

The Customer Is Not Always Right

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ABSTRACT. Consumers can sustain markets that are morally questionable. They can make immoral or morally suspect demands of individual businesses, especially small businesses. Even when they do not, the costs to firms of consumer protection can sometimes drive them to ruin. This paper presents cases where deference to the consumer is variously unwarranted, cases that may prompt second thoughts about some kinds of consumerism.

Consumers as kings, consumers as victims

Rhetoric about consumers provides two conflicting images of the people who buy things. In one image consumers are discerning, demanding and need to be deferred to. Thus the slogan, 'The consumer is king' or 'The customer is always right.' At other times consumers are potential victims who need to be defended by the law, by individual firms' consumer charters, by consumer protection schemes, and by consumer journalism and television. The rhetoric which conjures up the first image is usually to do with the economic dependence of firms on consumers. Firms that want to stay in business have to sell things that people want to buy, on terms that will make the buying easy and pleasant. If a willingness to take trouble to accommodate the consumer – if a willingness to treat the customer as king – is expressed by the style of selling, then that, too,

is justified by the dependence of seller on buyer. A business is after all at the mercy of the economic power of its customers, who are always being enticed to buy from competitors; so it pays to do what it takes to keep one's customers loyal, including treating them as kings.¹

On the surface, the rhetoric associated with the image of the customer as potential victim has a very different thrust. It emphasizes the financial sophistication of business people in comparison to the typical customer, and it usually takes the point of view of the individual consumer, whose economic power may be small, rather than the combined economic power of the many. The message of this second sort of rhetoric is that, since consumers are weak and the firms that they buy from are strong, consumers need protection, and need it on the moral grounds there always are for protecting the weak from the strong.

Although the images we have before us are not very similar, the rhetoric in the two cases is decidedly pro-consumer, and fussy customers who also know how to exploit the protections extended to the unwary or the ill-informed benefit twice over by making firms treat them now as kings and now as victims. In what follows I shall first consider whether there are sometimes moral or other grounds for not deferring to a customer, even if it is economically advantageous to do so; and, symmetrically, whether there are sometimes cases where firms have commercial grounds for being excused from the duties attending consumer protection. The conclusion toward which the discussion will head is that the pro-consumer drift of the familiar types of rhetoric is sometimes overdone. There are occasions when consumers are overdeferred to for the

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sake of more business or overprotected at the expense of business. To recognize this is not to repudiate the bulk of the protections to consumers that are either voluntarily compiled with or legally enforced: most of these are in any case morally justified by the need to protect human beings from avoidable harm; but it does mean thinking twice about how much is justified by the bare fact that a lot of consumers want a thing, or the fact that someone who asks for something has the status of a consumer.

Consumer demands with moral costs

It can sometimes be morally expensive to give the customer what he wants. At one extreme of a spectrum of cases there is significant demand worldwide for films and photographs of women and children who are being sexually assaulted. These films and photographs would be bad enough if the assaults were simply faked for the camera; but typically what is photographed in hard pornography in the present day is real assault, which is flatly impermissible morally. Written pornography that describes extremes of violence, such as *American Psycho* or De Sade's *Justine*, has been sold in Britain and elsewhere in Europe in mainstream bookshops. As with the films and videos, there are good reason for outlawing the sale of these books.²

Hard pornography may be agreed to provide a clear case where it is morally wrong to meet consumer demand, but it might be thought that this case is too far from the range of normal business activity to have a widely applicable lesson. For one thing, the sale of hard pornography is illegal in many countries, and, for another, the cruelty involved in making it is not typical of what is involved in making other products for which there is a big demand. These differences are undeniable, but to call attention to them is to miss the point of the case of hard pornography. The point is that there are certain things that no amount of consumer demand can justify. In the case of hard pornography, the weight of consumer demand is overridden by the impermissibility of the things done to satisfy it, namely violence and sexual assault.

Where consumer demand *can* be met legally and there is less agreement about the harm involved, things are perhaps not so clear. Soft pornography on film, almost universally legal in Western Europe, could be held to demean the women it depicts, and could be held to make its audience more tolerant of hard pornography. These points amount to a moral argument against meeting a demand for soft pornography. But the argument is controversial. Some people deny that women who take part voluntarily in pornographic films and who say they are happy to do so are really demeaned. Some people wonder whether a taste for hard pornography is aroused by indulging a taste for soft pornography. Another controversial moral argument against the satisfaction of demand can be mounted in the case of cigarettes, where the hazard to the health of smokers and those who live or work with them is at stake. Here the response sometimes made is that it is morally right for people to decide for themselves whether to take the risks associated with smoking. Now the fact that in both these cases the arguments for and against are inconclusive is less important than the fact that there are arguments for and against – that it is not obvious that the satisfaction of the demand for soft pornography or cigarettes is right, even though the two things are legal.

The range of cases in which it can at least be *asked* whether accommodating the consumer is morally permissible extends well beyond the cases where meeting the demand poses a threat to safety or health or where it involves extreme cruelty or injustice. Consider the example – based on fact – of a driving school in a racially mixed section of London. Intending customers of the school are asked whether they are willing to be taught by instructors of a different race. Whites are asked whether they feel comfortable being taught by oriental or black people; blacks whether they mind having white instructors, and so on. The question is put because customers in the past have sometimes asked to change instructors on racial grounds, and settling the matter in advance is thought by the management to save embarrassment all round and to have the effect of retaining customers who might otherwise leave. Is it morally right for customers to have a

veto over instructors on racial grounds? It is certainly wrong if it is done to indulge racialists. On the other hand, what if the demand for instructors of the same race generally comes from members of races who suffer discrimination, and who, because of that discrimination, would feel even more uncomfortable with a white instructor than they feel already at the thought of driving in London traffic? In that case, a request for an instructor of the same race might resemble a defensible request by women for female driving instructors. In general, it seems to me, a customer's refusal to deal with a firm's staff on sex or race grounds is sexist or racist and, morally speaking, it should not be accommodated unless it is shown not to be racist or sexist after all. But whether it is racist or sexist depends on the background to the refusal.

Consider now two cases where accommodating the consumer involves unfairness to the one doing the accommodating. In a British newspaper article on the pros and cons of having one's house enlarged,³ Jonathan Sale quotes a London architect who finds the task of designing two stations for the London Underground far less arduous than adding a couple of rooms to an existing house:

It's a world I hope never to return to . . . We've done it in the past and it's a nightmare. It almost always ended in tears. The wife hated it, or the husband hated it. You should not embroil the architect as a therapist in your own domestic problems with endless meetings over gin and tonic. I'd rather open a restaurant on a Greek island.

In the same article, a builder complains of clients who take advantage:

I know there are cowboy builders – but there are also cowboy clients. Mr. Barrett, who runs Hayling Builders near Portsmouth, was referring to rogue householders who ask him for advice and then go on to commission a cheaper firm to carry out his ideas, or even do it themselves. You talk to people and if you are not careful they bleed you of your time and brains.

Here is a case where a provider of a service feels (justifiably, I think) that the line has been crossed

between what can reasonably be given to potential customers in order to get business, and what needs to be paid for.

There are other cases where the impression that the consumer is within his rights to make special demands is strong from one perspective but less strong from another. Take the example (once again drawn from real life) of a chef and restaurateur who caters for gourmet tastes, and who is considered by most of his customers and most other leading chefs and restaurant critics to be a master cook. One day a customer who comes to the restaurant because of the chef's reputation sends back a dish that is cooked by the chef and asks that it be altered to his (the customer's) specification. The chef refuses and the meal ends in some acrimony, though the customer is not charged. Who is in the right? It might be thought that the customer is. After all, his meal was very expensive, and it was he who had to eat it. Surely he should have had the dish prepared to please him. In a more run-of-the-mill restaurant with a different chef, this way of reading the case would plainly be correct. What makes the reading controversial here is that the chef is out of the ordinary and that the customer came partly because of the chef's reputation. This fact makes the customer's situation comparable to that of someone who commissions an artist to paint a portrait. The one who commissions the painter may also be paying a great deal of money, and he may dislike the portrait, but it is not obvious that the artist is obliged to repaint the portrait to please him, even if the one who commissions it is the only one who will ever see it. In the case of the portrait commission one buys the artist's ability, but one has to allow the artist freedom to exercise it in a way that he judges appropriate. It may be the same with the master chef. Of course, even the painter and the chef can be careless and unscrupulous in painting or cooking, not bothering to exercise their ability: in that case the customer is wronged: he is not getting what he pays for. Nevertheless, it is possible for the customer to get what he pays and still not be pleased.

The commercial expense of consumer protection

In the cases just surveyed there are commercial reasons for accommodating the customer but moral reasons for not doing so or for not *having* to accommodate the customer. Might there also be cases in which there were moral reasons for accommodating the customer but stronger commercial reasons for not doing so? Because moral reasons are normally overriding, such cases are rare. The ones I am going to discuss depend on a mix of reasons, including commercial ones, for not doing what it would be at least morally desirable to do.

Consider first the situation, well-known to travellers, where an airline has overbooked the seats on a flight. Customers arrive expecting to travel after having booked, and a minority are disappointed, sometimes at great inconvenience. The overbooking is deliberate: a certain number of passengers book a variety of flights to the same destination at approximately the same time, and choose the most convenient, informing the disappointed airlines too late or not at all. As a result, airlines lose fares. Overbooking is meant to compensate for these no-shows. Is it justified? A reasonable answer to this question is that overbooking is a case of bad business ethics in *response* to bad business ethics. Customers are irresponsible if they make bookings they intend not to honour, and airlines are irresponsible if they do the same thing, even if, in a sense, customer irresponsibility provokes them to be irresponsible. This answer becomes less compelling the greater the loss to the airline through negligent booking on the part of customers. If a firm faces bankruptcy or take-over because its loads are too small, and if no-shows are largely to blame, then one might hold that, in self-defence, they are entitled to overbook, so long as they compensate those who are disappointed when a flight is full.

We have now identified the area where moral reasons for accommodating the customer arguably fail to be overriding – namely, where commercial collapse or serious commercial loss results, but no major harm is done to the customer. (I assume that this is typically how it

is with airline overbookings.) Cases of this kind are probably not very common, but it is possible to think of more than one from real life. Airline overbooking is one. Exaggerated health scares are another.

One such health scare occurred in Britain at the end of 1988. A widely-publicized statement by a junior Minister of Health in the UK government suggested that British egg production was a prime source of salmonella infection. The publicity caused sales of eggs to plummet and more than 700 000 chickens in flocks suspected of infection were slaughtered by government order. Up to a year after the initial statement, egg sales were still down by 10 per cent on levels before the scare. In the period from December 1988 to August 1989 egg producers are estimated to have lost £70 million. Long term investment in new chicken flocks also dropped markedly with an increase in the risk of flocks failing health tests. A detailed review of the evidence by a British Member of Parliament and a specialist in cooking hygiene who advises the United Kingdom egg producers' association⁴ throws doubt on the finding that salmonella in eggs was a significant threat to human health. Salmonella poisoning did increase in the UK in the period leading to the egg scare, and some of the cases appear to have been linked to eggs, but the poisoning continued to increase markedly when the egg scare had reduced egg consumption by a quarter,⁵ and at the temperatures eggs are normally broken out for cooking, the levels of contamination present are too low to make anyone ill.⁶

Although the health scare associated with eggs seems to have been exaggerated, the decision to issue warnings was explicable. The UK Ministry of Health had been embarrassed by cases of food poisoning in hospitals for which it was responsible, and it was advised by one of its own laboratories that salmonella could be spread in laying flocks. Had the circumstances been different, so that the Ministry was under no particular pressure to be seen to be responding to poisoning cases; had they left the decision to the egg producers and had the egg producers continued to regard the evidence of a health hazard as negligible, issuing no health warning,

would they have been acting immorally? So long as they were genuinely convinced that there was no health hazard and so long as they took steps to test the contrary evidence, I believe the egg producers would have done nothing wrong in conducting business as usual. This reading of the case is of a piece with the impression, strong in retrospect, that egg producers were unfairly disadvantaged by publicity that was not entirely well-grounded scientifically, and that seemed flimsy not only to the egg producers but also the Ministry of Agriculture in 1988. So far as the evidence went, consumers were in no real danger, and the cost of taking precautions was very great.

When is the customer wrong? Some indications

The cases I have presented challenge the dictum that the customer is always right, but do they suggest any method of recognizing when customers are wrong? Criteria may be implicit in the following questions: in situations where the answers to one or more are 'yes', there is *prima facie* evidence that deference to the customer or customer satisfaction is *not* called for:

- (1) *Is deference to the customer likely to cause business failure or significant loss of profitability while preventing at most minor harm to the customer?*

The answer to this question was 'yes' in the case of the salmonella scare; and perhaps it is also 'yes' in the case where an airline is considering putting a stop to the overbooking of seats for the sake of customers. The range of cases where the answer is 'yes' is likely to vary inversely with the size of the business: the smaller the business, the wider a range of cases in which the cost of deferring to the customer could be too high. A relevant case from those reviewed earlier was the small-scale building contractor who gave away his ideas, only to see his potential customers commissioning rivals to carry them out. A large building contractor might be able to suffer the theft of ideas and loss of business more readily than a one-man operation. Indeed, the case of

the small builder suggests the principle that, for small business, the provision of *any* service or goods at below cost may be too high a price to pay for customer satisfaction alone.

- (2) *Does customer satisfaction depend on waiving the reasonable standards of a commercial association, profession, art or craft?*

The answer was arguably 'yes' in the case of the master cook or portrait painter with dissatisfied customers. Another case where customer pressure might lead to the lowering of standards is where customer requirements, e.g. for speed in an automobile, would mean a threat to safety or the environment.

- (3) *Does consumer satisfaction depend on ignoring customer negligence or injustice?*

The answer is 'yes' in a whole range of cases – from those where the customer is reckless or casual in a purchasing decision, to those where a customer regards as his due in a commercial relationship something that is not owed at all and could only be asked for outside a commercial relationship. Here the case of the architect who was drawn into a marital dispute between his clients is in point. Customer injustice is also involved in the case where the product cannot be justly produced, as in the case of hard pornography.

Notes

¹ In practice, treating consumers as kings usually means treating the young and able-bodied as kings. Though old consumers can have considerable purchasing power, they are not often before the minds of product designers. Pat Moore, a New York product designer who set up a firm catering to the needs of the elderly and handicapped, is the exception to the rule. According to an article in the London *Guardian*, for 1 August 1989, she learned about attitudes to the elderly the hard way, by disguising herself as an old person and seeing how she was treated. She is responsible for designing easy to open packaging and containers for pills that register the number already taken.

² Sue Edwards, 'A Plea for Censorship', *New Law Journal*, November 1991, pp. 1479–1480 contains a

description of the pornography typically prosecuted under the UK Obscene Publications Act, and considers the status of widely sold hard pornography.

³ *Independent on Sunday*, London, 16 February 1992.

⁴ T. Gorman and R. North, *Chickengate: An independent analysis of the salmonella in eggs scare*, London I E A Health and Welfare Unit, 1990.

⁵ *Ibid.*, p. 25.

⁶ *Ibid.*, p. 35.

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