EDITORIAL POSTLUDE

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A Pessimist's Simplistic Historical Perspective on the Fourth Wave of Consumer Protection

The current severe economic downturn, coupled with scandals of business misfeasance and malfeasance, raises expectations for another surge in the U.S. consumer protections. Because it happened three times before, the human temptation to seek historical parallels readily fuels either optimistic hopes or the paranoid ravings of fact-free commentators on a broadcast news network. A simplified historical perspective brings an odd mix of hopeful optimism and reluctant pessimism.

Four decades ago, "consumerism" became a broadly accepted term for the political and social movements seeking to protect consumers by requiring businesses to provide nondeceptive advertising, product guarantees, honest packaging and improved safety standards. But over the decades, the most common uses of the term morphed back to Thorstein Veblin's 19th century criticisms of consumption itself, what he described as the modern world's economic order based on the systematic creation and development of widespread desires to purchase mass-produced products in ever greater amounts. In this sense, consumerism becomes synonymous with the excessive shopping which is periodically referenced as the true religion of the modern secular world. In a third definition found in modern business usage, consumerism became a positive marketing term, focusing on what consumers want to buy and a managerial determination to make it available.

At the founding of *JCA*, academic research on consumer affairs referenced studies of the consumers' interests in the marketplace, research conducted from the customer point of view. Yet today, in publications dedicated to business management, consumer studies become market segmentation, the analysis of what interests groups of present or potential customers, even though research of what interests groups of consumers is not necessarily studies of the consumers' interests.

The Journal of Consumer Affairs, Vol. 44, No. 2, 2010
ISSN 0022-0078

This changing variety of meanings indicate the different ways a consumer interest can be defined. And so it was through time. A simplistic shorthand perspective of past consumer movements tells an evolving tale of how businesses are seen in relation to their customers. Each prior wave of consumerism is noted in textbooks for a precipitating scandal during a concurrent economic recession or depression that resulted in eventual political reactions. The nature of those political or legal remedies was rooted in the views of the times, but a mini-review of those past movements provides an understanding of hopes for a new consumer movement or pessimism for its limitations.

Most regular readers of *JCA* are probably familiar with the detailed history of past consumer movements. But to make the point, a retelling is necessary. I will try to be brief.

In the first period of consumer protection in the early twentieth century, the focus was not on protecting consumers per se, but protecting the system of competition, or rather, an idealized view of "perfect" competition. Because the industrial world was becoming increasingly complicated, consumer education was part of these early movements. Educated and informed consumers were necessary for the economic system to work, so consumer literacy as a shopping skill enabled people to act on a somewhat more equal footing with product sellers.

This meant that the first wave's laws and regulatory agencies that many decades later became the focus of consumer protection activism were originally established to help protect the marketplace, not people. Businesses were getting too big, so anti-trust laws sought to make them smaller, or at least to deter companies' ability to acquire some form of monopolistic power. Advertisers desired truth in advertising laws, as proposed by the trade publication *Printers' Ink* Model Statute in 1911, because the most egregious false advertising of the time by patent medicines harmed the credibility of all messages. Despite courtroom claims that no one believes inflated advertised claims of product superiority, advertisers want their messages to be believed (Preston 1975, 1994). The original pure food laws were desired by the meat packers who faced sales resistance and export bans following public indignation after the publication of Upton Sinclair's *The Jungle* (1905).

During the 1930s, the second consumer movement of the Great Depression era still retained a certain faith in market forces, but came to recognize that consumers needed government assistance in stopping the sales of problem products or halting false information. Products were becoming even more complicated with many features hidden from view; mass-produced food packaging meant that potential dangers could be hidden beyond the ability of even the most cautious consumer to discover. Despite the founding of nonprofit product testing publications such as *Consumer Reports* during this period, corporate sources remained the predominant source of market information, and consumers were often unable to discern the truth. So the revised enabling legislation for the Food and Drug Administration now focused directly on potential consumer harms. The Federal Trade Commission Act was altered to give the agency power to stop any deceptive acts and practices without meeting the heavier burden of proof desired by earlier Supreme Court decisions of actual harm to competition.

In the 1960s, the scandal that exemplified the third wave of consumerism started to recognize the power of big business versus the relatively powerless consumer. The world's largest auto manufacturer in the world responded to criticisms of their products, not with information or product improvements, but using financial power in search of evidence to reduce the credibility of the critic. General Motors top executives eventually had to go before Congress to apologize for hiring detectives to follow Ralph Nader. In a sense, this indicated the intrinsic limits of consumer education, anti-trust enforcement or product information to put consumers on equal footing with business. Nader himself had a strong rallying statement that with consumers against a modern corporation, you cannot trust the competitive marketplace to provide necessary protection: "You can't have equal protection of the law when it is you versus Exxon."

As noted, this historical perspective is simple. Maybe, as the late James Carey used to say too often to his doctoral students on a variety of matters, it employs "a simplification verging on the burlesque." Yet it also reveals how much was lost as the consumer movement started to end around 1978. Optimists called it a "pause," as Ronald Reagan swept into office in the 1980s, but the pause was longer than even the most pessimistic views expected.

The current economic downturn coupled with business scandals gives an optimistic view of potential new consumer protections (Cohen 2010). On the other hand, events of the recent decades provide a wary skepticism—or even pessimism—for what solutions might be provided. After all, you would think that after the discovery of widespread misfeasance by financial organizations, a financial services regulatory agency would be an easy and popular solution for moving forward (Warren 2008). Yet, despite all that has happened, current events raise doubts as to whether any meaningful changes of financial regulations would pass into law, or if those changes that manage to pass would be effective. The unlikely source for perspicacious news insight on Comedy Central's "The Daily Show" is repeatedly incredulous that, even after everything that big banks and Wall Street investors did to cause the current economic problems, they still retain the political influence to limit or prevent the enactment of new regulations.

The answer might lie in extending the simplistic history, to review what happened during the three decade pause of the consumer movement.

Back in the olden days when Gerald Ford was the President of the United States, a business professor who had recently served as a consultant to the Federal Trade Commission on some deceptive advertising cases posed an open-ended question for a doctoral candidate's examinations. "Do you see the current wave of consumerism ending soon? Why or why not?" The student's answer was positive and optimistic. Each prior wave built on what came before, but the consumer protections of the then-current era seemed so strong and institutionalized that they forced a different view of businesses and their relationships to customers. There can be no turning back once you realize that consumers are not and can not be on equal footing with larger, more financially powerful and better informed business interests, or so it seemed at the time.

But simplifications should not omit the relevant. The third wave of consumerism was not an easy sell to the public. It was powered by a possibly unique collection of what one insider of the period noted as entrepreneur journalists, politicians and staff workers in Congress and the regulatory agencies (Pertschuk 1982). Many early successes were helped, or at least not hindered, in that business lobbyists and corporate public relations spin masters were caught off guard, a situation that was not going to last forever. It also did not help the consumer movement's long-term cause when the extremism of their own arguments outran the available data, a problem that sometimes persists today (Rotfeld 2008a, 2008b, 2008c), and in the late 1970s lead to the *Washington Post* labeling some proposals as "national nannyism."

To start the movement of deregulation that became the mainstay of later Republicans, Senator Ted Kennedy joined with consumer protection advocates of that same period to dismantle some old regulations that had outlived their purpose and now worked to protect businesses from market competition. It seemed like a good idea at the time, but unfortunately, business interests and politicians then took up the cause of more widespread total deregulation.

Starting with the Congressional elections of 1978, the anti-consumerism forces took off in earnest with the election of Ronald Reagan. Thus, the slow process of the consumerism's dismantling began.

It was not direct or always overt. Repeals of laws were not always necessary, but increasingly greater "trust" was placed in the power of market forces to do the job, even where it proved inadequate decades earlier. As the changes began, Le Duc (1982) wrote about one regulatory agency that, "In the world of Washington, 'the trend' seems mightier than 'the truth.' New approaches to old issues are in constant demand so that yesterday's policies can be blamed for today's problems. Thus, for example, it is no longer fashionable to view regulation as the remedy for all inequities in the marketplace. Instead, it is now considered proper to view the marketplace as the remedy for all inequities in regulation" (p. 164).

During the decades that followed, regulations were scaled back, consumer protections were deregulated and much that was accomplished in the prior waves of consumerism were negated. Not just those of the third wave, but in many instances, the consumer protection clock seemed to turn back to the earliest years of the Industrial Revolution.

The late Molly Ivins frequently wrote that if you elect people who do not trust the power of government, they would not know how to use government even in cases when it is needed. Regardless of the party in power, she reported tales of business misbehavior comparable to the scandals of earlier times (e.g., 2004), with relevant government agencies mostly ignoring it. By the time of the second Bush president, she described problems of unsafe food, drugs or other products comparable with dangers rivaling those of the prior century (Ivins and DuBose 2005). With the encouragement of Alan Greenspan, financial markets were deregulated with his stated trust that consumers would be protected adequately by self-regulation and market forces. Antitrust enforcement seemed minimal while court decisions overturned past case law limiting or distrusting business' power as corporations were recognized as having human rights under the U.S. Constitution.

In my own particular realm of research interests, the FTC continued to recognize that the only power of self-regulation comes from business awareness of regulations or laws that are real or threatened (Rotfeld 1992). Workshops on deceptive weight loss claims and not so veiled threats to hold media vehicles liable for the plethora of misleading weight loss advertising (Anthony 2003; Rotfeld 2003) were followed by a short-term drop in actual publication and broadcast of those messages in some vehicles. Bringing a few cases against vehicles that actually disseminated the messages might have maintained a stronger and more lasting impact (Galloway, Rotfeld, and Richards 2005), but the FTC did not appear willing to take that step. However, the self-regulation bodies of the National

Advertising Review Council still continue to recognize the importance of consumer trust, and the FTC does seem eager to go after companies who are unwilling to cooperate with the self-regulation program.

Yet even a century ago, the self-interest of advertisers desired a degree of regulation, at least to make certain claims are true. Business self-interest serving a concurrent consumer interest, however, was the exception instead of the rule.

With so much of past regulations or consumer protections missing, weak or inactive, consumer literacy provides to remaining hope for the public's self-protection. A college professor supports education, that conclusion is not a stretch, and it is a worthwhile endeavor to see how to improve consumers' literacy, along with their understanding of possible options and decisions in health care (Bone, France, and Aikin 2009; *JCA*'s special issue Summer 2009), privacy (Langenderfer and Miyazaki 2009; *JCA*'s special issue Fall 2009) or dealing with day-to-day economic concerns or future planning of financial needs (Kozup and Hogarth 2008; *JCA*'s special issues in Summers 2008 and 2010).

Yet a pervasive pessimism becomes unavoidable with even this simplistic understanding of past protections of earlier times. With the recent economic meltdown, we learned that many experts whose jobs required them to study the arcane financially engineered products were themselves unable to understand and spot the problems in the various investments that caused the collapse. In 2010, the marketplace is more confusing than ever, and the products are more complex with more potential hidden dangers (Rotfeld 2009). Many consumers simply do not possess the ability to understand and evaluate all available information, while the businesses possess even more influential power with the mass media and political lobbyists. And many of the consumers who are able to process and understand complex product information would rather do other things than develop a broad range of expertise.

Meanwhile, my Toyota might suddenly experience runaway acceleration at any time, my bank might fail, my new prescription might have hidden dangers—assuming the insurance company will allow me to buy it—and the pet food imported from China could have had a dangerous additive that killed our dog.

Under the heading of "freedom," meaning freedom for businesses, four different presidents oversaw so much of the core structures of consumer protections established up until 1980 become moribund, inactive, misdirected or even dismantled until 2009. Consumer literacy can only protect so many people, and the most literate and knowing person must still contend with the power of business to withhold, conceal and even limit the available information.

It is not asking the government to be a national nanny to desire some regulatory efforts to assess product guarantees and basic safety standards.

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