the number of people who are consuming them.²² A presidential debate is a classic example of a solidarity good.

The third and final difficulty has to do with the proper understanding of freedom and the relationship between consumers and citizens. If we believe in consumer sovereignty, and if we celebrate the power to filter, we are likely to think that freedom consists in the satisfaction of private preferences—in an absence of restrictions on individual choices. This is a widely held view about freedom. Indeed, it is a view that underlies much current thinking about free speech. But it is badly misconceived. Of course free choice is important. But freedom properly understood consists not simply in the satisfaction of whatever preferences people have, but also in the chance to have preferences and beliefs formed under decent conditions—in the ability to have preferences formed after exposure to a sufficient amount of information and also to an appropriately wide and diverse range of options. There can be no assurance of freedom in a system committed to the Daily Me.