WHY CONSUMER PROTECTION EFFORTS ARE LIKELY TO FAIL?

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Our primary objective in preparing this paper is to investigate and expose a number of fundamental causes underlying the actual failures of several recent efforts in consumer protection. We strongly believe that unless these root problems are eliminated or minimized there is very little hope that consumers in the market place can be sufficiently or effectively protected from a number of threats to rational and safe buyer behavior and consumption behavior. Indeed, we clearly see the presence of a "catch - 22" phenomenon in the present state of consumerism efforts.

In this paper, we first review the areas of consumerism, the entities involved and interested in consumer protection, and a typology of consumerism. Second, we examine in some detail how each entity entrusted with the task of consumer protection is likely to fail. Finally, we present some long-term strategies which seem to provide greater payoffs in consumer protection.

Review of Consumerism

Not surprisingly but unfortunately, consumerism means different things to different groups and entities. For example, to the new militant activists in the area, it is simply caveat venditor or let the seller beware. On the other hand, to the business entity, it has meant, at least in some quarters, a threat to free enterprise and capitalism. Peter Drucker (1969) has defined it as follows: "Consumerism means that the consumer looks upon the manufacturer as somebody who is interested but who really does not know what the consumer's realities are. He regards the manufacturer as somebody
who has not made the effort to find out, who does not understand the world in which the consumer lives, and who expects the consumer to be able to make distinctions which the consumer is neither willing nor able to make" (p. 2). Accordingly, if we consider marketing as the process of identifying and satisfying customer needs, wants and desire for a profit, consumerism can exist only if the marketing concepts have either not worked or more probably not fully utilized by management. The industry has, therefore, often considered modern marketing practice as an alternative to consumerism movement (Christopheron 1972). Finally, according to the Consumer Advisory Council (1963), consumerism has meant the provision and enforcement of a bill of rights of consumers consisting of the right to safety, the right to be informed, the right to choose, and the right to be heard.

Despite the differences of opinions among various groups and entities, consumerism is generally considered to include some form of protection to people against (a) physical threat to life, health and property; (b) economic threat to rational and satisfying consumption benefit as a result of market imperfections, abuses, fraud and deception; and (c) threat from other consumers in the process of collective consumption in the modern technological mass consumption society (Aaker and Day, 1971; Gaedeke and Etcheson 1972). Similarly, most researchers and practitioners in consumerism believe that there are three distinct processes with identifiable entities which should safeguard consumer interest (Uhl 1971). They are (a) the government through the process of legislation and regulation; (b) the business through the process of free competition and industry wide self regulation, and (c) the consumer activists through the process of
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place. The following diagram, adapted from J. N. Uhl (1971) pretty much summarizes these three entities and process:

There is, however, virtually no agreement among practitioners of consumerism as to which process or the entity is more desirable from a realistic welfare of protecting consumer interests. If anything, partisan lines have been so strongly etched that we fear it often leads to "negative sum" game playing among the three entities. Furthermore, it is often forgotten that the three processes interact and influence one another in their efforts to provide consumer protection. For example, greater consumer education and consciousness often leads to better legislation and regulation as well as greater self regulation. Similarly, greater regulation is likely to generate more self regulation and competition. Finally, intense competition often produces additional legislation and regulation.

We define consumerism as the organized efforts by or for consumers to maintain or enhance consumption welfare in a mass consumption technological
society. Tacitly, we think that consumerism as a concept or ideology is less relevant to agrarian and other less developed economies.

Accordingly, the three types of threats from which consumers need protection are presumed to be largely a function of mass production and mass consumption possible in an industrial state.

Based on our extensive review of consumer protection literature, we have developed the following typology of consumerism issues.

a. Physical Safety and Hazards of Mass Consumption

Physical safety is probably the most obvious and highly relevant area of consumer protection. As stated above physical safety is presumed to be largely a phenomenon and consequence of high technology. We believe that safety consequences of man-made technology are least known to us and, therefore, represent a much greater threat to human life than the natural hazards. For example, we know very little about the consequences of consuming preservatives and other chemicals in our food consumption. We can also divide the physical safety typology into two further types: (1) safety in voluntary consumption of products and services such as consumer durables, nondurables and voluntary services and (2) safety in involuntary consumption of the polluted environment. The latter includes collective consumption of polluted natural resources essential to human survival such as water and air. Most of the involuntary consumption activities often to be collective and, therefore, possess the inherent danger of mass effects of photochemical smog in highly industrialized metropolitan cities such as Tokyo or Los Angeles.
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b. Economic Rationality

This type of consumer protection area refers to economic loss, sacrifice and disutility which the consumer often encounters in the market place. It is further stratified into four distinct categories: (1) protection against what Senator Magnuson calls the dark side of the market place (Magnuson and Carper 1968). This includes fraud, deception and intentional misrepresentation as well as coercive and high pressure persuasive tactics of marketers such as bait and switch advertising, chain-referral selling, free gimmicks and fear-sell; (2) right to choose which includes concern related to monopoly powers, price collusions among oligopolists and other activities which are presumed to inhibit competition; (3) right to be informed. This not only concerns questions of unfounded claims, exaggerations and misrepresentations about the product attributes but also includes questions of partial and incomplete information and full disclosure; and (4) right to be heard which is primarily concerned with the question of consumer redress.

c. Environmental Imbalance and Threats to Humanity

This type of consumerism is best described as the macro long-term effects of mass consumption. We can divide it further into three subcategories; (1) excessive resource depletion and exploitation. In their industrial dynamics simulation of demand and supply of world resources, meadows, et. al. (1971) suggest that limits to growth are finite and much sooner than what is realized due to heavy depletion of natural resources such as metals, energy and chemicals; (2) pollution of the environment in the process of mass consumption. Solid waste, air pollution and water pollution are major aspects of this category including
the economics of recycling; (3) standardization of the human species.

Major concern has been recently raised about the homogeneity of human biology due to mass consumption of identical nutrients, chemicals and other life support entities and the lack of immunization such standardization is likely to generate. While very little known and researched in this area, concern is aroused by the recent experiences of standardized agricultural crops.

d. Social Safety and Social Inequities

In contrast to the physical safety considerations in personal consumption of products and services, we now discuss the psychological and physical safety considerations in mass consumption societies. It is argued that we live in an "other-directed society" where the social pressures of conspicuous consumption and conspicuous nonconsumption are equally critical to examine. Under this typology, we distinguish five categories of concern in consumerism: (1) safety and protection from other consumers. This includes the effects of smoking on nonsmokers, discarding of harmful and potentially dangerous containers, and the like; (2) problem of low income families who cannot meet the societal expectations of minimum mass consumption behavior; (3) safeguard of minority interests from being exploited by marketers of products and services, for example, the recent mass efforts to segment the black segment in numerous industries; (4) negative side effects of mass communication and consumption such as the effects of television programming on children, and the lack of exercise and effort due to very affluent consumption of convenience goods and services; and (5) dehumanization in mass consumption society such as
lack of concern interest or even shock in witnessing crimes, poverty and wars.

As can be seen from the above typology, the issues of consumerism are diverse and far-reaching. Some of them are more immediate, for example, physical safety considerations, and others are far-removed from daily immediate activities of consumers such as dehumanization and standardization of the specie. Some of the issues are pragmatic and others are ideological and, therefore, more abstract.

Let us now examine the role of each of the three entities and their processes in protecting consumer interests. Since our view is rather pessimistic about the potential of providing consumer protection, we will be limiting our arguments to the problem areas inherent in each process. Also, the evidence on recent efforts is negative to warrant our concentration on problems rather than the promises in each process.

The Role of the Legislative-Regulatory Process

Perhaps the single most commonly recommended process to solve consumer problems is government legislation and regulation (Barber 1966). Based on our review of a number of books and articles, we find that the following major weaknesses and limitations make government legislation or regulation ineffective in solving problems of consumerism.

1. Lack of technical know-how. It is no exaggeration when we state that regulatory agencies know very little about the market realities they are asked to regulate and certainly they know much less than the regulated industry managers. (withrow, 1967; Cohen, 1969)

While there are a number of explanations possible for this ironic reality, the most interesting to us is the singular lack of interest
among professionals for the civil service. Except only in very recent years, we find that the best graduating students in any applied discipline have consistently shunned the government employment opportunity.

Second, it also seems that a number of technological advancements have been transformed into product realities without fully comprehending all of their manifest or latent hazards. For example, very few including the regulatory agencies know the physical effects of cyclamates, hexachlorophane, enzymes and the like let alone their more subtle psychological effects on consumers.

2. Starvation budgets of the regulatory agencies. Ralph Nader (1968) dramatically points out this limitation by some statistics: the combined annual budget of the FTC and the Antitrust Division of the Justice Department in 1968 was $23 million with which they were supposed to collect data, initiate investigations, and enforce the laws dealing with deceptive and anticompetitive practices of a $350 billion economy. If we examine the annual budget of FTC alone, it is at least forty times less than the annual advertising and promotion budget of Proctor & Gamble. The starvation budgets make the regulatory agencies virtually ineffective in their efforts to detect and legally support any evidence pointing toward deception, misrepresentation or fraud. Thus, even if the regulatory agencies were technically competent, they don't have the means to enforce laws.

3. Lack of uniformity in enforcement. Surprisingly, the process of enforcement, even in the limited number of cases where it exists.
is haphazard and almost random. Most enforcement activities are initiated by complaints from competitors or from the direct letters of the consumers. (ABA Commission Report, 1969). In other words, the regulatory agencies have been practicing on the principle of management by exception rather than on the principle of management by objectives.

4. Enforcement limited to trivia. A stronger indictment of the regulatory agencies has been their singular efforts to limit enforcement to trivial aspects. For example, according to the ABA Commission Report (1969), the FTC has simultaneously ignored some fundamental aspects such as ghetto frauds, monitoring advertising practices and securing effective compliance with orders, and at the same time has concentrated on the failure to disclose that "Navy Shoes" were not made by the Navy, that flies were imported, that Indian trinklets were not manufactured by American Indians, and that Havana cigars were not made entirely of Cuban tobacco. Comparable case histories of regaling in trivia prevalent in other agencies such as the Antitrust Division and FDA can be found in Withrow (1967) and Dunkelberger (1969).

5. Antiquated organizational structures. Even in the enforcement of trivia on a haphazard basis with limited funds and technical competence, we find that bureaucracy par excellence often has mitigated its impact. There are simply too many agencies in too many places to deal with a single problem. For example, as of 1969, there were 269 consumer programs administered by 33 different Federal Agencies (Congressional Quarterly, 1969; Robinson, 1969).
The problem is even worse at the state and local levels where often the doctrine of political patronage tends to dominate in any enforcement activity.

6. Lack of realistic theory of buyer behavior. Perhaps the single most critical problem in both legislative and enforcement activities is lack of theory of buyer behavior. Unfortunately, many of the laws enacted to protect the consumer are based on value judgements, partial knowledge of the realities of consumer behavior, or worse yet on classical economic concepts of utility which no longer prevail in the market place. Withrow (1967) very clearly points out this problem as it relates to the antitrust policy. Another example is the recent proposal to enact unit pricing laws in grocery stores based on the presumption that (a) the housewife is neither aware nor capable of calculating unit prices and (b) unit price information can at best have positive effect on rational choice and at worst no effect. Just as the marketing practitioner has chosen to ignore negative impacts of advertising, so also it seems that proponents of unit pricing have chosen to ignore negative consequences such as overstocking and overconsumption of unit pricing.

The problem created by lack of a theory of buyer behavior is further compounded when existing laws are interpreted and enforced by regulatory agencies. McGhee (1965) has demonstrated this in the enforcement of Robinson-Patman Act, Dunkelberger (1969) finds this problem inherent in the enforcement of truth in packaging laws, and Cohen (1969) pleads for more behavioral theories in the FTC thinking. Indeed, the recent case of the boomerang effect of "corrective
advertising" concept in bread industry is direct testimonial to the lack of theory of buyer behavior in Federal enforcement activities.

7. The economic might of the industry. Some have bitterly complained against the strong lobby efforts which the industry can, and often does, resort to block passage of certain laws such as truth-in-packaging and truth-in-lending bills. The economic might of the industry is felt even greater because of a direct contrast in the lobbying efforts of the consumer advocates (Nader 1968). A second, and only indirectly related aspect of the economic might vested in the industry is the systematic hiring of regulatory agency officials once they resign or retire from their duties. It is alleged that often the regulatory officials remain soft hearted due to the future economic windfall they expect from such employments.

It should be evident from the above discussion that the prospects of consumer protection by the process of government regulation intervention and legislation are rather small.

The Role of Competition and the Free-enterprise Process

Although we are not as pessimistic about the role of competition and the free enterprise process of the business world as that of the regulatory-legislative process, we must express our concern about a number of matters which seem to inhibit this process from providing consumer protection.

1. Lack of customer-oriented marketing. Perhaps the single most critical reason why business may fail to play "positive sum" game with the consumers and, therefore, fail to safeguard consumer interests is the lack of customer-oriented marketing. Unfortunately,
makers which lends them to myopically focus on products instead of customer needs, to believe marketing is selling, and to define corporate objective as profits from sales instead of profits from satisfied customers (Kotler 1968). To this end, Drucker 1969 flatly explains presence of consumerism as the shame of the total marketing concept. It can also be shown that product-oriented marketing practice leading to innovate-or-perish policy is not only incapable of providing consumer protection, but it may be the heart of our current problems in multinational marketing (Seth 1972).

Fortunately, there seem to be enough unpleasant experiences from innovate-or-perish policy to encourage management to plan business activities by working backwards from the needs of the customers in the market place. To this extent, we think there is at least some hope that problems of consumerism may be mitigated by customer-oriented marketing concept (Christopherson 1972).

2. Problems in self-regulation of industry. The most common alternative suggested to prevent and cure the ills of marketing malpractices by a minority of business firms is the concept of self-regulation. Unfortunately, the track record of self-regulation as a potential alternative to protect consumer interests is not too good. Overwhelmingly, we find empirical evidence and thinking of both scholars and practitioners which suggest that self-regulation is unlikely to solve problems of consumer protection because it is not a workable proposition (Boyd and Claycamp 1966; Stern 1971; Levin 1967; Van Cise 1966; Turner 1967). A number of reasons have been cited for the actual
and potential failure of self regulation to protect consumer interests. The first and foremost is the fear, and sometimes the actual reality, that any collective activity such as self-regulation may be in violation of the Sherman Act or some other antitrust legislation. This fear often leads to some members of an industry to give up on any self-regulatory activities by resigning to the view that "you will be damned if you don't but doubly damned if you do." In short, the fear of legal complications and problems often short circuits any initiative or desire toward self regulation. We consider this as another example of "catch-22" phenomenon in the realm of consumer protection.

A second common reason for the failure of self-regulation is that there are too many parties involved each with differences in goals and perceptions. Accordingly, it is inevitable that group conflict will be present and persistent which often entails its inefficient resolution by the process of bargaining and politicking (March and Simon 1958; Sheth 1972).

Finally, it is very difficult, and sometimes impossible, to provide adequate internal safeguards, monitoring and policing against some self-serving members of industry. In this regard, we fear a parallel between the governmental regulatory agencies and the industry in regard to unenforceability of rules and procedures.

3. Lack of interest and commitment. A third major factor which is likely to limit the role of business entity to provide consumer protection is the total commitment to achieving day-to-day profit maximization (Levitt 1968). It seems that even the cri-
management suffers from lack of time to envision long term consequences of myopic thinking and business practices. Consequently there appears to be lack of a sense of social responsibility partly encouraged by the pressures of competition. This is further compounded by a strong belief that the doctrines of caveat emptor and free enterprise should and do provide enough incentives and safeguards to minimize consumer problems. In fact, it is relatively easy to trace the cause of typical defensive reactions of the industry to any legislative, advocacy or regulatory challenges of business practice to these beliefs.

The Role of the Consumer Advocate:

We think the role of the consumer advocates to solve consumer problems is even more limited than either the government or the business entity. This may seem paradoxical at first blush but there is enough evidence and reasoning to support our position. What are the underlying factors which minimize the potential of consumer advocates to solve consumer problems?

The first and the most serious factor relates to a total lack of consumer's own viewpoint on the matter. Most consumer advocates thrive on normative models of ideal consumers and consider themselves as evangelists in pointing out what is good for the consumer. Often such normative models are far removed from the realities of buyer behavior to be very useful. A case in point is the recent efforts to legislate unit pricing without any systematic research or experimentation on the psychology of buyers and on their information processing decision rules in the supermarket situation. A related factor is the typical oversight of any negative consequences that may ensue from a proposed legislative or regulatory change because most of such proposals are based
on the normative thinking that such changes will only be for the good of the consumer. In other words, often only one side of the coin is typically examined and researched by the consumer advocates.

A second factor detrimental to efforts of consumer advocates in consumer protection is that they tend to be issue-oriented rather than problem-oriented. There is often a complete lack of conceptualizing the totality of a consumer problem area. The efforts, therefore, often resemble the proverbial blind men and the elephant. Consequently, most efforts and even any research on specific problem areas tend to be symptomatic instead of explanatory and causal. We strongly believe that the myopic issue-oriented viewpoint simply generates more unnecessary and irrelevant controversies and debates as to how to solve the problem rather than providing its actual solution. Once again, therefore, we can't resist but imply a "catch-22" phenomenon in the efforts of the consumer advocates.

The third factor which delimits the role of consumer advocates relates to presence of starvation budgets for research and lobbying efforts and absence of professional credibility in most of their fundamental research on product testing procedures, (Thorelli 1971). In addition, whatever labeling and testing information is diffused to consumers, it tends to be so complex and technical to be of little interest to consumers. Related to the problem of credibility, we find that problems of consumerism are often handled in an emotional manner rather than in a rational manner. While there is nothing wrong in emotional reasoning and expression of the dire need for consumer protection, it often leads to a general disbelief among interested parties especially the industry.

Finally, there is the tragedy of the realities of consumer education and information: Those consumers who need the information most are the least
The classic example of this tragedy is the fact that *Consumer Reports* is primarily read by college educated professional people and not by the ghetto consumers; the latter probably need that type of information most and, as we understand, *Consumer Reports* was primarily published for them in its humble beginning. We think this tragedy is not because less educated consumers are irrational decision makers but because the consumer advocates have grossly failed to incorporate the customer-oriented approach to their marketing efforts of providing consumer education and information.

**What About the Team Effort?**

Often the suggestion is made that what we need is a joint cooperative effort among all the three entities and processes to minimize or even eradicate consumer problems.

Our viewpoint on the possibility and success of team effort is also pessimistic. In regard to the cooperative efforts between the government and the industry, our pessimism is simply an echo of an elegant analysis by Bauer and Greyser in what they call "the dialogue that never happens". What are some of the reasons for this prevalent pessimistic attitude among a number of scholars and researchers?

First, it is argued that there are some fundamental differences between the regulatory agencies and the industry in their models of buyer behavior. Each one is looking into the world of consumer behavior with different pairs of glasses. At the heart of this difference is the prevalence of a normative model (How should consumers behave) among the regulatory agencies and a descriptive model (How do consumers behave) among the marketing practitioners. Furthermore, the structure of the two models and reliance on specific disciplines
presume greater importance of price and promotion in manipulating consumers while the industry typically relies on product innovation and distribution as more important adaptive mechanisms to meet changing needs of the consumers.

Similarly, the regulatory agencies often examine the market performance in terms of aggregate market behavior but the industry invariably looks at market performance in terms of market segments.

A second major factor which has limited the team effort is the blind defensive attitudes and reactions of the industry to any governmental legislation or regulation. Business Week (1969) describes this defensive reaction neatly as consisting of the following sequential stages of reactions to any proposed legislation: (1) Deny everything, (2) Blame wrongdoing on the small marginal companies in the industry, (3) Discredit the critics, (4) Hire a public relations man, (5) Defang the legislation, (6) Launch a fact-finding committee or even a research institute, and (7) Actually do something about the consumer problems.

Unfortunately, the defensive attitudes and reactions are widespread so as to qualify as a mass phenomenon. We think they have arisen due to two causal factors. First, lack of modern-day realities of market structure and consumer behavior in the professional education in economics and business. For example, we still get educated in the principles of classical theory of the firm and perfect competition despite the fact that it is so rarely present in today's market structure and competitive behavior to be almost mythical. Second, the past experience and "track record" at legislating and regulating the free play of market behavior is dismal to say the least (Barber 1966, Withrow 1967).

A third factor which limits the role of team effort in protecting consumers arises from the fact that both suffer from the same limitations
of myopic views of consumers, of organizational bureaucracy, and of technical ignorance to assess the effects of technology. Thus, rather than pulling together each other's strengths, the team effort often results in the examination of each other's weaknesses. Furthermore, the fat is added to the fire by a basic mistrust and differences in values among professionals in the regulatory agencies and the industry.

Are There Any Solutions?

If the reader by now feels that the paper is a strong indictment of all the entities and processes engaged in consumer protection, we have fulfilled one of our objectives. For sure, we might have either ignored or minimized the positive efforts of some of the entities and processes; however, our review of the literature reveals more fervors and failures rather than favorable actions and results.

The reader may have also felt that the paper is a reflection of pessimism of the authors. This feeling is partly a true reflection of pessimism and partly our deep-seated belief that fundamental long-term changes are mandatory if we are to succeed in providing appropriate protection to consumer welfare. What are some of these fundamental changes?

The first recommendation is to adopt a strategy of selectivity and segmentation among the three entities and their processes (See Sheth 1972b for some general segmentation propositions). The problem of consumerism is complex, multidimensional and diverse as can be judged from the typology of areas of consumer protection. No single entity can, therefore, fully tackle the totality of consumerism especially when each entity seems to suffer from economic and expertise resources. We, therefore, recommend that the total problem area of consumer protection should be segmented and
Below is a grid of problem-entity interaction which capitalizes on the potential strengths of each entity and its process.

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In the above grid, we think it is best to motivate the industry to provide physical safety in consumption, to encourage the consumer himself to become more rational buyer, to rechannel the energies of the consumer advocates toward problems of social safety and social inequities, and to mandate the government to forestall environmental imbalance.

A second recommendation is a national effort to initiate a crash program to understand the complexity and realities of consumer behavior. Despite living in an industrial state and mass consumption society, we know very little from a policy viewpoint about the buyer behavior of citizens. What we need is a national research council endorsed and financed by both the government and the industry which will engage in compilation and analysis of data pertaining to consumption behavior at a psychological and microlevel. Furthermore, it should have a national recognition and status comparable to NSF and NIE.

From this research effort, we expect the emergence of realistic comprehensive theories of buyer behavior which should then guide the thinking and policy decision of all the entities engaged in consumer protection. Such comprehensive theories of buyer behavior should prove useful as a vista of consumer behavior, as a common frame of reference and vocabulary among all the entities, and as a guide to fundamental research in consumer behavior.
Fortunately, there is a good deal of hope that such an endeavor is realistic and feasible as we begin to examine the future of buyer behavior theory (Sheth 1972c).

A third recommendation relates to introducing some fundamental changes in our professional training and education at the higher education level. Unfortunately, most schools either explicitly or implicitly seem to encourage the attitude that business ends just any means. Somehow, there is too great an emphasis on winning the game and little emphasis on the sportsmanship in our professional education and training. These attitudes are further reinforced by a basic job insecurity and the reward system based on competitive aggressive behavior. The nat result is the common occurrence of a professional individual in a big company stooping to the deceptive and sometimes fraudulent activities "for the sake of the corporation" despite the consistent parental guidance and insistence on a religious following of the ten commandments. We hope that both the corporate entity and the professional individuals working in the corporation temper the spirit of competition with business ethics and personal values.

The last recommendation is most radical and probably very difficult to implement. We strongly believe that both the child rearing practices and secondary school education provide little competence to the new generation to cope with the realities of a complex mass consumption society. It is often surprising to reflect on the very little change in these educational processes both in content and format and contrast it to the enormous and rapid changes in the socioeconomic base of our society. We, therefore, recommend mass education of children and young adults especially in the public school systems to develop in them awareness and competence of the following aspects of realities of mass consumption:
...
a. Provide formal knowledge about the criteria with which to evaluate complex technical products and services and to choose more rationally.
b. Develop managerial and decision-making skills in them as consumers comparable to the same type of skills we inculcate in people to become professionals in industry or government.
c. Increase consumer's knowledge of the workings of business, government and the market place.
d. Develop values and consciousness which will invigorate respect and concern for other consumers in their pursuit of collective consumption.

We think it will be highly desirable, and even mandatory in the not too distant future, to replace pure and abstract subjects such as mathematics, physics, chemistry, languages and the like with more applied courses in managerial consumer behavior, market analysis, business organization and applied technology. Unless there is a major change in our present mass consumption habits, hopefully brought about by the above revisions in mass education, we think the negative side effects of mass consumption may endanger our very existence.
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